2001

Penrose v. Ross : Brief of Appellee

Utah Court of Appeals

Richard K. Glauser; Michael W. Wright; Attorneys for Appellee.
Scott N Cunningham; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

Nana **Penrose.**	Appellate Case No. 20010943 CA
Plaintiff/Appellant,	Priority Classification No. 15
v.	
Christopher Ross, an individual, Bryant Ross, An Individual, DOES 1-5 Inclusive, Whose True Names Are Not Known to Plaintiff.	
Defendants/Appellee.	

BRIEF OF APPELLEE

APPEAL FROM THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Appeal from the Order Granting Defendant Bryant Ross' Motion for Summary Judgment of the THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, Salt lake Department, the Honorable Judge Leon A. Dever presiding.

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Jurisdiction of the Court

Jurisdiction is before this court pursuant to *Utah Code Ann. , §78-2a-3.*

Statement of Issues

Plaintiff failed to sue defendant, Bryant Ross, within the four year statute of limitations but did file an amended complaint, adding Bryant Ross as a defendant five weeks after the statute of limitations expired. Plaintiff claimed that there was an identity of interest between Mr. Ross and his father, who was named in the original complaint, because of a family relationship, and that the complaint should therefore relate back in time. Plaintiff also argued that because Mr. Ross allegedly would suffer no prejudice by being forced to defend against the action, the complaint should relate back in time. The court held that there was no identity of interest between Mr. Ross and his father, and that summary judgment was appropriate in the circumstances. Three issues are presented:

(1) Did the trial court err in its decision that there was no identity of interest between Bryant Ross and his father?

(2) Did the trial court err in determining that the amended complaint did not relate back in time to the filing of the initial complaint?

(3) Did the court err in granting summary judgment to Bryant Ross?

These are questions of law, and are reviewed de novo. Butterfield v. Okubo, 831 P.2d 97 (Utah 1992).

Statement of the Case

Procedural Background: This is an appeal from the trial court's decision to grant summary judgment in favor of Mr. Bryant Ross, defendant and appellee. Defendant Christopher Ross also filed a motion for summary judgment, which was granted. That decision is not subject to this appeal.

Facts of the Case: The plaintiff was involved in an automobile accident on November 21, 1996. The police were called to the scene and a police report was prepared. The police report clearly identified the other driver as defendant, Bryant Ross. (Addendum A) Approximately four-and-a-half months after the accident on April 2, 1997, the plaintiff gave a recorded statement in which she acknowledged that the other car was driven by defendant, Bryant Ross. (Addendum B) On November 17, 2000, plaintiff filed a verified complaint to recover damages for personal injuries that she allegedly suffered in an auto accident. The complaint was filed only four days before the statute of limitations expired and in it she wrongfully identified Christopher Ross as the individual who was at fault for causing the collision. Christopher Ross was served with a Summons and Complaint on December 18, 2000, approximately four weeks after the statute of limitations had run.

Six weeks after filing her initial complaint, and five weeks after the statute of limitations had run, Ms. Penrose amended her pleadings to name the appellee, Bryant Ross, as an additional defendant. The new complaint alleged that Bryant

Ross was liable for plaintiff's injuries because he negligently operated the vehicle that struck her car, and that Christopher Ross was liable because he was the owner of the auto driven by Bryant Ross. The Defendants answered the amended complaint, and both moved for summary judgment shortly thereafter.

Ms. Penrose did not oppose the motion of Christopher Ross, and it was granted as a matter of course. She disputed that Bryant was entitled to summary judgment, alleging that the amended complaint related back in time because the defendants shared an "identity of interest".[1] The court disagreed with Ms. Penrose's analysis, and granted Bryant Ross's motion, holding that under the factual circumstances presented there was no identity of interest between Christopher Ross, the father, and Bryant Ross, the son.

Summary of the Argument

The trial court properly dismissed the cause of action against Bryant Ross because the amended complaint, which added him as a defendant, was filed after the statute of limitations had expired. The amended complaint did not relate back under Rule 15(c) of the *Utah Rules of Civil Procedure*, because there is no identity of interest between Bryant Ross and his father Christopher Ross. The phrase identity of interest means identity of legal interest or a common legal position. A family relationship is not sufficient to establish such an identity. Similarly, the fact

[1] Ms. Penrose also argued that her prior designation of a "John Doe" defendant preserved her action against Bryant Ross. In fact this was her main argument below. She has not raised the issue here, however, and therefore has waived it.

that the defendants had a common insurer and common legal counsel does not establish an identity of interest. Since neither party was answerable for the negligence of the other, the defendants had different legal interests and positions with respect to the litigation underlying this appeal. The trial court, therefore, decided correctly when it found that the parties did not have an identity of interest and that the amended complaint did not relate back.

Argument

Introduction

Both the facts and legal issues underlying this case are simple and straightforward. Ms. Penrose failed to file a complaint against Bryant Ross within the period prescribed by law. Mr. Ross moved for summary judgment on that basis, and Ms. Penrose opposed, alleging that her amended complaint should be viewed as timely, because Bryant Ross and his father shared an identity of interest.

The identity of interest argument made by Ms. Penrose both here and in the trial court below is based on two allegations:

(1) An identity of interest exists between Bryant Ross and Christopher Ross because the factual circumstances show that Bryant Ross would suffer no prejudice by being forced to defend this action; and,

(2) A father-son relationship is sufficient to establish an identity of interest, and therefore the amended complaint should relate back in time.

