

1 Brian T. Rekofke
2 William D. Symmes
3 Benjamin S. Coleman
4 Witherspoon, Kelley, Davenport & Toole
5 1100 US Bank Building
6 422 West Riverside
7 Spokane, WA 99201
8 (509) 624-5265

9 Attorneys for The Church of Jesus Christ of
10 Latter Day Saints and Donald C. Fossum

11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON

13 THOMAS A. WAITE,
14 Plaintiff,

Case No.: CV-05-399-EFS

15 vs.

16 THE CHURCH OF JESUS CHRIST OF
17 LATTER DAY SAINTS d/b/a
18 CORPORATION OF THE PRESIDING
19 BISHOP OF THE CHURCH OF JESUS
20 CHRIST OF LATTER DAY SAINTS, a
21 Utah corporation, d/b/a
22 CORPORATION OF THE PRESIDENT OF
23 THE CHURCH OF JESUS CHRIST OF
24 LATTER DAY SAINTS, a Utah
25 corporation; DONALD C. FOSSUM; and
26 STEVEN D. BRODHEAD,

ANSWER OF DEFENDANTS
CHURCH OF JESUS CHRIST OF
LATTER DAY SAINTS AND
FOSSUM

27 Defendants.

28 The Church of Jesus Christ of Latter Day Saints ("the
Church") and Donald C. Fossum, through their attorneys Brian T.
Rekofke, William D. Symmes, and Benjamin S. Coleman of
Witherspoon, Kelley, Davenport & Toole, answer Plaintiff's
Complaint as follows:

///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. PARTIES

1.1 Admit Mr. Waite was a resident of California and that on August 21, 2003, was a full-time missionary for the Church in Spokane. The remainder is denied.

1.2 Admit.

1.3 Admit that on August 21, 2003 Donald Fossum was a full-time missionary for the Church in Spokane. The remainder is denied.

1.4 Admit.

II. JURISDICTION AND VENUE

2.1 Admit.

III. NATURE OF OCCURRENCE

3.1 Admit that on or about August 21, 2003, Plaintiff was a passenger riding in the bed of a truck owned by the Church and driven by Mr. Fossum. Admit Mr. Fossum was traveling northbound on Adams Road. Admit Mr. Fossum stopped completely at the intersection of Adams and 8th Avenue, which is a four way stop sign intersection located in Spokane Valley, Washington. Admit that Defendant Brodhead was driving a 1988 Honda at a high rate of speed eastbound on 8th Avenue. Deny there were no visual obstructions for observing traffic approaching from the left. Admit Defendant Brodhead failed to stop at the intersection and plowed into the vehicle driven by Mr. Fossum. Deny Mr. Fossum drove into the intersection with knowledge that Mr. Brodhead was approaching in a fast moving vehicle from the left. Admit Plaintiff suffered injuries as a result of the crash caused by

1 Defendant Brodhead. Deny the remainder.

2 **IV. FIRST CAUSE OF ACTION**
3 **Negligence of Defendant Fossum**

4 4.1 (a) - (c) Deny.

5 **I. SECOND CAUSE OF ACTION**
6 **Negligence of Defendant Brodhead**

7 5.1 Defendants reallege and incorporate their answers as
8 set forth in paragraphs 1.1 through 4.1 herein.

9 5.2 (a) - (d) Admit.

10 **VI. THIRD CAUSE OF ACTION**
11 **Negligence of Defendant LDS Church**

12 6.1 Defendants reallege and incorporate their answers as
13 set forth in paragraphs 1.1 through 5.2 herein.

14 6.2 (a) - (f) Deny.

15 **VII. FOURTH CAUSE OF ACTION**
16 **Breach of Fiduciary Duty**

17 7.1 Defendants reallege and incorporate their answers as
18 set forth in paragraphs 1.1 through 6.2 herein.

19 7.2 Defendants deny a fiduciary relationship existed
20 between the Church and Mr. Waite. The Church admits that a
21 special relationship existed between the Church and its
22 missionaries, who have been called by their faith to leave their
23 state of residence to move to the State of Washington for two
24 years.

