

Commission held a hearing in Coeur d'Alene on October 11, 2006. Present at the hearing were Commissioners Limbaugh, Kile and Maynard, Charles Graham representing Claimant, Kenneth Mallea on behalf of ISIF and Mark Monson on behalf of Defendant Employer and the State Insurance Fund. Also attending the hearing were Claimant and her husband, a representative of ISIF, and an associate from Mr. Graham's office.

FACTS AND BACKGROUND

In 1991 Claimant filed a complaint against Valley Vista Care Corp., (Valley) her employer at that time. Claimant's complaint was also against SIF and ISIF. Issues arose regarding total and permanent disability, pre-existing impairment and causation. Claimant eventually settled her claims with Valley and SIF. In 1994, Claimant entered into a Lump Sum Settlement Agreement (LSSA) with ISIF, releasing ISIF from all future Workers' Compensation claims for her alleged total and permanent physical restrictions for the sum of \$6,500. The Commission approved the LSSA between Claimant and ISIF on February 18, 1994.

The current controversy stems from a new claim, filed by Claimant against ISIF on April 26, 2006. Claimant sustained a shoulder injury while cleaning tables as a custodian with St. Maries. Claimant alleges a number of pre-existing ailments, combined with this new shoulder injury, have rendered her totally and permanently disabled. ISIF denies liability.

JURISDICTION

A controversy exists in this case as Defendant ISIF has requested the Commission to interpret the 1994 LSSA. Because LSSAs are considered final orders of the Commission, a LSSA may be interpreted under Rule 15, JRP, and, therefore, a declaratory ruling on the 1994 LSSA is warranted. *See: Davidson v. H.H. Keim Co.*, 110 Idaho 758, 718 P.2d 1196 (1986).

CONTENTIONS OF THE PARTIES

There are essentially five issues that have been argued by the parties: (1) collateral estoppel; (2) res judicata; (3) waiver; (4) quasi-estoppel; and (5) ISIF's authority to enter into a § 72-404 LSSA, which absolves ISIF from future liability as regards total and permanent liability claims. Each party has made extensive arguments on these issues, both in briefing and at the hearing. Both parties are commended for their scholarship concerning this Petition.

ISIF contends that Claimant completely and voluntarily released ISIF from all future claims in 1994 by signing the LSSA. As a result, she should be collaterally estopped from pursuing another, similar complaint against the ISIF. ISIF goes on to allege that Claimant is attempting to re-litigate the same claim as was litigated in 1994, thus triggering the doctrine of res judicata. ISIF further argues that Claimant is estopped from asserting her most recent claim, due to the theory that Claimant waived her right to assert liability against ISIF when she signed the 1994 LSSA. This argument is similar to the collateral estoppel argument but is labeled as a waiver.

Claimant contends the 1994 LSSA is void under Idaho Code § 72-318(2) because it is an agreement between an employee (Claimant) and an employer to waive her rights to compensation under the Workers' Compensation Act. Claimant goes on to argue that the 1994 LSSA did not adequately compensate Claimant for total and permanent disability. Claimant further alleges that the doctrines of res judicata and collateral estoppel do not bar Claimant's new claim against ISIF as the same issues are not being litigated. Further, § 72-318(2) bars the waiver of Workers' Compensation rights anyway. Finally, Claimant argues that a ruling in ISIF's favor would violate public policy. Claimant cites *Cox v. Intermountain Lumber Co.*, 92

Idaho 197, 439 P.2d 931, (1968), for a reminder that the purpose of ISIF is to relieve employers of impaired or disabled persons of the responsibility of paying for total disability compensation to [employees] rendered totally and permanently disabled because of [their] pre-existing handicap coupled with subsequent injuries. See: *Id.*, 92 Idaho at 200, 439 P.2d at 934.