The fundamental questions presented for this court's review concern the scope of the "relation back" doctrine set out in Rule 15(c) of the *Utah Rules of Civil*

Procedure, and, whether the doctrine may be used to justify adding Bryant Ross to the underlying litigation after the statute of limitation had run, merely because he has a familial relationship with Christopher Ross. Mr. Ross is confident that when the court carefully considers the circumstances of this case, and rigorously applies the controlling principles of law, it will come to the same conclusion reached by the trial court. Namely, Bryant Ross does not share an identity of interest with his father, and the amended complaint naming him as a defendant was untimely filed. Summary judgment, therefore, was appropriate.

Point I

IDENTITY OF INTEREST CANNOT BE ESTABLISHED MERELY BY SHOWING A LACK OF PREJUDICE

In her opening brief Ms. Penrose repeatedly argues that her amended complaint should relate back, because Mr. Ross has failed to show that he would suffer any actual prejudice in defending the action.[2] In contrast, she points out that if the court declines to implement that doctrine, she will be deprived of her right to pursue compensation for her injuries. On the surface, this claim to fairness has a certain appeal. However, it comes into direct conflict with other policy choices made by our legislature in setting time limits in which an action may be brought. These

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[2] Ms. Penrose claims that because Bryant and Christopher Ross shared legal counsel (after Bryant Ross was finally sued and after the statute of limitations had run) and were covered by the same insurance policy, the investigation conducted by counsel would be useful for both parties. This is not true here. Because Christopher was not operating the vehicle, his defense to the first complaint was that he was not the person who allegedly caused Ms. Penrose's injuries.

promote prompt investigation and adjudication of disputes, while penalizing those who are dilatory. See, *Breiggar Props. , L.C. v. H.E. Davis & Sons, Inc.*, 449 Utah Adv. Rep. 3 (Utah 2002). In fact, by their very nature, statutes of limitation must operate without regard to individual questions of prejudice. After all, it is difficult, if not impossible, to explain how a complaint filed one day after the running of the statute causes prejudice to a defendant, while one filed a day before the statute runs is deemed acceptable. Nevertheless, the legislature has determined that the former is subject to dismissal, while the latter may go forward. Simply put, any test that focuses exclusively on actual prejudice would end up swallowing the rule and would emasculate limitations and the certainty they support.

As with any case, proper analysis requires that the parties and the court first identify the governing rules of law. Accordingly, a brief review of the relevant case and statutory authority is the proper place to begin the consideration of the issues presented here. As is made clear from its text, Rule 15(c) - the source of the relation back doctrine - is designed to allow a party to assert additional causes of action against a named defendant, even though the time for making the new claims may have passed.[3] The rule is not, however, intended to function in the same manner when it comes to adding new parties to pending litigation. This was made clear in the seminal case of *Doxey-Layton Co. v. Clark, et.al.*, 548 P.2d 902, 906 (Utah 1976), in which the Utah Supreme Court held that, generally, the relation back

[3] The new causes of action must also arise out of the same course of conduct detailed in the first pleadings.

provisions of Rule 15(c) do not apply to amendments that substitute or add new plaintiffs or new defendants to an action. In making this decision, the Court expressed a specific concern that if the rule was used to justify the easy addition of new parties, the very purpose of statutes of limitation would be defeated.

Doxey, supra, did, however, carve out a narrow exception to this general rule. The Court stated that if the party to be added had an identity of interest with a party already before the court, the amendment would be considered timely. *Id.*, at 906. In so holding, the court reasoned that this exception was not harmful because where there was a true identity, the new party would not suffer any prejudice.

The *Doxey* exception has become the source of considerable controversy. Parties, such as the appellant here, have latched onto the court's language regarding the lack of prejudice, and sought to use it to justify the late joinder of new defendants in any number of circumstances. This formulation of *Doxey's* holding, however, turns the case on its head. A careful reading of the opinion shows that the presence of an "identity of interest" is the actual predicate for relation back, and that the reference to a "lack of prejudice" is made only to show that the exception will not lead to injustice. Ms. Penrose's construction of *Doxey*, which focuses on the presence or absence of prejudice, suffers from the basic logical error of false equivalency. While the existence of a predicate may create certain extrinsic conditions, the presence of those extrinsic conditions does not always mean that the predicate is present. Or, in terms directly applicable to the issues under consideration here, an "identity of interest" may ensure a lack of prejudice, but the

mere absence of prejudice does not necessarily indicate the existence of the identity of interest. Plaintiff's arguments that prejudice must always be shown to invoke the statute of limitations would effectively destroy all limitations of actions. Uncertainty would abound and legislative intent would be ignored.

If a lack of prejudice is not equivalent to an "identity of interest", how, then, should the phrase be defined? This is the next step.

