

1998

Vicki M. Nielsen, Plaintiff-Appellant, vs. The Estate
of Mary Jane Hefferon, Defendant/Appellee :
Reply Brief

Utah Court of Appeals

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Lynn S. Davies; Richard, Brandt, Miller & Nelson.

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UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT

IN THE UTAH COURT OF APPEALS

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.A10

DOCKET NO. 981711

VICKIE M. NIELSEN,

Plaintiff/Appellant,

vs.

THE ESTATE OF MARY JANE
HEFFERON,

Defendant/Appellee.

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Appeal No.981711

Argument Priority 15

APPELLANT'S REPLY BRIEF

Appeal from a Decision of the
Third Judicial District Court,
Salt Lake County, Judge William A. Thorne

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376 E. 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 355-2886
Attorneys for Plaintiff/Appellant

FILED

**Julia D'Alesandro
Clerk of the Court**

MAY 27 1999

IN THE UTAH COURT OF APPEALS

VICKIE M. NIELSEN,

Plaintiff/Appellant,

vs.

THE ESTATE OF MARY JANE
HEFFERON,

Defendant/Appellee.

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ARGUMENT

I. THE BEST EVIDENCE RULE DOES NOT APPLY TO THE ISSUES RAISED BY MS. NIELSEN ON APPEAL.

The purpose of the best evidence rule is stated in Rule 1002, Utah R. Evid.: to prove the content of the writing, the original document is required. Where the release was identified as such and the signatures authenticated, the document was properly admitted into evidence. The rule, however, does not dictate the conclusion that the writing is the agreement of the parties in cases where fraud or alteration are alleged. Also, where there exists a good faith dispute as to the substantive content of the writing, reliance on the rule may be reversible error. 31 Wright et al, Federal Practice and Procedure (1992) § 6871 and cases cited therein.

Ms. Nielsen testified that she and her attorney struck out the provisions of the release dealing with release of her personal injury claims. She also asserted that the insurance adjuster had represented that although those provisions were in the release, all parties agreed that they did not apply and she was releasing only her claims for property damage. The issue is not whether the release says what it says--an appropriate application of the best evidence rule. It is whether the release fails to represent the agreement of the parties due to fraudulent inducement or material alteration. The best evidence rule was not intended to resolve this more fundamental issue.

II. PAROL EVIDENCE IS PROPERLY ADMISSIBLE ON THE ISSUE OF VALIDITY OF THE RELEASE.

The parol evidence rule has always been applied only to preclude extrinsic

evidence as to the terms of an integrated agreement. The rule does not, however, preclude extrinsic evidence of fraud or of whether the parties intended the contract, as it appears, to be the entire agreement between the parties. In those circumstances, parol evidence is admissible. “Because the parol evidence rule applies only if the writing was intended by the parties to represent the full and complete agreement of the parties, the trial court must first determine whether the writing was intended to be an integrated agreement.” Colonial Leasing Co. of New England, Inc. v. Larsen Bros. Const. Co., 731 P.2d 483, 486 (Utah 1986). The trial court failed to make this threshold determination and it is the very issue which Ms. Nielsen asserts as one of the factual disputes ignored by the court.

Before considering the applicability of the parol evidence rule in a contract dispute, the court must first determine that the parties intended the writing to be an integration. To resolve this question of fact, any relevant evidence is admissible.

Hall v. Process Instruments and Control, Inc., 890 P.2d 1024, 1026 (Utah 1995)

(emphasis added).

This general rule as stated contains an exception for fraud. Parol evidence is admissible to show the circumstances under which the contract was made or the purpose for which the writing was executed. This is so even after the writing is determined to be an integrated contract. Admitting parol evidence in such circumstances avoids the judicial enforcement of a writing that appears to be a binding integration but in fact is not.

Union Bank v. Swenson, 707 P.2d 663, 665 (Utah 1985).

Exceptions to the parol evidence rule exist, however, when there is an issue as to whether the parties intended the writing as an

integrated contract, and when “what appears to be a complete and binding integrated agreement ... may be voidable for fraud, duress, mistake or the like, or it may be illegal. Such invalidating causes need not and commonly do not appear on the face of the writing.”

West One Trust Co. v. Morrison, 861 P.2d 1058, 1061 (Utah App. 1993).

Ms. Nielsen attempted to make two arguments before the trial court:¹ (1) Based upon her recall of the circumstances surrounding the execution of the release, the release presented to the court could be a material alteration of the document she signed. (2) She signed the document based upon the representations of the insurance adjuster that the release would not affect her personal injury claims. Allegations of representations made by one inducing execution of the agreement are sufficient to raise issue of fact precluding summary judgment. Union Bank at 666. Also, acceptance of a document into evidence does not necessarily resolve factual issues about the validity of the document. Hartman v. Young, 551 P.2d 229, 231 (Utah 1976). Relying on the best evidence rule, the trial court refused to accept any parol evidence to establish these claims, in essence ignoring facts material to the validity of the release. In the face of these material issues of fact, summary judgment was inappropriate as a matter of law.