25 7.3 The Church admits that its missionaries devote a
26 substantial amount of their time to missionary work, are not
27 otherwise employed and that the Church supplies the basic needs
28 of its missionaries including medical care, housing, food and

Answer of Defendants LDS Church and Fossum - 3
G:\C:\Church of Jesus Christ adv. Waite\Pleadings\Answer to Complaint 013006 (klh).wpd

1 transportation. Deny that the Church's missionaries are
2 "vulnerable", but admit that a "special relationship" existed
3 between Mr. Waite and the Church.

4 7.4 The Church admits that missionaries undergo extensive
5 training, including training in personal safety and careful
6 instruction in automobile safety and that each missionary was
7 expected to follow church teachings, rules and direction. The
8 Church specifically denies the inference that Plaintiff could
9 not and did not question riding in the bed of the pick up truck
10 and avers that its missionaries were specifically instructed and
11 agreed in writing not to ride unsecured in any vehicle.

12 7.5 Defendants admit Mr. Waite suffered injuries from the
13 motor vehicle collision caused by Defendant Brodhead but deny
14 that such injuries are the result of any negligence on behalf of
15 the Church and/or Mr. Fossum.

16 7.6 Deny.

17 **VIII. INJURIES AND DAMAGES**

18 8.1 Admit Plaintiff suffered some damage. Deny the nature
19 and extent of damage described in this paragraph and deny any
20 negligence.

21 **IX. LIMITED PHYSICIAN-PATIENT WAIVER**

22 9.1 This is a legal conclusion to which no answer is
23 required,

24 **X. JURY DEMAND**

25 10.1 This is a request of the court to which no answer is
26 required.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XI. AFFIRMATIVE DEFENSES

By way of further answer to Plaintiff's Complaint and by way of affirmative defense, The Church and Fossum allege as follows:

11.1 Plaintiff has failed to state a claim upon which relief may be granted.

11.2 Plaintiff's injuries were caused by the acts or omissions of persons or entities over whom these answering Defendants exercised no authority or control. Fault should be apportioned to those persons or entities pursuant to Washington Statute and these answering Defendants are not responsible for any fault so apportioned.

11.3 Plaintiff was negligent in disregarding Church policy and rules when he decided to ride unsecured in the back of a truck.

11.4 The sole cause of the accident resulting in Plaintiff's injuries was the negligent act of Defendant Brodhead.

11.5 Plaintiff's claims are barred by the First Amendment of the Constitution, specifically, the free exercise clause and the establishment clause.

11.6 Plaintiff assumed the risk of damage when he rode unsecured in the truck.

11.7 Due to his failure to follow Church policy and rules regarding riding unsecured in a vehicle, Plaintiff is estopped to maintain his claim.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11.8 Defendants reserve the right to amend this answer in the future to include any affirmative defense or any other matter constituting an avoidance which may become apparent through the process of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint and reserving affirmative defenses, Defendants The Church and Fossum pray that Plaintiff's Complaint be dismissed with prejudice and that these Defendants be awarded their costs and reasonable attorney's fees, together with such other and further relief as the Court may deem just and equitable.

DATED this 25th day of August, 2006.

**WITHERSPOON, KELLEY, DAVENPORT
& TOOLE**

By: 

Brian T. Rekofke, WSBA No. 13260
William D. Symmes, WSBA No. 683
Benjamin S. Coleman, WSBA No. 32199
Attorneys for The Church of Jesus
Christ Of Latter Day Saints and
Donald C. Fossum

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2006, I caused to be electronically filed the foregoing **ANSWER OF DEFENDANTS CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS AND FOSSUM** 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; and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: NONE.

/s/ Brian T. Rekofke
Brian T. Rekofke, WSBA #13260
William D. Symmes, WSBA #683
Benjamin S. Coleman, WSBA #32199
Attorneys for The Church of Jesus
Christ of Latter Day Saints and
Donald C. Fossum
Witherspoon, Kelley, Davenport
& Toole, P.S.
422 W. Riverside, Suite 1100
Spokane, WA 99201
Phone: (509) 624-5265
Fax: (509) 458-2728
btr@wkdtlaw.com
wds@wkdtlaw.com
bsc@wkdtlaw.com