Point II

THE PHRASE "IDENTITY OF INTEREST" IS A TERM OF ART USED TO DESCRIBE A RELATIONSHIP BETWEEN PARTIES THAT IS CHARACTERIZED BY A COMMON LEGAL INTEREST OR POSITION. CHRISTOPHER AND BRYANT ROSS DID NOT HAVE THE SAME POSITION

As implied, above, the appellant appears to view the test set out in *Doxey* as an empty vessel, which may be filled by any relationship between new defendants and old, if the relationship involves the possibility of communication. In appellant's view an identity of interest is established upon a showing that it was likely that the old party would have told the party to be added that a lawsuit was pending. (Here appellant is focusing on the question of constructive notice, which is really a variation on the lack of prejudice argument detailed earlier. The role notice plays in the analysis of these issues will be addressed below.) Such a standard, unfortunately, suffers from a number of basic flaws. For instance, it ignores the plain language chosen by the Utah Supreme Court to describe the circumstances that allow relation back. It also fails to take into account how the standard has actually been applied in

the past quarter of a century. And, finally, the appellant's version of the identity of interest test is so expansive that it allows the exception to swallow the rule.

a. Identity of Interest is a defined term, with a precise meaning which does not apply here: The most obvious problem with Ms. Penrose's understanding of the expression "identity of interest", is that it fails to recognize that the language used in *Doxey* has a precise meaning. The phrase "identity of interest" is, after all, one that is commonly used in a number of legal contexts, ranging from the certification of class action lawsuits to the implementation of the doctrine of res judicata. See, for example, *Condor v. Hunt*, 1 P.3d 558 (Utah App. 2000), re: claim preclusion; *Nunnelly v. First Federal Savings and Loan Association of Ogden*, 154 P.2d 620 (Utah 1944) re: class action lawsuits; and *James Constructors, Inc. v. Salt Lake City Corp.*, 888 P.2d 665 (Utah App. 1994) re: surety and indemnity law. What is significant about these cases is that in every instance the phrase "identity of interest" is employed in the same way, i.e., to describe a relationship that is based on a common legal position or common interest in a case.

Of course, this usage conforms with, and is most likely derived from, the dictionary meaning of "identity", which inevitably involves the concept of "sameness", See, *Webster's Unabridged Dictionary*, 2001, p. 950. According to the plain language of the exception, in order for parties to share an "identity of interest" they must share the "same" interest.

Ms. Penrose's proffered interpretation of the identity test utterly disregards the plain language of the decision. But unless we are willing to believe that the Utah

Supreme Court chose its words carelessly, and in doing so jettisoned a well-established meaning for a commonly used phrase, the "identity of interest" test, as set out in *Doxey*, must be interpreted as requiring an identity of legal interest or a common legal position vis a vi the case at issue.

b. The restrictive interpretation is supported by case law and does not fit the facts of this case: The more restrictive view of the test, which was adopted by the trial court and is advocated here by Mr. Ross, also finds strong support in the cases that have applied the standard to particular fact patterns over the years. In *Doxey*, itself, the Court was faced with a dispute over a real estate contract, and determined that an amended pleading that added the heirs of the parties named in the original complaint, could relate back because there was an identity of interest between the heirs and the decedents, who had signed the contract. This, of course, is a classic example of a common position or interest in a case. The rights and responsibilities of the heirs were in fact derived from - and in no way differed from - the rights of their ancestors.

Similarly, in the recent case of *Nunez v. Albo, et.al.,* 2002 Utah App. LEXIS 69 (Utah App. 2002), this court was presented with a case in which the plaintiff had first sued a physician, and then sought to add his governmental employers, the University of Utah and its medical school, as new defendants. This court found as a matter of law that this type of relationship created an identity of interest, and that the amended complaint would therefore relate back in time. As with the connection between decedents and their heirs, an admitted employer-employee governmental

relationship (as it was there) presents a classic case of a common position or interest in the litigation, because every aspect of the employer's liability is based on what the employee has or has not done. And every defense asserted by the newly added defendant is identical to the defenses possessed by the doctor.

In contrast to these cases are those which find that other relationships, no matter how close, do not satisfy the "identity" test . The most instructive of these is *Russell v. The Standard Corporation,* 898 P.2d 263 (Utah 1995). There, the Plaintiff alleged a claim for libel against the Associated Press and the Salt Lake Tribune in her first complaint. After finding out that the article had originated with the Standard Examiner in Ogden, Ms. Russell sought to add it as an additional defendant. Although the statute of limitations had expired, Ms. Russell claimed that because the parties had an active contractual relationship there was an identity of interest between the various defendants. The Supreme Court rejected this contention out of hand. Significantly, the Court made no inquiry into whether actual notice of the claim was given, although it is clear that parties involved in an active business relationship have both opportunity and reason to communicate about a variety of issues presumably including the subject of Ms. Russell's suit. Instead, the court simply pointed out that not all relationships involved an identity of interest.

For this reason, Ms. Penrose's argument that an identity of interest is present in every relationship, in which the opportunity or likelihood that communication about a pending suit could take place, is without support in the case law. Mere opportunity for or even communication is not enough. The parties must also share

the type of common legal bond or position described in *Doxey*, supra, and *Nunez*, supra.

That is not true here. Christopher Ross and Bryant Ross are two separate people. They own separate assets and incur separate debts, etc. It would be absurd to suggest that they are legally common. Neither the original nor the amended complaint based Christopher's liability on Bryant's actions. Christopher and Bryant, therefore, did not share a common view or interest in the case; it was, in fact, quite the opposite. Christopher's defense to the original complaint was to point the finger at his son, while his defense to the amended complaint was to express indifference. In neither case was he to be bound by the actions of Bryant. The facts here do not resemble those of *Doxey* or *Nunez*, and the court should not find an identity of interest. [4]

c. The position advocated by the plaintiff has no principled boundaries: Briefly, it should also be noted that the notice theory advanced by Ms. Penrose contains no principled means of distinguishing between relationships that would support an identity of interest and those which would not. If notice is the key, then it could arise under a myriad of facts. For example, what would happen if a person loaned his auto to a neighbor, and the friend caused injuries to a third party, who

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[4] The Oklahoma Court of Appeals recently reached the same conclusion in *Nusbaum v. Knobbe*, 23 P.3d 302 (Ok.App. 2001). The court was presented with a claim that a family relationship, the use of a common attorney and a common insurer created an identity of interest. The court rejected the argument, reasoning that familial relationships did not necessarily give rise to common legal interests.

then brought suit against the auto's owner? Is close proximity in residence the type of relationship that would support an assumption that notice was given? What if the auto was given to a co-worker? Is this sufficient to support the assumption? What about the case of a son who has become estranged from his father? Does the blood tie, in and of itself, support an assumption of notice? The Oklahoma Court of Appeals has answered this in the negative in *Nusbaum*, infra.

