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7 (509) 624-5265  
8 Attorneys for LDS 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

DEFENDANT CHURCH AND  
FOSSUM'S LR 56 STATEMENT  
OF FACTS

24 Defendant, The Church of Jesus Christ of Latter Day Saints (the "Church"),  
25 by and through its attorneys, Witherspoon, Kelley, Davenport & Toole, P.S.,  
26 hereby submit the following LR 56.1 Statement of Material Facts in Support of  
27 its opposition to Plaintiff's Motion for Summary Judgment Re: Affirmative  
28 Defenses and Responsive Statement of Facts.

DEFENDANT CHURCH AND FOSSUM LR 56  
STATEMENT OF FACTS - 1

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

1100 U.S. BANK BUILDING  
422 WEST RIVERSIDE AVENUE  
SPOKANE, WASHINGTON 99201-0302  
(509) 624-5265

**STATEMENT OF FACTS AND  
RESPONSIVE STATEMENT OF FACTS**

**I. Church's Response to Plaintiff's Statement of Facts**

1. Plaintiff's Fact # 1 is admitted. Plaintiff was a Missionary for the Church.

2. Plaintiff's Fact #2 is admitted. Missionaries are required to sign a Driving Contract.

3. Plaintiff's Fact #3 is admitted. Plaintiff signed a Driving Contract.

4. Plaintiff's Fact #4 is admitted. The Driving Contract requires missionaries to wear seatbelts at all times while a vehicle is moving.

5. Plaintiff's Fact #5 is admitted. At the time of the collision plaintiff was riding in the cargo bed of a Church owned pickup truck without a seatbelt. Defendant Church objects to Plaintiff's citation to the Declaration of James T. Ross as that declaration is incomplete and unsigned. FRCP 56(e).

**II. Church's Material Facts**

1. Prior to becoming a missionary, Mr. Waite knew riding in the back of a pickup truck was "obviously not the safest place to be." Aff. of White, Exh. A. (Depo. of Thomas Waite 90:15-25; 91:15-20.)

2. Mr. Waite signed a contract agreeing to abide by certain rules relative to vehicles while a missionary. Aff. of Ross White Exh. B. (Thomas Waite Deposition, 100:15-101:14; 102:7-14, Exhibit 3)

3. The contract was part of an overall safety program that included lectures, videos, written tests and handbooks. Aff. of Ross White, Exh. C. (Kevin Ludlow Deposition, 30:2 -31:2; 33:3-34:5; 56:4-58:23.)

4. The missionaries' truck was struck by defendant Steven Brodhead. Aff. of White, Exh. D. (Deposition of Stephen Brodhead, 40:4-16.)

DEFENDANT CHURCH AND FOSSUM LR 56

STATEMENT OF FACTS - 2

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A PROFESSIONAL SERVICE CORPORATION  
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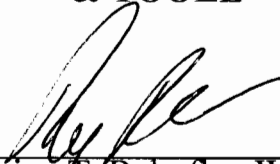
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5. Mr. Waite was ejected from the truck cargo hold and suffered injuries. Aff. of White, Exh. E. (Depo. Of Brodhead, 42:2-21.)

DATED this 12<sup>th</sup> day of February, 2007.

**WITHERSPOON, KELLEY, DAVENPORT  
& TOOLE**

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2007:

1. I electronically filed the foregoing **DEFENDANT CHURCH 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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