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

12 THOMAS A. WAITE,)

13 Plaintiff,)

14 vs.)

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

25 Defendants.)

Case No.: CV-05-399-EFS

REPLY MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT RE:
AFFIRMATIVE DEFENSES

1 I. THE SEATBELT STATUTE APPLIES

2 Defendants contend that Washington's seatbelt statute does not apply in the present
3 case. Defendants are incorrect.

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5 Initially, it should be noted that RCW 46.61 is the statute which governs the "rules
6 of the road" in Washington state, and RCW 46.61.688 is the section within the statute
7 that governs seatbelt use. (Appendix A). This section is entitled, "Safety Belts, Use
8 Required - - Penalties - - Exemptions." As denoted, in addition to requiring the use of
9 seatbelts within the state of Washington, and providing penalties for its violation, this
10 statute contains exemptions to this requirement. These exemptions include RCW
11 46.61.688(2) and RCW 46.61.688(7). RCW 46.61.688(2) provides in relevant part:
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14 *This section does not apply to a vehicle occupant for whom no safety belt is*
15 *available when all designated seating positions . . . are occupied.*

16 RCW 46.61.688(7) provides:

17 *This section does not apply to an operator or passenger who possesses*
18 *written verification from a licensed physician that the operator or*
19 *passenger is unable to wear a safety belt for physical or medical reasons.*

20 Appendix A.

21 However, whether an occupant or passenger is in violation of the statute or falls
22 within the exemptions, RCW 46.61.688(6) prohibits such evidence from being used in a
23 civil action. RCW 46.61.688(6) provides:
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1 *Failure to comply with the requirements of this section does not constitute*
2 *negligence, nor may failure to wear a safety belt assembly be admissible as*
3 *evidence of negligence in any civil action.*

4 Appendix A.

5 Defendants contend that RCW 46.61.688(2) should be interpreted to mean that
6 RCW 46.61.688(6) does not bar evidence of the failure to wear a seatbelt in this case.
7 However, such a reading would render the prohibition on the use of seatbelt evidence in
8 large part superfluous.

9
10 It is a basic rule of statutory construction that whenever possible, statutes should be
11 construed so that no portion is superfluous, and so that strained, unlikely or absurd
12 consequences are avoided. *Clark v. Payne*, 61 Wn. App. 189, 195, 810 P.2d 931 (1991);
13 *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989); and *Sim v. State Parks and*
14 *Rec. Comm'n.*, 90 Wn.2d 378, 383, 583 P.2d 1193 (1978).

15
16 As argued by the defendants, RCW 46.61.688(6) would be superfluous in the
17 context of RCW 46.61.688(2) (as well as RCW 46.61.688(7)). Only an occupant *in*
18 *violation* of the law could prohibit evidence of that violation from being admitted into
19 evidence, whereas, evidence would be admissible against those occupants who had *not*
20 *violated* the law. This absurd consequence advocated by the defendants is contrary to the
21 clear intent of the legislature and should be avoided by the Court.
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1 II. A PRIVATE CONTRACT MAY NOT BE USED TO CIRCUMVENT
2 STATUTORY LAW

3 In addition to the legal authority previously provided by Plaintiff, this Court is also
4 entitled to rely on common sense. *Doherty v. Municipality of Metropolitan Seattle*, 83
5 Wn. App. 464, 470, 921 P.2d 1098, citing *Taggart v. State*, 118 Wn.2d 195, 225-26, 822
6 P.2d 243 (1992).
7

8 Common sense dictates that if the Mormon church is allowed to circumvent the
9 legislative limitation on admissibility of seatbelt evidence in a civil action, we could
10 immediately expect to see every insurance company in the state of Washington require its
11 insured to enter into a similar private agreement promising to wear a seatbelt at all times,
12 and the evidentiary limitation intended by the legislature in RCW 46.61.688(6) would be
13 worthless.
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16 III. FIRST AMENDMENT

17 Defendants argue that Mr. Waite “alleges a special relationship with the church,”
18 and that such claim would challenge the church’s missionary program and training, and is
19 therefore forbidden by the First Amendment. (Defendant’s Memorandum, page 8,
20 line 19). However, for the purpose of summary judgment, no such argument is necessary
21 since the Defendants have already admitted that a “special relationship” existed between
22 the church and Mr. Waite. (See Joint Status Certificate and Discovery Plan, page 5,
23 line 6).
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1 What is at issue in this motion for partial summary judgment is whether
2 Mr. Waite's failure to wear a seatbelt, or whether his signing a private agreement to wear
3 a seatbelt, will be admissible at trial. Such issues are entirely secular in nature and are
4 not barred by the First Amendment. Whether claims against a church are barred by the
5 First Amendment was the specific issue addressed in *S.H.C. v. Sheng-Yen Lu*, 113 Wn.
6 App. 511, 520, 54 P.3d 174 (2002), rev. den. by *S.H.C. v. Lu*, 149 Wn.2d 1011, 69 P.3d
7 874 (2003).
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9
10 *Our (Washington state) supreme court then considered whether the claims*
11 *against the church were barred by the First Amendment. The court stated*
12 *that "[t]he First Amendment does not provide churches with absolute*
13 *immunity to engage in tortious conduct. So long as liability is predicated*
14 *on secular conduct and does not involve the interpretation of church*
15 *doctrine or religious beliefs, it does not offend constitutional principles."*
16 *The court held that because these principles were not offended by the case*
17 *before it, there was no constitutional bar to the claim. (footnote citation*
18 *omitted)*

19 Here, none of the evidence regarding the motor vehicle collision, seatbelts and the
20 private driving contract involves the interpretation of a religious doctrine. Therefore, the
21 issues before this Court are not barred by the First Amendment.

22 DATED this 28th day of February, 2007.

23 NORDSTROM & NEES, P.S.

24 By: s/Stephen L. Nordstrom

25 STEPHEN L. NORDSTROM, WSBA #11267
26 Co-Counsel for Plaintiff

EYMANN ALLISON HUNTER JONES, P.S.

By: Telephonically Approved 2/28/07

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CERTIFICATE OF SERVICE

I, Stephen L. Nordstrom, hereby certify that on the 28th day of February, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following participants:

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Appendix A

RCW 46.61.688**Safety belts, use required — Penalties — Exemptions.**

(1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Neighborhood electric vehicle," meaning a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500;

(d) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(e) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208 and to neighborhood electric vehicles. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(8) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts.

[2003 c 353 § 4; 2002 c 328 § 2; (2002 c 328 § 1 expired July 1, 2002); 2000 c 190 § 3; 1990 c 250 § 58; 1986 c 152 § 1.]

Notes:

Effective date -- 2003 c 353: See note following RCW 46.04.320.

Expiration date -- 2002 c 328 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 328 § 3.]

Effective date -- 2002 c 328 § 2: "Section 2 of this act takes effect July 1, 2002." [2002 c 328 § 4.]

Intent -- Short title -- Effective date -- 2000 c 190: See notes following RCW 46.61.687.

Severability -- 1990 c 250: See note following RCW 46.16.301.

Study of effectiveness -- 1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians -- Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