These hypothetical situations are offered to show that no "type" of relationship can ensure that notice of a suit would be provided to another potential defendant. In order to assure fairness a trial court would be required to engage in significant pretrial inquiry to determine if actual notice was given. In the alternative, it could simply assume that all relationships would imply that notice was given. (Since it seems clear that a party wrongfully accused or only partially liable might well contact other potential defendants to help share the blame or costs.) This, however, raises the very problems noted by the Utah Supreme Court in *Doxey*. A test that provides no reasonable boundaries threatens to undermine the statute of limitation. A better option is to adopt the test accepted by the trial court and advocated here. It is firmly based on the plain language the Court selected in announcing the exception, and it conforms with standard modes of interpretation.

Point III

THE SO-CALLED MISNOMER CASES SHOULD NOT BE APPLIED TO THE FACTS IN THIS CASE

In arguing that notice is sufficient to establish a legal identity, Ms. Penrose cites to *Sulzen v. Williams*, 977 P.2d 497 (Utah App. 1999) and *Wilcox v. Geneva Rock Corp.*, 911 P.2d. 367 (Utah 1996) as support for her position. While it is true that these cases do appear to adopt a looser standard, a careful review of the facts of those cases shows that they are completely inapposite to the issues presented here.

Both *Sulzen* and *Wilcox* share a common fact pattern and fit within what are commonly known as misnomer cases. In both cases the proper defendant was identified in the body of the complaint, but was misnamed in the caption, and in both the intended party was actually served with a copy of the summons and complaint. Finally, in both cases the amendments that were sought by the plaintiffs, were sought in order to correct a technical defect in the pleadings.

These misnomer cases are analytically different from cases in which a new party is going to be added. For example, in misnomer cases there is no need to inquire into whether the parties share a common interest, because there are not multiple parties to consider. Similarly, in both *Sulzen* and *Wilcox* the fact that the parties were actually served with process obviated any need to inquire into whether notice was actually given. Each party had actually received notice. In *Otchy v. City of Elizabeth Board of Education*, 737 A.2d 1151 (N.J.Super. 1999), the Superior Court of New Jersey characterized the difference between misnomer cases and those in which a new party was to be added, as a difference between a formal and a substantive change. Noting that formal changes cause less concern.

In this case, the addition of Bryant Ross was not a formal or stylistic change. It was not a mere correction of spelling or capacity, nor was it a mere substitution of a misnamed party. (After all, Ms. Penrose maintained her action against Christopher Ross.) The amended complaint named a separate individual, who had rights and obligations separate and distinct from the party previously named. The more relaxed standard that was enunciated in *Sulzen* and *Wilcox,* was predicated on the fact that the actual parties were the same in both actions and is simply not applicable to the facts presented here.

Point IV

ALLOWING MS. PENROSE'S COMPLAINT TO RELATE BACK WOULD UNDERMINE THE DUTY TO ADEQUATELY INVESTIGATE THE FACTS AND CIRCUMSTANCES OF A CASE BEFORE BRINGING SUIT.

Rule 11 of the *Utah Rules of Civil Procedure* states that a party and counsel are under a positive obligation to undertake adequate investigation to assure themselves of both the factual and legal basis for making their claims before filing a complaint. Here, this means that Ms. Penrose and her attorney were required to take such steps as were reasonably necessary to ascertain who was driving the auto that collided with her back in 1996. Fortunately, such information[5] is a matter of public record, and, as argued by Mr. Ross in his memorandum in support of summary judgment, is easily obtained by requesting an accident report from the

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[5] This information by law would also have been exchanged at the accident scene pursuant to Utah Code Annotated § 41-6-31. (Addendum D)

investigating agency. (Addendum C) Yet, in her opening brief, Ms. Penrose admits that she did not take that simple step.

Allowing the complaint to relate back in this case would reverse all of the general requirements that attend the filing of a lawsuit. Ms. Penrose's failure to take the steps necessary to preserve her cause of action - even though she had four years to ascertain the proper parties - would be excused. While, on the other hand that failure would be used to justify the deprivation of the assurances that statutes of limitation bring. The Court should not sanction such a result, especially in cases such as this where the failure to name the proper party was the sole result of Ms. Penrose's own negligence.

Point V

THE TRIAL COURT'S DECISION HAD AN ADEQUATE BASIS. IT SHOULD BE UPHELD ON APPEAL.

Ms. Penrose also makes a brief stab at claiming that the trial court abused its discretion by failing to make adequate findings of fact regarding the relation back doctrine. She does not, however, flesh out that argument in any meaningful way, so it is difficult to know how to respond to it. It should be noted however, that the fundamental facts that governed the resolution of this case were undisputed. Ms. Penrose did not name Bryant Ross in a timely manner. Ms. Penrose amended her complaint to name Bryant Ross after the statute of limitation had expired. Bryant Ross and Christopher Ross have a familial relationship, were eventually represented by the same counsel but are two distinct individuals with separate legal identities.

