

All other issues, including Claimant's entitlement to on-going medical care, are reserved pending the outcome of this proceeding.

BACKGROUND

Claimant sustained severe burns as a result of a compressor explosion and resultant fire at Employer's mill on April 23, 1982. Also injured in the blast was Dale Hollenbeak. A third employee, Boyd Smith, died as a result of the accident. Claimant, Hollenbeak, and Smith's widow sought workers' compensation benefits and Surety accepted the claims.

Subsequently, Claimant, Hollenbeak, and the widow Smith filed a third party negligence action against several defendants that had owned, maintained, repaired or supplied parts and materials for the failed compressor. In late 1985, all of the plaintiffs were engaged in negotiations with all of the defendants in the civil action, and Defendants herein, to settle all of the claims related to the April 23, 1982 mill accident. The negotiations included both the third party negligence claims as well as the workers' compensation claims.

A compromise was ultimately reached with all three workers or their estates on both their workers' compensation claims and their third party negligence claims. On February 25, 1986, Claimant's case before the Idaho Industrial Commission was dismissed with prejudice in light of the aforementioned compromise, which included a lump sum settlement of his workers' compensation claims.

The terms of the lump sum settlement, in particular with regard to medical care, came into dispute when, some years later, Claimant was diagnosed with Hepatitis C. Claimant eventually underwent a liver transplant, requiring a life-long regimen of immunosuppressant and other transplant-related medications. Claimant believes that he contracted Hepatitis C as a result of blood transfusions he received while being treated for the injuries he sustained in the 1982

industrial accident. Claimant reopened his workers' compensation claim in 2000, seeking medical benefits for his liver treatment pursuant to Idaho Code § 72-432.

CONTENTIONS OF THE PARTIES

Claimant avers that his liver problems and ultimately his need for a transplant and lifetime care are the direct result of his 1982 industrial accident and all of his medical care relating thereto should be paid by Defendants.

Defendants contend that the lump sum settlement Claimant entered into in 1986 foreclosed all future claims for benefits related to the 1982 industrial accident, including medical care.

Claimant responds that Defendants have the burden of proving their affirmative defense by a preponderance of the evidence and have failed to do so—having neither produced the lump sum settlement document nor established its contents with any degree of certainty. Having failed to establish an affirmative defense, and raising no other defenses to Claimant's claim, Defendants are obligated to provide Claimant medical care as required by Idaho Code § 72-432.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Angela Bussert offered at hearing;
2. Claimant's Exhibits 1 through 4, admitted at hearing; and
3. Defendants' Exhibits A through I admitted at hearing.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. On April 23, 1982, Claimant sustained burns over 60% of his body, along with other injuries, when a compressor exploded, setting fire to the lumber mill where Claimant was employed. Claimant endured a lengthy hospital stay and numerous reconstructive surgical procedures, including multiple skin grafts. Claimant was actively treated for his injuries through late 1985.

2. Claimant filed a claim for workers' compensation benefits. Surety accepted the claim and paid both medical and income benefits to Claimant.

3. On February 25, 1986, a Stipulation for Dismissal with Prejudice and Order (IIC Stipulation) was filed in Claimant's workers' compensation proceeding. Claimant, his attorney, Joseph M. Imhoff, and the attorney for Defendants, David W. Cantrill, signed the Stipulation. The reason given for the dismissal with prejudice was that the case had been settled. Terms of the settlement were not specified.

4. An Addendum to Lump Sum Agreement (Addendum) was dated and signed on February 25, 1986. There is no indication that the Addendum was actually *filed* with the Commission, though two Commissioners signed it, and an assistant secretary acknowledged it. The Addendum makes reference to "that certain Lump Sum Agreement entered into between the parties hereto, and submitted to the Industrial Commission for approval on February 25, 1986 . . ." Defendants' Exhibit A., p. 001. The substance of the Addendum was that Employer and Surety agreed to waive an overpayment of \$1,211.04 in time loss benefits paid to Claimant.

5. Claimant's income benefits terminated February 24, 1986, apparently as a result of the lump sum settlement.

6. Surety's last payment for medical care was made in November 1985.

7. Claimant required no additional medical care related to his industrial accident until the late 1990s, at which time Claimant began having liver problems. Eventually, he was diagnosed with Hepatitis C.

8. On August 10, 2000, Claimant filed an Amended Complaint reopening his workers' compensation claim. He sought additional medical care (including a recommended liver transplant) for treatment of the Hepatitis C, which he believed was transmitted via the blood transfusions he received as a result of his industrial accident.

9. In their Answer, Defendants asserted in pertinent part that Claimant's right to additional medical care was "waived in conjunction with the lump sum agreement approved by the Industrial Commission on February 25, 1986." Answer to Complaint, filed August 17, 2000. Defendants also raised a causation issue—whether Claimant's Hepatitis C was causally related to his April 23, 1982 industrial accident. Because resolution of the first issue could be dispositive of all remaining issues, an Order bifurcating the issues was entered on November 17, 2004, limiting the hearing to the issue as framed at the outset of this document.