ISIF responds that the statutory language of Idaho Code § 72-318 does not apply. It only prohibits agreements between employees and employers. No such agreement is part of this situation. Further, ISIF is not an employer. ISIF states that Claimant was compensated for her claim of total disability when she was paid \$6,500 as part of the LSSA. ISIF cites Idaho Code § 72-324 for ISIF's authority to settle claims where a claimant's status as a total-perm is disputed. Finally, ISIF argues that a ruling in its favor would not violate public policy. Claimant certainly did not think the LSSA was a violation of public policy in 1994.

ANALYSIS

The Commission appreciates the parties' thorough briefing and exemplary participation at the hearing in this matter. The parties have presented the Commission with thoughtful analysis and have argued their points extremely well.

Idaho Code § 72-318(2)

The language of this provision is straightforward, and provides that: "No agreement by an employee to waive his rights to compensation under this act shall be valid." Claimant argues that this language prohibits Claimant's agreement with ISIF that was reached in the 1994 LSSA. Claimant's position that Idaho Code § 72-318(2) voids the 1994 LSSA is misplaced. This provision was established to prohibit an agreement between an employee and employer that would limit the employee's rights to workers' compensation benefits. It does not limit a party's

ability to negotiate and finalize an agreement to resolve benefit claims in a contested adjudication of those issues.

The application of § 72-318(2) can be described by the following simplistic examples. An employee takes a job at a convenience store. During the employee's second day of work, the employee and the employer enter into an agreement whereby the employer will have no liability for any workers' compensation benefits that might be due to the employee should he become injured at work, in exchange for a dollar an hour more in wages. Another example may be the situation, post-injury, when the injured worker agrees to waive his rights to any workers' compensation benefits if the employer retains his employment status. Both situations involve consideration for the agreement, but each fictional situation is clearly against the language and spirit of § 72-318(2). In the case of a lump sum settlement agreement, however, the parties are voluntarily entering into an agreement over disputed claims that will release one party's liability in exchange for payment of funds. *See*: Idaho Code § 72-404.

Should Claimant's reasoning hold true, essentially no agreement under §§ 72-404 and 72-324 could be valid. Not only would this destroy ISIF's willingness to enter into such agreements, but it would most certainly harm the interests of claimants, as they would lose the avenue of settlement as a possible option to resolve workers' compensation claims. The Commission is not willing to impose such a drastic handicap on either ISIF or claimants.

The present situation has added complexity because an agreement with ISIF is requested only when a claimant alleges total and permanent disability. Total and permanent disability is

the highest assessment of disability that can be given to a worker, meaning that a worker cannot return competitively to the workforce. Thus, ISIF can be liable to an individual worker only one time, when the worker is totally and permanently disabled. The question then remains, who has the burden of determining whether a claimant is truly totally and permanently disabled and if they will be returning to work? When cases are litigated, the Commission makes a written, factual determination of total and permanent disability.

In a workers' compensation case, which proceeds through the litigation process, there are evidentiary burdens placed upon the parties. Yet, inherent in the settlement process is the abandonment of the burden of proof. The parties need not go forward with testimony and documentary evidence to prove specific facts. The fundamental requirement for the approval of a lump sum settlement agreement is that the Commission determines that the settlement agreement is for the best interest of all parties. *See*: Idaho Code § 72-404.

The 1994 LSSA set forth the parties' competing contentions regarding Claimant's total and permanent disability and ISIF liability. Pursuant to Idaho Code § 72-332, ISIF is liable for the remainder of income benefits to an injured employee who has a pre-existing permanent physical impairment, which has combined with a subsequent industrial injury, causing the employee to be totally and permanently disabled. In the 1994 LSSA, Claimant claimed that she was totally and permanently disabled and unable to work, and that ISIF was liable for a portion of her disability due to preexisting conditions. *See*: 1994 LSSA p.2.

As stated above the Commission does not make additional findings and determinations when approving a lump sum settlement. The Commission is directed to review the settlement to

make sure it is in the best interests of all parties. Given the statements made by the parties in the 1994 LSSA, the Commission was within its authority to evaluate the document and approve the 1994 LSSA granting Claimant a payment from ISIF.