Based on these facts, the court made a ruling that as a matter of law, the amended complaint did not relate back, and that it must be dismissed as untimely. This adequately explains the ruling, and does not represent an abuse of discretion.

CONCLUSION

Ms. Penrose's amended complaint was filed after the statute of limitations had expired. An identity of interest cannot be established merely by showing that one party is related to another or that they shared common legal representation. Because there was no identity of interest as a matter of law, the amended complaint was not timely, and the trial court properly dismissed Ms. Penrose's action. That dismissal should be upheld by this court.

DATED this 29th day of July, 2002.

SMITH & GLAUSER, P.C.

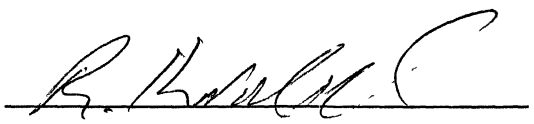
Richard K. Glauser

RICHARD K. GLAUSER
MICHAEL W. WRIGHT
Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2002, I personally delivered 2 true and correct copies of the foregoing **Brief of Appellee** to the following:

Scott N. Cunningham
211 East 300 South, Suite 216
Salt Lake City, Utah 84111



Case No. 20010943-CA
District Court Case No. 000909391

ADDENDUM A

TIME: 11-21-96 | DAY OF WEEK: M T W (T) F S S | MILITARY TIME: 28 | 46-174888

PLACE WHERE ACCIDENT OCCURRED: COUNTY Salt Lake 35 CITY OR TOWN Salt Lake

FOR AGENCY USE: 5407

Accident was outside city limits — indicate distance from city limits or nearest town ____ MILES NORTH ☐ S ☐ E ☐ W ☐ of ____ CITY OR TOWN

D.L.D. USE ONLY

LOCATION

ROAD ON WHICH ACCIDENT OCCURRED: 900 East — GIVE NAME OF STREET OR HIGHWAY NUMBER — RAMP NO. — INTERSECTION TYPE: 2

1. AT ITS INTERSECTION WITH ____

2. IF NOT AT INTERSECTION ____ FEET ☐ NORTH ☐ S ☐ E ☐ W ☐ of @ 850 South. — NEAREST INTERSECTION, STREET, HOUSE NO. LANDMARK

____ TENTH OF A MILE ☐ NORTH ☐ S ☐ E ☐ W OF MILE POST ____ BE SURE TO COMPLETE IF ROAD HAS MILE POST

STATE/LOCAL

VEHICLE #1

VEHICLE #	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)
1	89	Honda	Acc.	-H 02	Red			INTERSTATE ☐ INTRASTATE ☐

VEHICLE IDENTIFICATION NUMBER: JHMCA5539KC076925

DISPOSITION OF VEHICLE CODE: 1 (Advanced towing)

NO. OF AXLES (INCLUDING ALL TRAILERS): — DIR OF TRAVEL: East.

US DOT / ICC MC	LICENSE PLATE INFO	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	TOWED	COST OF REPAIR
		97	5	UT	396-JMY	25-4	1 2 5 8 9 7 U T	$3000

OWNER / OPERATOR / CARRIER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.	PHONE
	Christenfer.	S.	Ross.	6842 So. Pine mt. Dr. 84121.	942-1634

DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.	PHONE
	Bryant	C.	Ross.	6842 So. Pine mt. DR 84121	942-1634

DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	AGE	SEX	SAFE EQUIP	INJURY TYPE	INJURY CAUSE	INJURY AREA	EXTRI	CAUTION	EJECTION	THROUGH WHAT AREA EJECTED?
	UT	15956 2953	12-17-79	17	M	2	4	4	1	0	1		

DRIVER'S EDUCATION	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS
1. PUBLIC 3. NONE 2. COM'L 4. UNKN 2	1	D		A.

INSURANCE COMPANY	EFFECTIVE DATE	EXPIRATION DATE	POLICY NUMBER
Statefarm	11-29-96	5-29-97.	402-5125-E29-44

INSURANCE APPEARS VALID	AGENCY THAT SOLD POLICY	ADDRESS	PHONE
YES ☒ NO ☐	Noel T. Leavitt.		801-486-9661.

VEHICLE #2

VEHICLE #	YEAR	MAKE	MODEL	BODY STYLE/TYPE CODE	VEHICLE COLOR	G.V.W.R.	DESC. OF CARGO CODE	COMMERCIAL VEHICLE (Reg 12,000 lbs. or more)
2	88	Ford	Tal	4DR 01	Gray			INTERSTATE ☐ INTRASTATE ☐

VEHICLE IDENTIFICATION NUMBER: 1FABP50U5JG164315

DISPOSITION OF VEHICLE CODE: 1 Jay's D&D Towing

NO. OF AXLES (INCLUDING ALL TRAILERS): — DIR OF TRAVEL: South

US DOT / ICC MC	LICENSE PLATE INFO	YEAR	MONTH	STATE	NUMBER	PARTS DAMAGED	TOWED	COST OF REPAIR
		97	08	UT	095ZER.	3-2-16	1 2 5 8 9 7 U T	$2000.00