10. Despite a lengthy search, no original or copy of the lump sum agreement referenced in the Addendum (Defendants' Exhibit A), was found in the Commission files, or those of Surety, Employer, Claimant, or any of their respective counsel.

11. At hearing, Defendants sought to prove the content of the elusive lump sum agreement by the use of a number of secondary sources, including:

- The Addendum;
- The IIC Stipulation;
- The affidavit of Michael W. Moore, an attorney for Claimant in his third party negligence action, and part of the federal court record;

- The affidavit of Timothy C. Walton, an attorney for Claimant's co-worker Hollenbeak in Hollenbeak's third party negligence action, and a part of the federal court record;
- The affidavit of David W. Cantrill, an attorney for Surety, and a part of the federal court record;
- The Order from the federal district court dismissing the third-party negligence action brought by the three injured workers or their estates;
- A letter dated January 24, 1986 from Surety to attorney Cantrill;
- Surety's internal memorandum dated January 20, 1986;
- The deposition testimony of Don Dalebroux, a retired employee of Surety; and
- The testimony at hearing of Angela Bussert, an employee of Surety.

12. The Addendum and the IIC Stipulation are what they are and say what they say. What is notable about them for the purposes of this proceeding is what they don't say, *i.e.*, anything about future medical care and how it was to be handled pursuant to the settlement.

13. The affidavits of the three attorneys that were filed as part of the federal district court proceeding were admitted over the objections of Claimant. Claimant asserted that the affidavit of Michael Moore included hearsay and he also questioned its relevance. The affidavits of Timothy Walton and David Cantrill were, Claimant asserted, hearsay. The Referee admitted all three depositions, noting that rules of evidence were not strictly applied in workers' compensation proceedings, and that without examining the documents, could not determine whether they might contain probative information on the question at issue. Additionally, the affidavits, having been filed with a federal district court in a separate, but related case, at least bore a patina of reliability.

14. The affidavits provide a chronology of events as told from three different perspectives regarding the disintegration of what the affiants believed was a binding verbal settlement agreement that had not yet been reduced to writing. All three affidavits include references to the related workers' compensation cases, and the affidavit of David Cantrill (representing Surety herein) specifically notes that a lump sum settlement of the workers' compensation claims was a requirement of the settlement. None of the affidavits, however, include any specific discussion as to the terms of the lump sum settlements *vis a vis* future medical benefits.¹

15. The Stipulation and Order for Dismissal of Claims before the United States District Court of the State of Idaho, filed February 28, 1986, (Defendants' Exhibit F), states: "The reason for this stipulation is that the claims of each of such Plaintiffs have been compromised and fully settled." *Id.*, at p. 041.

16. Defendants' Exhibit G is a letter from one of Surety's claims adjusters that includes an accounting of all workers' compensation benefits paid to Claimant through January 24, 1986. The letter states in relevant part: "I will continue paying total temporary disability benefits until the lump sum has been approved." *Id.* at p. 044. The benefits accounting attached to the letter indicates that there were no medical bills outstanding as of January 24, 1986.

17. Defendants' Exhibit H is an internal Surety memorandum dated January 20, 1986, to Dave Lensch from Don Dalebroux. In his deposition, Mr. Dalebroux testified that Mr. Lensch was an employee of Surety at their home office. Mr. Dalebroux also testified that at the time in

¹ Additionally, since the affidavits chronicled discussions held prior to an apparent breakdown in the settlement agreement, they may not be reflective of the final, fully executed, settlement agreement.

question, he was the claims manager for Surety's Pacific Northwest Region, which included Idaho. In pertinent part the memo states:

Dave, we have all three cases settled.

They will be full in finals,² except for Smith, and we are to continue to pay the medicals and indemnity payments where that is appropriate until the Compromise Agreements are approved by the Commission.

On [Claimant] we agreed to pay \$80,000 in addition to what we paid and to waive what has been paid to date.

Id., at p. 047.

DISCUSSION AND FURTHER FINDINGS

18. It is well established within the workers' compensation arena that Idaho Code § 72-432 imposes an obligation upon employers to provide reasonably necessary medical treatment to employees injured on the job. Medical benefits are such a fundamental part of the workers' compensation system that they are excluded from the statutory time limitations contained in Idaho Code § 72-706. See, *Walters v. Blincoe's Magic Valley Packing Co.*, 117 Idaho 239, 787 P.2d 225 (1989). An injured worker's right to receive medical treatment for a work-related condition extends throughout the worker's lifetime, subject only to the worker's obligation to demonstrate that the need for the medical treatment is causally related to the industrial accident. Only when an injured worker's right to medical treatment has been adjudicated or otherwise commuted by order of the Commission does the obligation of a surety to provide reasonable medical care cease.

In the instant case, there is nothing in the Commission files to suggest that any hearing was ever held adjudicating Claimant's entitlement to future medical benefits. There is evidence,

² The parties agree that the word "in" was an error and that the sentence should read, "They will be full *and* finals . . ." Emphasis added.

and the parties do not dispute, that Claimant *did* compromise his workers' compensation claim in some way by virtue of a lump sum settlement agreement. That lump sum agreement is referenced in a number of the exhibits admitted at hearing. Of particular importance, it is referenced with some specificity in the Addendum to the agreement that was executed by the Commission on February 25, 1986. Defendants' Exhibit A. What remains at issue in this proceeding is whether that lump sum agreement specifically foreclosed Claimant's entitlement to future medical benefits.