III. MS. NIELSEN WAS NOT REQUIRED TO PROVE HER CASE PRIOR TO AMENDING HER COMPLAINT.

Liberty Mutual argues in essence that Ms. Nielsen must not only be able to allege facts to support an amendment to her complaint, but must prove the elements of the

¹“Attempted” is the correct word, because the trial court refused to hear any argument once the release had been authenticated.

claims. That argument confuses the requirements of pleading with the subsequent substantive requirements for prevailing on the issues. The proofs of fraud required to reach a jury are substantially different from the allegations of fraud required to state a claim for relief. Likewise, the “broad discretion in concluding whether bad faith has been sufficiently shown”² is an issue of whether the claim has been proven, not whether it has been sufficiently alleged.

The issue of whether the trial court abused its discretion in denying Ms. Nielsen’s motion to amend does not turn on whether she could prove the substance of her claims, but whether “justice so requires” the amendment Rule 15(a), Utah R. Civ. P., and whether she should be afforded the privilege of presenting her legitimate contentions central to the dispute before the court. Wilcox v. Geneva Rock Corp., 911 P.2d 367, 369 (Utah 1996).

IV. LIBERTY MUTUAL IS NOT ENTITLED TO AN AWARD OF FEES AND COSTS.

The appellate rules define what constitutes a frivolous appeal for purposes of an award of attorney fees or costs.

For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law.

Rule 33, Utah R. App. P. (in relevant part).

This Court has been extremely cautious and conservative in determining an appeal to be frivolous under Rule 33.

²Appellee’s Brief, p. 24.

[T]his court has defined a frivolous appeal as one without reasonable legal or factual basis, or one in which no justiciable question has been presented and is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.

However, sanctions for frivolous appeals should only be applied in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions. Egregious cases may include those obviously without merit, with no reasonable likelihood of success, and which result in the delay of a proper judgment.

While we hold in favor of Mary Hamilton on this issue, we are unable to say that Stuart and Vincent Hamilton's appeal was obviously without merit or filed merely for the purpose of delay.

Accordingly, we decline to award Rule 33 sanctions on this issue.

Matter of Estate of Hamilton, 869 P.2d 971, 976 (Utah App. 1994).

There is no question that there exist questions of fact as to the validity of the release at issue. It is clearly established law that in the face of disputed questions of material fact, summary judgment is inappropriate and constitutes reversible error.

Further, the issue of abuse of discretion is one which turns on the factual circumstances of each discretionary decision. It is at least arguable in good faith that a trial court's refusal to permit amendment of a complaint to address newly discovered issues which are not only material, but central to the dispute is an abuse of discretion under existing Utah law.

Clearly, this appeal is not one of those egregious cases where Rule 33 sanctions are appropriate. Despite Liberty Mutual's disdain for having to address the issues which it avoided at the trial court, those issues are supported by law and fact and are not frivolous. The Court should, therefore, decline to award fees and costs on this appeal.

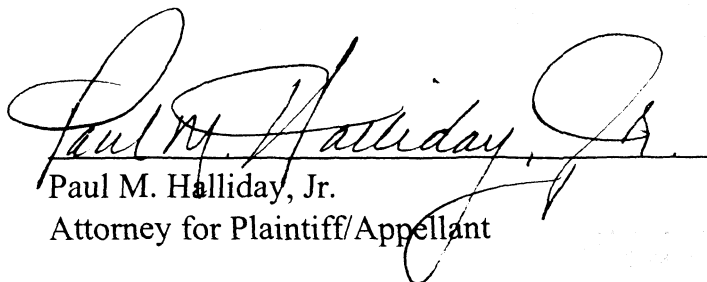
CONCLUSION

There are disputed facts as to whether the release was the integrated agreement of

the parties, whether it was fraudulently induced and whether there was a material alteration of the document. These facts precluded summary judgment as a matter of law. Further, because the issues to be addressed by the amended complaint are central to the dispute between the parties and failure to permit amendment substantially prejudices Ms. Nielsen, justice demands that she be permitted to amend her complaint. This Court should, therefore, reverse the summary judgment of the trial court and remand for further proceedings under an amended complaint.

RESPECTFULLY SUBMITTED this 25 day of May, 1999.

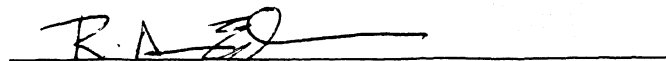
HALLIDAY & WATKINS, P.C.


Paul M. Halliday, Jr.
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing instrument were mailed, first-class, postage prepaid, on this 25 day of May, 1999, to the following:

LYNN S. DAVIES
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110-2465



Addendum

February 28, 1991

David Garris
Liberty Mutual Insurance Company
127 South 500 East
Salt Lake City, Utah 84111

Re: Vickie Nielsen
Claim No. 8L13587-03
Our File No. 10786

Dear David:

The law firm of Halliday & Halliday has been retained by Vickie Nielsen to represent her interests regarding an accident that occurred on September 28, 1990 caused by your insured, Mary Heffernon, resulting in personal property damage and injuries to our client.

Enclosed, is the title to the car that was totaled, which car was being towed behind the car in which Vickie and her husband John and two children were riding in. We understand that upon the receipt of this title, you will send a check to Vickie Nielsen in the sum of \$1,000.00 to our address.

Our client is still working on a list of personal property that was damaged in this accident and as soon as we receive such, we shall forward it to your attention.