OWNER / OPERATOR / CARRIER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.	PHONE
	NANA	G.	Penrose.	1632 Princeton Ave 84105	583-0160

DRIVER	FIRST	INITIAL	LAST	STREET, CITY, STATE, ZIP, PHONE NO.	PHONE
	Same			Same	

DRIVER'S LICENSE	STATE	NUMBER	DATE OF BIRTH	AGE	SEX	SAFE EQUIP	INJURY TYPE	INJURY CAUSE	INJURY AREA	EXTRI	CAUTION	EJECTION	THROUGH WHAT AREA EJECTED?
	UT	8709323.	04-26-40	56	F	2	3	4	3	0			

DRIVER'S EDUCATION	YEARS DRIVE EXP.	LICENSE CLASS	ENDORSEMENT	RESTRICTIONS
1. PUBLIC 3. NONE 2. COM'L 4. UNKN 3	40	D		B

INSURANCE COMPANY	EFFECTIVE DATE	EXPIRATION DATE	POLICY NUMBER
State Farm	10-23-96	04-23-97	718-7635-D23-441

INSURANCE APPEARS VALID	AGENCY THAT SOLD POLICY	ADDRESS	PHONE
YES ☒ NO ☐	Cy Schmidt		801-483-1150.

OCCUPANT

	1. PEDESTRIAN 2. BICYCLIST	NAME	ADDRESS	DATE OF BIRTH	AGE	SEX	INJURY TYPE	INJURY CAUSE	INJURY AREA
1	13.	Patric Holland	1446 E. Pinlico.	16	M	2	1	—	—	0	1

IIAGRAM WHAT HAPPENED BELOW.

CA..E NUMBER 96-179888

leason For No Diagram _____

Officer not at scene

Vehicles moved

Other _____

INDICATE DIRECTION OF NORTH

VEHICLE NO. _____ NO. _____

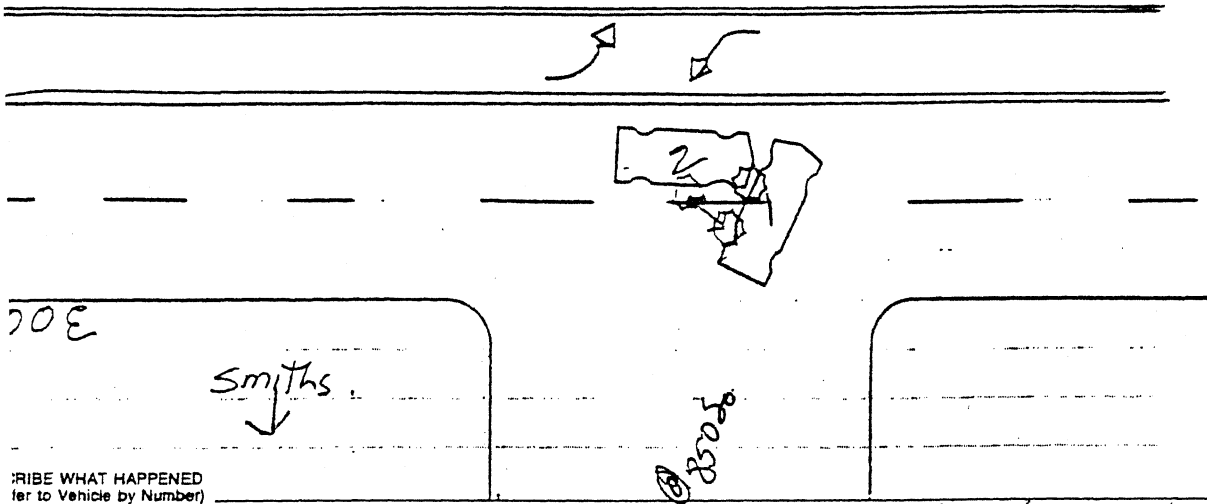
ESTIMATED TRAVEL SPEED

ESTIMATED IMPACT SPEED

POSTED SPEED

ADVISORY SPEED

RECEIVED FEB 6 '14



INDICATE INTERSECTION TYPE

:RIBE WHAT HAPPENED
fer to Vehicle by Number)

veh #2 WAS S.B on 900 E. inside bound lane when veh #1 exited Smiths parking lot and attempted to turn N.B. To the inside lane N.B. and veh #2 it veh #1 's left side.

If Hazardous Materials were involved list the placard number from off the commercial vehicle:

E TO PROPERTY
THAN VEHICLES _____ $ _____
Name object and state nature and amount of damage ESTIMATE

d address of
object struck _____

SSES
Det Kevin J. Peterson Address WIC. 4375 So-200 E. SLC 111 Phone 535-5441
Joe Adamson Address WIC. 3551 Callao Dr. Phone 250-0765

FIRST AID ADMINISTERED BY

EMS REPORT NO

EMS REPORT NO

INJURED TAKEN BY
1- Ambulance, Private
2- Ambulance, Fire
3- Paramedics
4- Private Vehicle
5- Helicopter
6- Other

1

TIME: Amb. Called: _____ Arrived: _____

INJURED TAKEN TO (Ross) SL. Regional Hosp
(Penrose) L.D.S Hosp

- 6 - Private Individual
- 7 - Hospital
- 8 - Helicopter Personnel
- 9 - None Administered
- 0 - Unknown

CTIVITY

11-21-96 Date Notified of Accident
Month Day Year

1238 Time Notified of Accident

SE
LITARY
ME)

1238 Arrived at Scene

Investigation of accident Completed at 1430 of X the same day ☐ the _____ day following

Source of Information
Officer at scene _____
Driver No. _____ Contacted station
Other _____

PHOTO(S) TAKEN YES ☐ NO X
VIDEO TAKEN YES ☐ NO X
FIELD DIAGRAM YES ☐ NO X

Bryant C. Ross Charge: Improper look out.