The administrative approval process does not produce any additional written determinations of a claimant's entitlement to benefits and the extent of disability, as are made after a contested hearing. Rather, a settlement avoids the necessity of any further administrative determination of those factual issues for the benefit of the parties. The 1994 LSSA was, more than anything else, an acknowledgement of Claimant's receipt of compensation for her alleged condition of total and permanent disability.

The settlement process allows parties an expeditious resolution without the difficulties inherent to litigation. Lump sum settlement agreements are a respected way to reach an agreement that is acceptable to all parties. It is a rare case when the hearing and decision process makes even one party content with the outcome, let alone all parties. A responsible employer and an injured worker are permitted to enter into a settlement with regard to compensation, but the agreement must be approved by the Commission. *See: Idaho Code § 72-404, -711.* Upon approval, the agreement is for all purposes considered to be an award by the Commission. *Id.* The approved agreement constitutes a final decision of the Commission, which is subject to a motion for reconsideration or rehearing pursuant to Idaho Code § 72-718. *See: Drake v. Industrial Special Indemnity Fund*, 128 Idaho 880, 882, 920 P.2d 397, 399 (1996). The 1994 LSSA clearly set forth Claimant's contention that she was totally and permanently disabled and unable to work. *See: 1994 LSSA p. 2.*

The 1994 Lump Sum Settlement Agreement

The fundamental question to resolve is the impact of the 1994 settlement between Claimant and ISIF. Within the text of the 1994 LSSA, it becomes clear that the parties were not in agreement as to whether Claimant was totally and permanently disabled, whether the accident arose out of the course and scope of employment, whether Claimant had pre-existing physical impairments that had manifested, and apportionment. These disagreements do nothing to lessen the validity of the 1994 LSSA. Recognizing these disputes, the parties agreed to the following statement:

The parties hereto acknowledge that there are serious questions and, therefore, disputes concerning the above issues. It is further acknowledged that this lump sum settlement is a compromise settlement of said issues as well as all other issues whether or not known, herein listed, discoverable or contemplated by the parties.

It is clear the parties freely intended to settle the issue of permanent disability through compromise. Even more important is the following language from the 1994 LSSA:

It is understood and agreed by and between the parties hereto that the lump sum payment of \$6,500.00 agreed to be paid to Claimant by the Fund is in consideration for and in payment of any and all claims that Claimant may now or hereafter have, including but not limited to every claim of whatever nature or kind for medical expenses, prescriptions, psychiatric care, temporary disability compensation, permanent disability compensation and all other claims that Claimant could now or hereafter make for benefits against the Fund under the Workers' Compensation Laws of the State of Idaho. (emphasis added)

This language clearly indicates Claimant's position in 1994. Claimant accepted \$6,500 as consideration to support the 1994 LSSA between Claimant and ISIF, even though Claimant could have litigated the case and potentially collected greater benefits for the rest of her life. The Commission did not force Claimant or ISIF to accept the 1994 LSSA.

Now, having been paid by ISIF for her claim that she was totally and permanently

disabled, Claimant cannot claim again she is totally disabled. A worker may not collect for a second time workers' compensation benefits from ISIF for industrial injuries sustained after being classified as permanently and totally disabled, because the classification presumes that the worker is unable to work. A subsequent lesser disability cannot be superimposed upon the maximum disability recognized by the law.

Summary of Theories

It is clear that Claimant entered into the 1994 LSSA and received \$6,500 as compensation for her disputed injury. It is irrelevant that ISIF did not concede Claimant's status as totally and permanently disabled. Claimant alleged total and permanent disability, voluntarily entered into the LSSA and received \$6,500 as consideration for the release of her claim of total and permanent disability against ISIF. It is purely speculative for Claimant to engage in any discussion about the real worth of Claimant's settlement in 1994 compared to her present injury. She compromised all arguments in accepting the terms of the full and final settlement with ISIF. Once the Commission approved the terms of the settlement agreement, the settlement became a final award and judgment of the Commission. *See: Davidson v. H.H. Keim Co.*, 110 Idaho 758, 718 P.2d 1196 (1986). Moreover, Claimant still retained her rights to rehearing, reconsideration and/or appeal if she had buyer's remorse or truly had legitimate legal concerns over the validity of her settlement. Those rights lapsed when Claimant did not avail herself of those legal remedies. The Commission is not convinced by Claimant's arguments that the 1994 LSSA is void under any circumstance. Nor is the Commission willing to open the door to potentially thousands of settlements fully and freely entered into by claimants, employers, sureties, and the ISIF during the past 12 years. Lastly, a final award through the settlement

process is not subject to modification. *See*: Idaho Code 72-719(4).