We appreciate your cooperation in this matter and should you have any questions, please do not hesitate to call.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH/esl

enclosure

UTAH CERTIFICATE OF TITLE

THIS CERTIFIES THAT THE PERSON NAMED BELOW AS OWNER HAS BEEN DULY REGISTERED IN THE OFFICE OF THE STATE TAX COMMISSION OF UTAH AND THAT APPLICATION FOR CERTIFICATE OF TITLE SHOWS SUCH VEHICLE TO BE SUBJECT TO THE LIENS ENLUMERATED BELOW AND NO OTHERS

No 476148

FORM TC-127 REV 6-62
DEPARTMENT USE ONLY



VIN. 213271W 234137

OWNER
Vickie Mae Long
821 So 3rd West
Salt Lake City, Utah

| | | |
|---------------|--------------|---|
| MAKE AND CYLS | Pont 8 | IMPORTANT - THIS CERTIFICATE IS EVIDENCE OF OWNERSHIP OF VEHICLE IT DESCRIBES WHEN VEHICLE IS SOLD OR TRANSFERRED. THIS INSTRUMENT PROPERLY ENDORSED, MUST BE PRESENTED TO THE STATE TAX COMMISSION BEFORE TRANSFER CAN BE MADE STATE TAX COMMISSION OF UTAH <i>Thomas A. Johnson</i> CHAIRMAN |
| TYPE OF BODY | 2dr Cpe | |
| YEAR MODEL | 1971 | |
| VEHICLE MODEL | Vnt | |
| PREV REG D | Utah | |
| DATE OF ISSUE | 11/10/76 skb | |

LIEN HOLDER OR MORTGAGEE
Cyprus Credit Union Inc
2711 So 8600 West
Magna, Utah

DO NOT PLACE IN VEHICLE. PLACE IN SAFE OR BANK VAULT

SIGNATURE

PART I TRANSFER BY OWNER

I, THE UNDERSIGNED OWNER (LINE 1), WHOSE NAME APPEARS UPON THE FACE OF THIS CERTIFICATE, FOR VALUABLE CONSIDERATION, DO HEREBY CONVEY, TRANSFER AND ASSIGN ALL RIGHT, TITLE AND INTEREST IN THE VEHICLE DESCRIBED ON THE REVERSE SIDE HEREOF TO THE PERSON SHOWN AS DEALER (LINE 3, PART III) OR PURCHASER (LINE 5, PART IV) AND WARRANT THE TITLE TO BE FREE AND CLEAR OF ANY LIENS OR ENCUMBRANCES WHATSOEVER, EXCEPT A LIEN IN FAVOR OF THE PERSON SHOWN AS LIEN HOLDER (LINE 6, PART IV) HEREUNDER.

1 _____
 SIGNATURE OF TRANSFEROR IN INK (MUST BE NOTARIZED)

SUBSCRIBED AND SWORN TO THIS _____ DAY OF _____ 19____

PART II
RELEASE OF LIEN

2 _____
 SIGNATURE OF OFFICER ADMINISTERING OATH TITLE
By Harris Credit Union, Inc.

PART III
REASSIGNMENT OF DEALER

3 _____
 SIG. OF LIEN HOLDER (AS SHOWN ON FACE OF TITLE) RELEASING INTEREST

4 _____
 NAME OF DEALER + SIGNATURE AND TITLE OF PERSON SIGNING

PART IV
PURCHASER AND NEW LIEN HOLDER

5 _____
 DEALER LICENSE NO. ADDRESS

6 _____
 NAME OF PURCHASER

_____ NAME OF NEW LIEN HOLDER

ERASURES OR OBLITERATIONS VOID THIS CERTIFICATE

Customers Name: John Nielsen
Address: 1104 Merino
City/State/Zip: ARTESIA New Mexico
Home Phone: 505-748-2398
Work: (Judo Taylor)
Date: 10/4/90

Vehicle Year: 1974
Make: Chevy
Model: UAN
Body: SWB
Cyl: 0-8
VIN: CGL2590170617
Odometer: 26674
Color: Blue

Retail Price: \$1,000
Add on Before Purchase: ~~XXXX~~
Purchase Price: 1000
Add On: ~~XXXX~~
State Tax: 60
Total: 1060
- 500 Down
560
Additional Remarks at Purchase: ~~XXXX~~

Any additional work to be added after delivery.
Customers Signature: ~~XXXX~~

Attention James:
Application pending
Ralph's Stevenson Approval

Paid \$500 10/4/90
Received by
Cash Howard

Suite 500
127 South 500 East
P.O. Box 45440
Salt Lake City, Utah 84145-0440
Telephone: (801) 363-3057
Utah Toll Free: 1-800-634-4201



March 7, 1991

Paul Halliday, Jr.
Halliday & Halliday
376 East 400 South, Suite 300
Salt Lake City, UT 84111

RE: YOUR CLIENT: JOHN & VICKY NIELSEN
OUR CLAIM #: AL 667-013587-04

Dear Paul:

This letter will confirm our telephone conversation of March 7, 1991, when we discussed the value of a 1986 Nissan King Cab pickup owned by the Nielsen's involved in this auto accident.

As we discussed on the telephone, the actual cash value of the vehicle is \$5,419.00. In addition, we pay State sales tax of 6.25%, which adds \$338.69 to the value of the vehicle. The total amount which we would settle this total loss for is \$5,757.69. Upon settlement of the claim, we would need to have the signed, notarized title forwarded to our office in exchange for the settlement check.