Charge: _____

spection Yes _____ No _____ If Yes, Report Number _____

ion taken W.T. Greg Cazier, WK. 1515 So 1100 East 486-3883
Salazon E94 - L SLCPD 11-21-96

ADDENDUM B

RECORDED CLAIMS STATEMENT

Date and Time Sent: 1/12/01 4:17 PM	**Claim Number:** 44 1015 121
Return to: Julio Sandoval	**Unit Printer #:** 55/D
If questions, please call Beth Abernathy at (970) 395-5219	

Q: This is this is Felix(sp?) ah Jensen(sp?) interviewing your first name is Nana(sp?)?
A: Right.

Q: Is that the right pronunciation?
A: It's Nana.

Q: Nana and the last name Penrose?
A: Right.

Q: And that's P-E-N-R-O-S-E?
A: Right.

Q: Today's the 2nd of April 1997 the time is about ah 11:00 A.M. And ah your present address please?
A: It's 1632 Princeton Avenue.

Q: And that's in Salt Lake City?
A: Right.

Q: And your zip code?
A: 84105.

Q: And this recorded statement is being given with your full knowledge and consent is that correct?
A: Right.

Q: Call your attention to on or about the 21st of November of 1996 at the 900 east and about 850 south in Salt Lake City, Utah at about 12:38 P.M. I have it you had an accident there with a Mr. Bryant Ross. Is that correct?
A: Yes.

Q: Just tell me in your own words what happened as best as you recall. Where you were going what took place anything you can tell me.
A: I was just driving um south on that street and I was ah there's ah two lanes each way...

Q: 'Kay you were going south on 9th East?
A: Um hum.

Q: Okay.
A: And I was in the lane next to the center.

Q: Alright.
A: And ah he came out of the parking lot of Smith's and he cut across the...

Q: Well what's the what's what side of the street would that be?
A: The ah west side of the street.

Q: Okay and you were going south the inside lane?
A: Um hum. And he cut across the area where the cars are parked and then another lane and he just rammed right into the center of my car to where the front front fender or somewhere I didn't see the car.

Q: Okay.
A: Knocked it into the next lane of oncoming traffic.

Q: So he hit you in the ah the passenger side of your vehicle?
A: Right.

Q: Did you have anyone else in the car with you?
A: No.

Q: Okay now tell me about the injuries that you suffered in the accident as best as you know.
A: Um well um I- I hurt my neck...

Q: Okay.
A: My ah back...

Q: You have a cervical...
A: And ah...

Q: Spine sprain?
A: Ah cervical is the middle or neck?

Q: That's the neck.
A: Neck yeah and I think in my middle back too.

Q: Okay.
A: And ah and I've had headaches from whatever since um they seem to increase about about maybe I don't know exactly how long ago maybe about a month or s- a month well six weeks ago.

Q: Okay.
A: I wake up in the morning almost every morning with a dull headache especially when if I slept on my side but sometimes and then if I slept on my back sometimes they diminish a little bit and ah...

Q: Right.
A: Been going to physical therapy for that and um especially on the left side because oh as much as I can figure is he hit the car in the right and it must've thrown me forward and to the right where it pulled those muscles that so um I broke my hand I've had the back problem and the neck...

Q: Which which hand did you...
A: Had broke my left hand.

Q: Okay so the wrist or the hand itself?
A: The hand two two bones one's a spiral fracture and the other was a regular fracture.

Q: In the hand itself?
A: Yes.

Q: Okay.
A: And ah...

Q: Now who who is taking care of that...
A: Dr. Larcom.

Q: Larcom?
A: Larcom L-A-R-C-O-M, Peter.

Q: Larcom okay.
A: And um and so I had a cast on that or yeah I guess they call it a cast...

Q: Right right.
A: And ah it's been stiff you know every since it's been pains on and off in it but but the thing especially there's a couple of fingers that um tingle at the end and are numb at the very end so I'm gonna see him again and see what there is to do about that with that um trying to think what else.

Q: You have not recovered yet a- as far as you're aware?
A: No no.

Q: Okay.
A: I'm gonna um...

Q: Did you also...
A: See another doctor about the neck because headaches it was recommended to see a neurologist so...

Q: Yeah that might be a good idea. Now ah have you lost any time from work because of this accident?
A: No.

Q: Okay.
A: Because I'm not working.

Q: You're not working okay. Ah let see the time of the accident was approximately I have it at 12:38 P.M. is that correct?
A: I would guess about that time.

Q: Okay. During the daylight hours then?

A: Yes.

Q: Any difficulty with the weather conditions anything like that?
A: N-...

Q: Snow on the road anything?
A: No.

Q: What did the fellow tell you when why he turned into you like that?
A: I didn't talk to him.

Q: He didn't he didn't talk to you at all?
A: No we were both his head he had a head injury.

Q: Okay.
A: I glanced over and saw blood on his head and they took me in an ambulance to the hospital.

Q: Okay. Anything else you can tell me about the accident Ms. Penrose comes to your mind? You were not speeding in anyway going down 9th East?
A: No I wasn't.

