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5 Attorneys for Church Defendants and Donald C. Fossum  
6

7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 THOMAS A. WAITE,

10 Plaintiff,

11 vs.

12 THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH  
13 OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; THE  
14 CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST  
15 OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and  
16 STEVEN D. BRODHEAD,

17 Defendants.  
18

Case No.: CV-05-399-EFS

DEFENDANT CHURCH  
DEFENDANTS AND  
FOSSUM'S LR 56 STATEMENT  
OF FACTS

19 Defendants, The Corporation of The Presiding Bishop, Corporation of the  
20 President, (the "Church Defendants"), by and through their attorneys,  
21 Witherspoon, Kelley, Davenport & Toole, P.S., hereby submit the following LR  
22 56.1 Statement of Material Facts in Support of its Motion for Partial Summary  
23 Judgment.

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27 CHURCH DEFENDANTS AND FOSSUM LR 56

28 STATEMENT OF FACTS - 1

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WITHERSPOON, KELLEY, DAVENPORT & TOOLE  
A PROFESSIONAL SERVICE CORPORATION  
ATTORNEYS & COUNSELORS

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**STATEMENT OF FACTS**

**I. Church's Material Facts**

1. Mr. Waite alleges in his Complaint (Ct. Rec. 1) that he had a "special relationship" with the Church which made the Church his fiduciary. Complaint, ¶ 7.2 - 7.3.

2. Based on the "expectations" of a fiduciary relationship, Mr. Waite claims that he, "could not and did not question riding in the bed of the canopied pickup truck". Complaint, ¶ 7.4.

3. Mr. Waite further alleges that, "As a result of the negligent failure of Defendant LDS Church to adequately supervise, train, and otherwise protect plaintiff Thomas Waite, he suffered injuries and damages arising from this motor vehicle collision". Complaint, ¶ 7.5.

4. Mr. Waite specifically claims that the Church was negligent as follows:

"(a) The LDS Church knew or should have known that allowing missionaries to ride unrestrained in the bed of the canopied pickup truck greatly increased the likelihood of injury in the event of collision;"

"(b) In failing to exercise reasonable care to protect its missionaries, including Thomas Waite, by providing adequate transportation;"

"(c) In failing to have a policy in place prohibiting missionaries from riding in beds of pickups or for having a policy which created the inference that such conduct was acceptable;"

"(d) For failure to exercise reasonable care in the training of its driver missionaries;"

1 "(e) In failing to exercise reasonable care in the entrustment of the pickup  
2 to defendant Fossum ... ."

3 Complaint ¶ 6.2.

4 5. On February 27, 2007, Defendant served six contention  
5 interrogatories seeking the specific facts which Mr. Waite claimed supported each  
6 of the allegations in paragraphs 6.2 and 7.5 of the Complaint.

7 6. As to the Church defendants, the interrogatory answers for each  
8 specific allegation were identical:

9 Mission leaders were aware that Donald Fossum was carrying  
10 passengers in the bed of the pickup and failed to take any action to  
11 warn, train, or protect its missionaries, including Mr. Waite.  
Moreover, Mr. Waite was trained always to remain with a companion.

12 Aff. of Rekofke, Exh. A.

13 7. As to Mr. Fossum's alleged negligence, Mr. Waite answered:

14 Donald Fossum received no training or direction regarding  
15 missionaries riding in the bed of the pickup to which he was assigned.  
He was neither advised to read the owner's manual nor the warnings  
contained within the manual.

16 Aff. of Rekofke, Exh. A.

17 8. In its March 27, 2007, Order (Ct. Rec. 80) the Court held that:

- 18 • RCW 46.61.688 creates a substantive rule of evidence.
- 19 • Under Washington law, riding unrestrained in the bed of a  
20 pickup is not inherently risky.
- 21 • The failure of Mr. Waite to use a seatbelt in the bed of the  
22 pickup could not be introduced as evidence of his  
23 comparative negligence, thereby barring a number of  
24 affirmative defenses, including assumption of risk, estoppel,  
25 and violation of Church training, rules and policies.

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28 CHURCH DEFENDANTS AND FOSSUM LR 56

STATEMENT OF FACTS - 3

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DATED this 11<sup>th</sup> day of May, 2007.

**WITHERSPOON, KELLEY, DAVENPORT  
& TOOLE**

By:   
\_\_\_\_\_  
Brian T. Rekofke, WSBA No. 13260  
Ross P. White, WSBA No. 12136  
Attorneys for Church Defendants and  
Donald Fossum

CHURCH DEFENDANTS AND FOSSUM LR 56  
STATEMENT OF FACTS - 4

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### CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of May, 2007:

1. I electronically filed the foregoing **CHURCH DEFENDANTS AND FOSSUM'S LR 56 STATEMENT OF FACTS** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

(for Waite) Richard C. Eymann and Stephen L. Nordstrom;  
(for Brodhead) Andrew C. Smythe

2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **None.**

3. I hereby certify that I have hand delivered the document to the following participants at the addresses listed below: **None.**



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CHURCH DEFENDANTS AND FOSSUM LR 56  
STATEMENT OF FACTS - 5

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