We look forward to receiving your letter of representation of John and Vicky Neilson, and the settlement of this total loss. I will be away from our office from March 8, 1991 through March 25, 1991. Should your clients agree to accept our offer during this time period, please contact our office and speak with Paola Valente and refer to our claim number. Paola will be able to issue a settlement check for the total loss to the Nielsen's vehicle.

Sincerely,
LIBERTY MUTUAL INSURANCE COMPANIES

A handwritten signature in cursive script that reads "Karen E. Weldon".

Karen E. Weldon
Senior Claims Representative

KEW/k1/3-016

March 21, 1991

Karen E. Weldon
Senior Claims Representative
Liberty Mutual Insurance Group
Suite 500
127 South 500 East
P.O. Box 45440
Salt Lake City, Utah 84145-0440

Re: Your Claim No. AL 667-013587-04
Our File No. 10786
Our Client John & Vicky Nielsen

Dear Karen:

This letter shall confirm our telephone conversation, wherein I notified you that we represent both John and Vicky Nielsen regarding the above referenced claim.

I have discussed your offer of settlement regarding the vehicle with John Nielsen. However, at this time I have not received his authorization to accept your offer.

As soon as I have received my clients permission to accept your offer, I shall obtain the title and forward it to your office in exchange for the settlement check.

We appreciate your cooperation in this matter and look forward to resolving this claim.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH/esl

127 SOUTH 500 EAST
SALT LAKE CITY, UT 84145
CONTACT: WELDON, K
PHONE: 1-801-363-3057 EXT 234



| | |
|---------------------------|------------------------|
| 01052544 | 05/30/91 |
| CHECK AMOUNT \$4757.69 | CLOCK NUMBER 003898 |

ACCIDENT DATE: 09/23/90
INSURED: HEFFERON, MARY JANE

CLAIM NO. AL667-013587-04
POLICY NO. AO2268586704019029

CLAIMANT:
NIELSEN, JOHN

INSURED OPERATOR:
HEFFERON, MARY JANE

| COV TYPE | PROVIDER | SERVICE FROM | THRU | CHARGE | ADJUST CODE | PAID -AMOUNT |
|----------|----------|--------------|------|---------|-------------|--------------|
| LIPD | | 05/29/91 | | 5757.69 | 98 | 4757.69 |

PAYMENT SENT TO:
JOHN NIELSEN AND PAUL HALLIDAY JR

| | |
|-----------------|---------|
| SUB TOTAL 1 | 4757.69 |
| DEDUCTIBLE | 0.00 |
| SUB TOTAL 2 | 4757.69 |
| WITHHOLDING TAX | 0.00 |
| CHECK AMOUNT | 4757.69 |

COPY OF PAYMENT EXPLANATION TO:

COVERAGE TYPES

LIPD: LIABILITY - PROP DAMAGE

ADJUSTMENT CODE NOTES

98: OTHER - SEE NOTES BELOW

EOP NOTES

RE: TOTAL LOSS ON 86 NISSAN

CAREFULLY DETACH CHECK BEFORE DEPOSITING - RETAIN STATEMENT FOR YOUR RECORDS

CHECK NUMBER
01052544

OFFICE NO.
667



E. CODE
280

5-39/110

Liberty Mutual
Insurance Group/Boston

PAY ► \$4757.69**

| DATE OF CHECK | PAYMENT IDENTIFICATION |
|---------------|------------------------|
| 05/30/91 | AL667-013587-04 |

VOID IF NOT PRESENTED WITHIN
6 MONTHS OF DATE OF CHECK

PAY TO THE
ORDER OF

JOHN NIELSEN AND PAUL HALLIDAY JR
ATTORNEY
376 E FOURTH SOUTH
SLC, UT 84111-2912

BANK OF BOSTON 210 BERKELEY ST BOSTON MA 02116

NOT VALID IN EXCESS OF \$100,000

⑈01052544⑈ ⑈01000390⑈ ⑈00 5288⑈89

May 9, 1991

David Garris
Liberty Mutual Insurance Company
127 South 500 East
P. O. Box 45440
Salt Lake City, Utah 84145-0440

Re: Vickie Nielsen
Claim No. 8L13587-03
Our File No. 10786
Your Insured. Mary Heffernon

Dear David:

Enclosed, please find a list prepared by our client Vickie Nielsen regarding personal property that was lost or damaged in the automobile accident that occurred on September 28, 1990, which accident was caused by your insured, Mary Heffernon.

Our client is demanding \$5,000.00 as settlement in full for the lost and damaged personal property. Please review the list and respond as soon as possible as to your position.