Q: Okay.
A: I was just traveling the regular speed.

Q: Alright.
A: I wasn't um trying to think if there's anything else ah...

Q: So improper look out on the other guys part is probably what caused the accident?
A: Yeah I think that he was probably this is just my guess I don't...

Q: Yeah.
A: Know that he...

Q: Yeah that's...
A: The way he the way he was going it wa- I just was wondering if he was accelerating across a couple lanes of traffic to try to get into a left turn lane but that's purely speculation...

Q: Yeah.
A: On my part I didn't...

Q: Okay.
A: Know.

Q: Okay are the remarks that you have made in this statement ah your true version to the accident to the best of your knowledge?
A: Is it a true version?

Q: Yeah right.
A: Yeah it is. I just don't know you know I haven't thought about it so I don't know if there's any details that I've left...

Q: Well...
A: Right now or not.

Q: I think we've covered it pretty well. Okay...
A: Any other questions you wanna give me?

Q: No I think that's about all I need to ask you and ah this recorded statement has been given with your knowledge and consent is that correct?
A: Correct.

Q: Thank you Ms. Penrose this completes the recorded interview.

TEMK/1015121.111

ADDENDUM C

RICHARD K. GLAUSER (4324)
MICHAEL W. WRIGHT (6153)
SMITH & GLAUSER, P.C.
Parkview Plaza
2180 South 1300 East, Suite 600
Salt Lake City, UT 84106
(801) 466-4228
Attorneys for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

NANA PENROSE, Plaintiff, v. CHRISTOPHER ROSS, an individual and Does 1-5, inclusive, whose true names are not known to Plaintiff. Defendants.	**AFFIDAVIT OF J. KENT HOLLAND** Civil No.: 000909391 Judge L.A. Dever

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, J. Kent Holland, being first duly sworn upon oath, depose and state as follows:

1. I am an attorney duly licenced to practice law in the State of Utah, and have been so for over twenty (20) years;

2. During the past twenty (20) years, I have practiced extensively in the areas of personal injury litigation and insurance defense and I am familiar with the general practices and procedures utilized by legal counsel to obtain information relating necessary to prosecute and defend such actions;

3. It is a standard practice in this area of law to obtain the official accident reports compiled by the investigating officer, which are available from either the State of Utah or from the municipality or locality in which the accident occurred;

4. In order to obtain the official accident report a party, or a party's attorney, need only request one from either the State or from the locality in which the accident occurred, and need provide only his or her name and the date of the accident;

5. It is not necessary to provide the names of all parties who were involved in the accident to obtain an official copy of the report.

FURTHER, AFFIANT SAYETH NOT.

DATED this 30th day of May, 2001.

J. KENT HOLLAND

SUBSCRIBED AND SWORN to before me this 30th day of May, 2001.

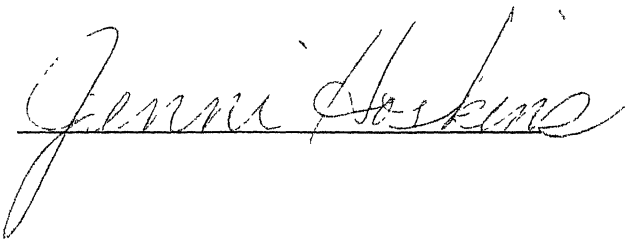
NOTARY PUBLIC
Residing in Salt Lake County, UT

Notary Public
ZENON SANTIAGO
767 East Lisonbee Avenue
Salt Lake City, Utah 84106
My Commission Expires
January 30, 2005
State of Utah

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, this 30 day of May, 2001, to:

Scott N. Cunningham
211 East 300 South, Suite 216
Salt Lake City, UT 84111



ADDENDUM D

41-6-31. Accident involving injury, death, or property damage — Duties of operator, occupant, owner.

(1) The operator of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property, if the vehicle or other property is operated, occupied, or attended by any person or if the owner of the vehicle or property is present, shall:

(a) give to the persons involved his name, address, and the registration number of the vehicle he is operating;

(b) upon request and if available, exhibit his operator's license to:

(i) any investigating peace officer present;

(ii) the person struck;

(iii) the operator, occupant of, or person attending the vehicle or other property damaged in the accident; and

(iv) the owner of property damaged in the accident, if present; and

(c) render to any person injured in the collision reasonable assistance, including the transporting, or the making of arrangements for the transporting, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the transporting is requested by the injured person.

(2) The operator of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $1,000 or more shall immediately and by the quickest means of communication available give notice of the accident to the nearest office of a law enforcement agency.

(3) If the operator of a vehicle is physically incapable of giving an immediate notice of an accident as required in Subsections (1) and (2) and there is another occupant in the vehicle at the time of the accident capable of giving an immediate notice, the occupant shall give or cause to be given the notice required of the operator under this section.

(4) If the operator is physically incapable of making a written report of an accident when required under Section 41-6-35 and he is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall within 15 days after becoming aware of the accident make the report required of the operator under this section.

History: L. 1941, ch. 52, § 21; C. 1943, 57-7-98; L. 1983, ch. 183, § 32; 1987, ch. 138, § 25; 1992, ch. 28, § 1; 1996, ch. 174, § 1.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, substituted "$1,000" for "$750" in Subsection (2).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d Automobiles and Highway Traffic § 349 et seq.

A.L.R. — Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232.

41-6-32. Collision with unattended vehicle or other property — Duties of operator.

The operator of a vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended and which results in