19. The lump sum agreement, which is the focus of this inquiry and which holds the answer to the question of whether it foreclosed future medical benefits or left them open, has not been produced. In fact, it is not a certainty that the lump sum settlement was actually reduced to writing. In any event, the written agreement itself is unavailable. In the absence of the document itself, either an original or a reasonable facsimile thereof, the parties are reduced to using secondary evidence to prove the material terms of the agreement.

20. The only party to the agreement who testified was Claimant. Claimant stated that he did not recall having compromised his workers' compensation claim at all, nor did he remember any discussions with Mr. Imhoff, his attorney at the time, regarding future medical care. Claimant did confirm that his signature appears on the IIC Stipulation.

21. As noted elsewhere, the Addendum, the IIC Stipulation, the Stipulation and Order for Dismissal of Claims, and the January 24, 1986 letter from Surety to David Cantrill, do not limn the terms of the agreement regarding medical care. Likewise, the affidavits of the attorneys involved in the global settlement, while providing insight into the making of a complex settlement agreement, shed no light on the specific terms of the agreement regarding disposition of the workers' compensation claims.

22. Defendants argue that the January 20, 1986 memo from Dale Dalebroux to Dave Lensch supports their position that Claimant waived his right to future medical care as a result of the lump sum agreement settling his workers' compensation claims. Defendants rely on the language in the memorandum referring to the settlements being "full [and] finals." At his deposition, Mr. Dalebroux testified that the phrase "full [and] finals" suggested to him that after the lump sum settlement was signed and the amounts agreed to in the settlement had been paid, Surety "could close the file and no further payments would be made." Defendants' Exhibit I, p. 13. Mr. Dalebroux further testified that he could not recall ever having resolved a case via a lump sum agreement while leaving the medical benefits open, that doing so would be so unusual that he was sure he would have mentioned it in the memo had that been the case. The witness also frankly admitted that he had no personal recollection about Claimant's case or the settlement therein and he was basing his testimony on his current interpretation of what the January 20, 1986 memo meant.

23. The Referee finds nothing in the record that can, with any certainty, establish whether the lump sum agreement compromised Claimant's entitlement to future medical benefits or left entitlement to future medical benefits open. Both parties make equally persuasive arguments as to why their view of the matter should prevail. But both parties must, in reaching their respective conclusions, rely upon supposition, speculation, and their view—from today's perspective—of what would have been reasonable then. Neither party can prove, by a preponderance of the evidence, that their interpretation of the missing agreement is correct. The evidence regarding the specific terms of the lump sum agreement pertaining to future medical benefits rests in equipoise.

24. In this proceeding, Claimant claimed benefits under the workers' compensation statutes. The claim was accepted and substantial benefits were paid. Some years later, Claimant sought additional medical care for a condition that he attributes to the initial industrial accident—medical care to which he is legally entitled so long as he can establish a causal relationship between the original injury and the current condition. This legal right can be terminated only by an order of the Commission, either as a result of an adjudication or as a result of Commission approval of a settlement agreement that terminates the right to future medical benefits. Defendants contend that they are not obligated to provide further medical care because Claimant's right to on-going medical benefits was bargained away when he settled his claim by entering into a lump sum agreement and the Commission approved the agreement. Defendants' assertion of the terms of the prior agreement to avoid liability constitutes an affirmative defense. In *Seamans v. Maaco Auto Painting & Body Works*, 128 Idaho 747, 918 P.2d 1192 (1996), the Idaho Court determined that in the workers' compensation arena, just as in the realm of civil litigation, affirmative defenses must be proven by a preponderance of the evidence by the party asserting them.

25. Based upon the record in its entirety, Defendants have failed to establish, by a preponderance of the evidence, that the lump sum agreement entered into on or about February 25, 1986 compromised Claimant's right to future medical benefits. Defendants' having failed to establish an affirmative defense, Claimant prevails and is entitled to medical treatment for conditions that are causally related to his 1982 industrial accident.

CONCLUSION OF LAW

1. Claimant's right to medical benefits stemming from the accident of April 23, 1982, has not been compromised or commuted by a subsequent settlement.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 15 day of June, 2005.

INDUSTRIAL COMMISSION

/s/ _____
Rinda Just, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of July, 2005 a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

THOMAS P BASKIN
PO BOX 6756
BOISE ID 83707-6756

GLENNA M CHRISTENSEN
PO BOX 829
BOISE ID 83701-0829

djb /s/ _____

matters adjudicated.

DATED this 7 day of July, 2005.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

James F. Kile, Commissioner

/s/ _____
R.D. Maynard, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of July, 2005, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

THOMAS P BASKIN
PO BOX 6756
BOISE ID 83707-6756

GLENNA M CHRISTENSEN
PO BOX 829
BOISE ID 83701-0829

djb

/s/ _____