ISIF has presented a number of theories regarding why Claimant's most recent claim should be barred: res judicata, collateral estoppel, waiver, and quasi-estoppel.

Res Judicata

Res judicata is generally invoked to bar a subsequent suit between the same parties or their privies upon the same cause of action. *See: Idaho State University v. Mitchell*, 97 Idaho 724, 552 P.2d 776 (1976). Idaho Code § 72-718 codifies a variation of the doctrine of res judicata; decisions by the Commission are conclusive only as to matters actually adjudicated, rather than as to all matters which could have been adjudicated. *See: Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716, 682 P.2d 1263 (1984). It follows that a compensation agreement approved by the Commission is res judicata only with respect to matters actually determined by that agreement. *See: Kindred v. Amalgamated Sugar Co.*, 114 Idaho 284, 756 P.2d 401 (1988).

ISIF contends that Claimant is attempting to re-litigate the same claim as was litigated in 1994, thus triggering the doctrine of res judicata. Claimant alleges that the doctrine of res judicata does not bar Claimant's new claim against ISIF, as the same issues are not being litigated.

As discussed above, Claimant and ISIF entered into the 1994 LSSA to settle the issue of Claimant's total and permanent disability. The issue of Claimant's total and permanent disability and entitlement to benefits from ISIF was resolved by the 1994 LSSA, and is precluded by res judicata.

Collateral Estoppel

Collateral estoppel will apply if each of the following questions is answered in the affirmative.

- 1) Did the party against whom the earlier decision is asserted have a full and fair opportunity to litigate that issue in the earlier case?
- 2) Was the issue decided in the prior litigation identical with the one presented in the action in question?
- 3) Was the issue actually decided in the prior litigation?
- 4) Was there a final judgment on the merits?
- 5) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

See: Jackman v. Industrial Special Indemnity Fund, 129 Idaho 689, 691, 931 P.2d 1207, 1209 (1997).

ISIF contends that Claimant completely and voluntarily released ISIF from all future claims in 1994 by signing the LSSA. As a result, she should be collaterally estopped from pursuing another, similar complaint against the ISIF. Claimant alleges that the doctrine of collateral estoppel does not bar her new claim against ISIF, as the same issues are not being litigated.

The issue settled by the 1994 LSSA is that of ISIF's liability to Claimant. ISIF is not liable for specific industrial accidents and the consequential injuries. ISIF is only liable when a claimant is totally and permanently disabled. Here, ISIF entered into the 1994 LSSA to resolve the issue of total and permanent disability. In the 1994 LSSA Claimant contended that she was totally and permanently disabled, and as such she was entitled to payments from ISIF. The parties entered into the settlement agreement to resolve the issue of Claimant's total and permanent disability. Claimant is precluded by collateral estoppel from asserting another claim against ISIF, which she specifically released from any future liability.

Waiver

Waiver is a voluntary, intentional relinquishment of a known right. *See: Brand S. Corp.*

v. King, 102 Idaho 731, 639 P.2d 429 (1981). ISIF argues that Claimant is estopped from asserting her most recent claim, due to the theory that Claimant waived her right to assert liability against ISIF when she signed the 1994 LSSA. Claimant avers that § 72-318(2) bars the waiver of Workers' Compensation rights, including Claimant's right to pursue ISIF a second time.

In the present case Claimant is not waiving her rights to compensation. She can be totally and permanently disabled once, and under the appropriate circumstances she can receive compensation from ISIF for her total and permanent disability only once. Claimant received compensation from ISIF for her claim of total and permanent disability in 1994. The express agreement of the parties waived any further claims against ISIF for total and permanent disability.