We appreciate your cooperation and look forward to resolving the matter.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH/esl

enclosure



EASTERN UTAH SELF STORAGE

351 East 600 South
Price, Utah 84501
(801) 637-0513

LEASE AGREEMENT

This lease is made between EASTERN UTAH SELF STORAGE (Lessor) and John Nielson (Lessee)

Lessor agrees to lease Lessee Locker/room number B2 in the buildings known as EASTERN UTAH SELF STORAGE

located at 351 East 600 South Price Utah (the premises) to be used as storage room for storing personal property other than explosive or highly flammable material for a minimum of ONE month(s) beginning on the 26 day of

SEPT. 19 90 The rent is \$ 18⁰⁰ per month payable on or before the anniversary day of each month

Lessor acknowledges receipt of \$ 18⁰⁰ which pays rent to Oct 26 19 90 and of \$ — which shall be held by Lessor as a deposit to secure Lessee's performance under this lease. The security deposit shall bear no interest, is not a debt of the Lessor to the Lessee until such time as the termination of the tenancy created by this lease and is not to be held in trust by Lessor but is rather the property of the Lessor.

If the rent for the leased premises becomes delinquent ten (10) consecutive days a late charge of \$5.00 per month will be added to the rent. In addition, the Lessor shall have the right to lockout the Lessee from said unit and deny the lessee access to the contents thereof until such time as the lessee has made payment of the total rental and late charges along with any other incurred costs.

Lessee shall disclose to Lessor any lienholders or anyone having interest in property that is or will be stored in said unit.

Lessor reserves the right to enter and inspect the premises at any reasonable time.

Lessee agrees that Lessee will not use the premises for any unlawful purpose, will pay the rent as it becomes due, will keep the premises in a good and clean condition, will not store explosives or highly flammable material on the premises, will at Lessee's own expense obtain insurance on property stored on the premises if any insurance is desired, and that Lessor shall not be responsible for damage of any kind done to Lessee's property stored on the premises by fire, water, theft, or other cause. Lessee specifically agrees to release and hold the Lessor harmless from any cost or liability arising from the storing of goods on the premises or for other use of the premises, including liability which arises from the ordinary negligence of the Lessor. ~~Lessee acknowledges that the Lessor will not provide insurance coverage on the property stored on the premises.~~

Lessee agrees to dispose of all rubbish, garbage, and other waste in a clean and sanitary manner. Lessee agrees not to conduct a business on or from the premises. Lessee shall not destroy, deface, damage, impair, or remove any part of the leased unit. It is a condition of the return of the security deposit that the premises be returned to the Lessor at the end of the lease in a clean, empty, and good condition. In the event the Lessee returns the premises to the Lessor in a damaged condition, ordinary wear and tear excepted, then the Lessor shall have the right to apply the security deposit toward the damages caused by the Lessee.

In the event of any breach of this lease by the Lessee, the Lessor may terminate this lease and shall have the right of entry and may remove all property from the premises, such property may be removed and stored at the cost of the Lessee.

In the event the rent for the leased premises remains due and unpaid for thirty (30) consecutive days, the Lessor at his option may sell or otherwise dispose of Lessee's personal property to pay rental charges, legal fees, and any other incurred costs. Lessee agrees that any notice required by law may be mailed to Lessee at the address given below.

The parties intend and agree that the relationship between the parties is and shall be a landlord-tenant relationship and not a bailor-bailee nor a warehouse-depositor.

DATED SEPT. 26 19 90

Eastern Utah Self Storage
(Lessor)

By [Signature]

Please pay rent to
Eastern Utah Self Storage
351 East 600 South
Price, Utah 84501
Phone (801) 637-0513
or 637-7818

If rent is ten (10) days late add
\$5.00 per month late charges

Initial [Signature]

I understand that the Lessor does not provide insurance coverage on any personal property in my storage space. I will/will not obtain my own insurance.

Initial [Signature]

AS LESSEE I HAVE READ AND DO UNDERSTAND THIS AGREEMENT

Signature of Lessee [Signature]

Name (Print) John Nielson

Street 835 So 300 W.

City Price Utah

State Utah

Zip 84501

Telephone Number 364-4824

Employer Intake Trucking

Employer's Address Quincy Center

Telephone Number [Blank]

Driver's License No. [Blank]

Co Lessee or Lien Holder(s) [Blank]

TENANTS STORE GOODS AT THEIR OWN RISK

- 1. I understand that the lessor is a landlord renting space for the tenants self service use and is not a bailor or warehouseman in the business of storing goods for hire.
- 2. I hereby acknowledge that I have received a copy of the completed rental agreement and that I understand the provision that states the lessor is not responsible for loss or damage to property in my storage space.

INSURANCE IS TENANTS RESPONSIBILITY

- 3. I understand that the lessor does not provide insurance coverage on any personal property in my storage space.
- 4. I have been given a brochure which explains the optional Customer Storage Insurance that is available.

