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8 Attorneys for Church Defendants and Donald C. Fossum

9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 THOMAS A. WAITE,

12 Plaintiff,

13 vs.

14 THE CORPORATION OF THE  
15 PRESIDING BISHOP OF THE CHURCH  
16 OF JESUS CHRIST OF LATTER DAY  
17 SAINTS, a Utah corporation; THE  
18 CORPORATION OF THE PRESIDENT  
19 OF THE CHURCH OF JESUS CHRIST  
20 OF LATTER DAY SAINTS, a Utah  
21 corporation; DONALD C. FOSSUM; and  
22 STEVEN D. BRODHEAD,

23 Defendants.

Case No.: CV-05-399-EFS

JOINT STATEMENT OF  
UNCONTROVERTED FACTS  
RE: CHURCH DEFENDANTS  
AND DONALD C. FOSSUM'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

24 The parties, by and through their respective counsel of record, stipulate that  
25 the following specific facts are uncontroverted as to Church Defendants and  
26 Donald C. Fossum's Motion for Partial Summary Judgment:

27 1. The Church acknowledges that while Mr. Waite was on his mission,  
28 a "special relationship" existed, but denies that the special relationship was that  
of a fiduciary. Complaint and Answer, ¶ 7.3.

2. Based on the expectations of their "special relationship", Mr. Waite

JOINT STATEMENT OF UNCONTROVERTED FACTS  
RE: CHURCH DEFENDANTS AND FOSSUM MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 1

G:\C:\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion SJ re Specific Claims (Seat belt)\Statement of Uncontroverted Facts 053107 (klh).wpd  
WITHERSPOON, KELLEY, DAVENPORT & TOOLE

A PROFESSIONAL SERVICE CORPORATION  
ATTORNEYS & COUNSELORS

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1 claims that he "could not and did not question riding in the back of the canopied  
2 pick up truck".

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

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

10 5. Mr. Waite specifically claims that the Church was negligent as  
11 follows:

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

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

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

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

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

24 Complaint ¶ 6.2.

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28 JOINT STATEMENT OF UNCONTROVERTED FACTS  
RE: CHURCH DEFENDANTS AND FOSSUM MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 2

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

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

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

9 Aff. of Rekofke, Exh. A.

10 8. As to Mr. Fossum's alleged negligence, Mr. Waite answered:

11 Donald Fossum received no training or direction regarding  
12 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.

13 Aff. of Rekofke, Exh. A.

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

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

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28 JOINT STATEMENT OF UNCONTROVERTED FACTS  
RE: CHURCH DEFENDANTS AND FOSSUM MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 3

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DATED this 5<sup>th</sup> day of June, 2007.

**WITHERSPOON, KELLEY, DAVENPORT  
& TOOLE**

By: /s/ Brian T. Rekofke  
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By: Telephonically approved 06/05/07  
Stephen L. Nordstrom, WSBA No. 11267  
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JOINT STATEMENT OF UNCONTROVERTED FACTS  
RE: CHURCH DEFENDANTS AND FOSSUM MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 4

**CERTIFICATE OF SERVICE**

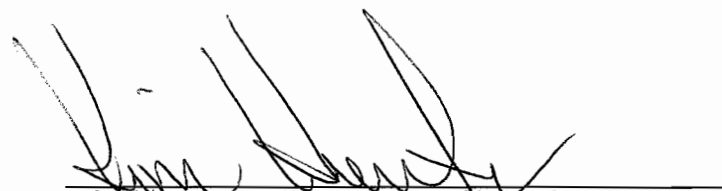
I hereby certify that on the 5<sup>th</sup> day of June, 2007.

1. I electronically filed the foregoing JOINT STATEMENT OF UNCONTROVERTED FACTS RE: CHURCH DEFENDANTS AND DONALD C. FOSSUM'S MOTION FOR PARTIAL SUMMARY JUDGMENT 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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