This is an addendum to, and made part of, a rental contract dated SEPT. 26 1990

X John Nuber
TENANT

X _____
DATE

LANDLORD'S COPY

1115 SOUTH CARBON AVE.

PRICE, UT 84501

NO. A 20122

| | | | | | | |
|--|-----------|--------------------|------------|--|---------|-----------------------------------|
| TIME IN | TIME OUT | DRIVERS LICENSE NO | | STATE | EXPIRES | DATE |
| | 3:00 | 145850263 | | UT | 3-6-94 | 9-24-90 |
| LICENSE NO | VEH NO | MAKE | BODY STYLE | I WILL RETURN CAR BY | | RATE |
| 956DMJ | 11485 | Plymouth | Voyager | | | \$28.45 PER DAY PLUS 10¢ PER MILE |
| PURCH ORD NO | AGREEMENT | MADE THIS | DAY OF | 19 | DATE | TIME |
| | | | | | OUT BY | IN BY |
| CREDIT CARD | | | | MILEAGE IN | 11097 | 3 MILES @ 10 " 70 |
| OTHER REFERENCE | | | | MILEAGE OUT | 16194 | HOURS @ |
| REMARKS | | | | MILES DRIVEN | 103 | 9 DAYS @ 27.50 247.50 |
| INSURANCE CO | AGENT | | | POLICY NO | | |
| MILEAGE LIMITATION (SEE 4 ON REVERSE SIDE) | | | | | | |
| _____ MILE RADIUS BY _____ LESSOR | | | | | | |
| REQUEST FOR PERMISSION FOR PERSON OTHER THAN RENTER TO DRIVE | | | | | | |
| I hereby request Lessor's permission to allow _____ to drive this vehicle | | | | Driver's Lic. No _____ | | |
| APPROVED BY LESSOR _____ RENTER _____ | | | | NOT VALID UNLESS APPROVED BY LESSOR'S REPRESENTATIVE | | |
| IMPORTANT—READ BEFORE SIGNING | | | | | | |
| The undersigned hereby acknowledges that the lessor is not providing any type of insurance protection or collecting any charges therefor. In consideration of the foregoing acknowledgment the undersigned agrees to pay for all loss and damage to the described automobile and to hold Lessor harmless from any liability as a result of the lessee's usage thereof. | | | | | | |
| DRIVERS SIGNATURE <i>John Wilson</i> | | | | PAID \$50 DEPOSIT | | |
| DRIVERS ADDRESS <i>835 S. 300 W</i> | | | | | | |
| CITY <i>J. L. C</i> | | STATE <i>Utah</i> | | PHONE <i>360-4829</i> | | |

FORM 701 U © NORTHWEST BUSINESS FORMS INC. 605 THOMAS ST., SEATTLE WASH

TERMS ON REVERSE SIDE RENTALS CASH

Amount

DRIVE SAFELY

STANDARD RENTAL AGREEMENT

IN CONSIDERATION of the covenants herein contained the undersigned Lessor hereby leases to the undersigned Lessee, hereinafter called "Renter" (including therein any additional renter signatory hereto), upon the covenants, terms and conditions set forth on this page, the motor vehicle described in this agreement, hereafter referred to as "said vehicle."

1. Lessor and Renter expressly agree that for the terms of this lease Renter is not and does not hereby become an agent, servant or employee of Lessor in any manner whatsoever.
2. Renter acknowledges that said vehicle is the rightful property of Lessor, although registered title may be in some third party, and further acknowledges that he received said vehicle in good and safe mechanical condition, and agrees that he will return said vehicle to Lessor at Station from which it was rented or such other as is specifically designated herein, in the same condition as he received it, ordinary wear and tear excepted, on the return date stated herein, or sooner upon demand of Lessor. In states where law is so applicable, Renter acknowledges that failure to promptly return rented vehicle may result in criminal prosecution after notification pursuant to said laws.
3. Renter covenants and agrees that said vehicle will not be operated in violation of any law governing the use or return thereof, or in violation of any of the other terms and conditions set out above.
4. Renter agrees that he will not operate said vehicle outside this state and such other states as may be specifically named herein or beyond mileage limitation as shown on face of this form without the written consent of Lessor.
5. Renter expressly agrees to pay Lessor on demand: (a) a mileage charge computed at the rate specified for the mileage covered by said vehicle during the term of this rental; (b) Time; and special rental rate adjustment charges of the rates specified for this rental; (c) the inter-city return charge if any is indicated herein, or the cost of return of said vehicle to station where rented if said vehicle is left at any other location without written permission from Lessor; (d) state and local taxes, if any, payable on items a, b, and c; (e) a sum equal to the fair market value of all tires, tubes and accessories lost or stolen from said vehicle; (f) the amount of any fines and court costs for parking, traffic or other legal violations assessed against said vehicle, Renter or Lessor during term of this agreement, except where caused through fault of Lessor; (g) the amount of any collection costs, including attorney's fees, incurred by Lessor in obtaining payment from Renter under this agreement; (h) a sum equal to the cost of all damage to said vehicle; (i) any and all expenses incurred by Lessor as a result of Lessee's usage of the vehicle described herein. It is further agreed that if said rent and charges are not paid when due, or if Renter has breached any other provision of this agreement, or if Lessor has reasonable ground to believe Renter is going to breach any provision of the agreement, Lessor may immediately retake possession of the said vehicle wherever it is without cancelling its rights against Renter under this agreement.
6. THE RENTER EXPRESSLY AGREES THAT THE MOTOR VEHICLE LEASED TO HIM SHALL NOT BE OPERATED:
 - a. To carry passengers for a consideration, express or implied;
 - b. In violation of any of the terms and conditions of this rental agreement;
 - c. By any person in violation of law as to age;
 - d. In any race or speed test or contest;
 - e. To propel or tow any trailer or vehicle used as a trailer;
 - f. By a Renter or Driver who has given a fictitious name or address to the Lessor;
 - g. By any person under the influence of intoxicants or narcotics;
 - h. For any illegal purpose;
 - i. By a Driver outside his usual and customary employment by the Renter, or by a Driver outside the regular and usual employment of the Renter;
 - j. In any instance where the speedometer of said vehicle has been tampered with or disconnected.

701-U

RENTAL CAR

Sept 24, 90
Things lost & damaged in
automobile accident:

- 1, China dishes that were 36 yr old
- 2, Burglar alarm Brand New still in box
- 3, Man Beard.
- 4, Records, 45's, albums, cassettes,
Videc's,
- 5, Toaster Oven Brand New still in box
- 6, Silver ware
- 7, C. B. 40 channel (Used)
- 8, 2 Chain Saws 1, Big, 1, Small
- 9, C. B. antenna
- 10, Clothes
- 11, Crystal Nick Neck.
- 12, Bedding.
- 13, Humidifier
- 14, Hot curing set Brand New
- 15, Deep Fryer Used
- 16, Little Oven toaster Used
- 17, Dicer for Veg
- 18, Baby Clothes
- 19, Brand New Hairdresser
- 20, Coal man stove
- 21, Radio Head set (2)
- 22, Vacuum's, upright, sack canister (2)

- 23, Leather Jackets
- 24, Hiking Boots (used)
- 25, Radio control car (used)
- 26, Pictures (wall)
- 27, Family pictures
- 28, Mr Coffee pot (used)
- 29, Phone Radio (used)
- 30, Color V. T. 12 inches Hitachi (used)
- 31, Carousel Carousell Candy dishes (2) ^{prz}
- 32, 3 Love Birds Blue, Big, Little, small
- 33, Laundry Baskets
- 34, U. Hand Jowing Bar
- 35, Dishes, Drinking Glasses, bowls
plates coffee cups, salt & pepper
shakers
- 36, Jewel Box man with a hand
carved car on top, wood
- 37, Remington Sleeping bags (2)
- 38, Air blow dryer
- 39, Skate board it was New Day
- 40, Microware Oven Carousell

Diamond When I went threw my
stuff that was left I R
had jewelry missing
rings, necklaces, Earrings ect.

RELEASE AND SETTLEMENT OF CLAIM

AL 667-013587-05

(File No)

For the sole consideration of FOUR THOUSAND ^{FOUR}NINE ^{FORTY-FIVE}HUNDRED NINETY SIX AND 50/100 (to include any and all liens)

dollars (\$4996.50)

the undersigned hereby releases and forever discharges MARY JANE HEFFERON AND LIBERTY MUTUAL INSURANCE CO.

and all other persons, firms and corporations from all claims and demands rights and causes of action of any kind the undersigned now has or hereafter may have on account of or in any way growing out of ~~Personal Injuries existing or which may exist which are known or unknown to me at the present time~~ and Property Damage resulting or to result from an occurrence which happened on or about

23 SEPTEMBER 19 '90, and do hereby covenant to indemnify and save harmless the said party or parties from and against all claims and demands whatsoever on account of or in any way growing out of said occurrence or its results ~~both to person and property~~ This release expresses a full and complete SETTLEMENT of a liability claimed and denied, regardless of the adequacy of the above consideration, and the acceptance of this release shall not operate as an admission of liability on the part of anyone nor as an estoppel, waiver or bar with respect to any claim the party or parties released may have against the undersigned Witness my hand and seal

(1) Dated June 6, 19 91 A

**YOU ARE MAKING A FINAL SETTLEMENT
THIS IS A RELEASE: READ BEFORE SIGNING.**

(4) Paul M. Hattaway Jr. X
(Witness Signature)

(2) WE VICKIE NIELSON

376 E. 400 S. #500 X
(Address)

(3) Vickie M Nielson
(Signature)

(5) _____
(Witness Signature)

(3) _____ (L S)
(Signature)

(Address)

CLAIM OFFICE ADDRESS:

127 SOUTH 500 EAST
SALT LAKE CITY, UT 84145
CONTACT: GEHRIS, D
PHONE: 801-363-9057 EXT 244
INSURED NAME:



ACCIDENT DATE:

09/23/90

CHECK NUMBER:

20768959

ISSUE DATE:

06/05/91

AL667-013587-05

POLICY NUMBER:

A02268586704019029

INSURED OPERATOR:

HEFFERON, MARY JANE
CLAIMANT NAME:

NIELSON, VICKIE

HEFFERON, MARY JANE

| COV | PROVIDER | SERVICE FROM - THRU | CHARGE | ADJUST CODE | PAID AMOUNT |
|------|----------|---------------------|---------|-------------|-------------|
| LIPD | | 09/23/90 | 3445.00 | | 3445.00 |

PAYMENT SENT TO:
VICKIE NIELSON &

| | |
|-----------------|---------|
| SUB TOTAL 1 | 3445.00 |
| DEDUCTIBLE | 0.00 |
| SUB TOTAL 2 | 3445.00 |
| WITHHOLDING TAX | 0.00 |
| CHECK AMOUNT | 3445.00 |

COVERAGE TYPES

LIPD: LIABILITY - PROP DAMAGE

ADJUSTMENT CODE NOTES

EOP NOTES

FINAL SETTLEMENT

December 15, 1992

David Gehris
Liberty Mutual Insurance Company
127 South 500 East
Salt Lake City, Utah 84145

Re: Vickie Nielsen
Your Insured: Mary Jane Hefferon
Claim No. AL 667-013587-05
Our File No. 13037

Dear David:

Enclosed, please find a copy of a letter from one of Ms. Nielsen's doctors regarding her physical injuries from the motor vehicle accident that occurred on September 23, 1990. As you recall, our firm represents Vickie in this matter and we settled the property damage dispute back in June 1991.

It appears that our client may need some back surgery to correct injuries she received from this accident. We are monitoring this matter and we are notifying you that there will be a claim made regarding personal injuries from this accident. Once our client is stabilized, we shall send you copies of all of her medical records along with our case evaluation to try and resolve this matter.

Should you have any questions or wish to discuss this matter, please do not hesitate to call.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH/esl

August 24, 1993

David Gehris
Liberty Mutual Insurance Company
127 South 500 East
Salt Lake City, Utah 84145

Re: Vickie Nielsen
Your insured: Mary Jane Hefferon
Claim No. AL 667-013587-05
Our File No. 13037

Dear David:

Enclosed, please find a letter from a David C. Cope, M.D., that we recently received regarding estimated expenses of surgery for our client, Vickie Nielsen.

Please review this letter and call to discuss policy limits on this policy, being policy No. A02268566704019029. Our client desires to have this back surgery as soon as possible.

We appreciate your cooperation in this matter.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH/esl

enclosure

Suite 500
127 South 500 East
P. O. Box 45440
Salt Lake City, Utah 84145-0440
Telephone: (801) 363-3057
Utah Toll Free: 1-800-634-4201



SEPTEMBER 21, 1993

PAUL HALLIDAY, JR ESQ.
376 E. 400 S.
SUITE 300
SALT LAKE CITY UT 84111

RECEIVED SEP 24 1993

INSURED: MARY JANE HEFFERON
CLAIMANT: VICKIE NIELSON
DATE OF LOSS: 09/23/90
FILE NUMBER: AL667-013587-05

Dear PAUL HALLIDAY, JR Esq:

PLEASE CALL ME SO THAT WE MIGHT DISCUSS THE ABOVE CAPTIONED CLAIM. I AM EASIEST REACHED IN THE MORNING HOURS. THANK YOU FOR YOUR RESPONSE TO THIS MATTER.

Sincerely,
DAVID GEHRIS
Claims Department
Ext 244

Liberty Mutual Insurance Group/Boston
Equal Opportunity Employer

FREEFORM

October 5, 1993

Mr. David Gehris
Claims Department
Suite 500
127 South 500 East
P. O. Box 45440
Salt Lake City, Utah 84145-0440

Re: Insured: Mary Jane Hefferon
Claimant: Vickie Nielsen
Date of Loss: 09/3/90
File Number: AL667-013587-05
Our File Number: 13037

Dear David:

Enclosed, please find a copy of the medical records of Dr. Michael Hess regarding our client, Vickie Nielsen.

Please review these records, and contact us regarding your decision about an independent medical exam.

We look forward to your cooperation in resolving this matter.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH, JR./nh

Enclosed

December 5, 1994

Traci Birdsong
Liberty Mutual
P. O. Box 45440
Salt Lake City, Utah 84145-0440

Re: Your insured Mary Jane Hefferon
Our Client Vickie Nielsen
Date of Loss 9-23-90
Your File Number AL667-013587-05
Our File Number 13037

AL667-000062-05

Dear Traci:

Enclosed, please find a copy of the Summons and Complaint that was served on the Personal Representative of the estate of Mary Jane Hefferon. I spoke with Gary McCallister and he was going to send a copy of the documents to Dave Gehris, whom I understand is no longer working this file.

By this letter I am allowing you to have an open extension to answer the above referenced complaint. Our plan is for our client to have her back surgery in either December or January. Once, she becomes medically stabilized, we then wish to try and settle the matter before proceeding through litigation. We filed our lawsuit to preserve our client's claim against the estate of Mary Jane Hefferon.

Should you have any question or wish to discuss this matter, please do not hesitate to call.

Yours very truly,

Paul M. Halliday, Jr.
Attorney at Law

PMH, JR./nh

Enclosure

cc: Vickie Nielsen



RECEIVED AUG 31 1995

JULY 31, 1995

PAUL M. HALLIDAY JR.
HALLIDAY & HALLIDAY
WESTERN FINANCIAL CENTER
376 EAST FOURTH SOUTH
SALT LAKE CITY UT 84111

Liberty Mutual Group

127 South 500 East
Suite 500
P.O. Box 45440
Salt Lake City, Utah 84145-0440
Telephone: (801) 363-3057
Utah Toll Free: (800) 634-4201

INSURED: MARY JANE HEFFERON
CLAIMANT: VICKIE NIELSEN
DATE OF LOSS: 09/23/90
FILE NUMBER: AL698-000062-05

Dear Mr. Halliday:

Thank you for speaking with me on Monday, July 31, 1995 regarding your client, Vickie Nielsen. In order to evaluate the claim, I will be waiting for your medical package. Once I get it, I will quickly go over it so as we can discuss our next steps. I realize that you would like for us to advance money in order for Ms. Nielsen to have back surgery and I will keep that in mind as I read the medical reports. Thank you very much for your help and cooperation.

Sincerely,
PATRICIA G MERRELL
Claims Department
Ext 229