Quasi-Estoppel

Quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by him or her. *See: KTVB Inc., v. Boise City*, 94 Idaho 279, 281, 486 P.2d 992, 994 (1971). This equitable theory of contract also applies here, as Claimant is currently taking a position inconsistent with her position during the signing of the 1994 LSSA. In 1994, Claimant declared she was totally and permanently disabled and received settlement benefits as a result thereof. Claimant was represented by an attorney and explicitly endorsed the 1994 LSSA through her signature. Claimant's current position, that the 1994 LSSA is void, is contrary to her explicit declaration, and is clearly prejudicial to ISIF.

CONCLUSION

For the above reasons, the Petition for Declaratory Ruling should be, and is hereby, GRANTED. As a result, Claimant's current claim against ISIF is barred due to the 1994 Lump Sum Settlement Agreement, which fully, finally and forever discharged and released ISIF from all future liability on account of Claimant's total and permanent disability.

IT IS SO ORDERED.

DATED this 19th day of January, 2007.

INDUSTRIAL COMMISSION

_____/s/_____
James F. Kile, Chairman

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

Commissioner R.D. Maynard dissenting:

After thoroughly reviewing the applicable statutes and existing case law regarding this matter, I respectfully dissent from the conclusions of the majority. The lump sum settlement agreement was void, *ab initio*, pursuant to the plain meaning of Idaho Code § 72-318(2).

Idaho Code § 72-318(2) reads, "No agreement by an employee to waive his rights to compensation under this act shall be valid." As stated by the majority, the statute is intended to

prohibit an agreement that might [*prospectively*] limit an employee's [future] rights to workers' compensation benefits. This interpretation of the statute is supported by the Idaho Supreme Court. *See, Emery v. J.R. Simplot Co.*, 141 Idaho 407, 111 P.3d 92 (2005). The practical application of this statute is evident upon review of virtually any lump sum agreement between an employee and employer. Employee/employer agreements do not contain prospective language limiting recovery in the event of a future injury. Even when the employee continues working for the same employer post-injury. A simple reading of the statute reveals that it is not limited to only an agreement between an employee and employer.

Although lump sum agreements are routinely used to resolve and dispose of claims for benefits of present injuries, the language used in the present agreement not only resolves the benefits due Claimant on the present injury, but also any and all future claims for benefits. The problematic language in the Wernecke agreement reads as follows:

It is understood and agreed by and between the parties hereto that the lump sum payment of \$6,500.00 agreed to be paid to Claimant by the Fund is in consideration for and in payment of *any and all claims that Claimant may now or hereafter have*, including but not limited to every claim of whatever nature or kind for medical expenses, prescriptions, psychiatric care, temporary disability compensation, permanent disability compensation and all other *claims that Claimant could now or hereafter make for benefits* against the Fund under the Workers' Compensation Laws of the State of Idaho. This is the case whether or not the full extent of Claimant's damages, disability, loss, expenses or claims are now known or foreseen, and *regardless of whether the Claimant shall ever again injure herself in another or future accident*, or suffer any disease which would argue cause the Fund to be liable for additional claims or benefits under the laws of the State of Idaho. Acceptance of this agreement by the Claimant according to the terms and conditions stated herein, shall fully and completely *discharge the Fund from liability from any claims forever*, regardless of whether such claims arise from the accident which is the subject of this cause, or any accidents, injuries, diseases, impairments, disabilities or deformities existing prior thereto *or hereafter arising*.

(Emphases added.) Clearly, ISIF wanted to create an agreement by which Claimant waived her rights to future compensation—a practice that is strictly prohibited by Idaho Code § 72-318(2).

The assertion that the ISIF includes such language in nearly every lump sum settlement agreement does not legitimize the process. The Industrial Commission as an administrative agency is a creature of statute, limited to the power and authority granted to it by the Legislature and may not exercise its sub-legislative powers to modify, alter, or enlarge the legislative act which it administers. Accordingly, the Commission exercises only that discretion granted by the Legislature. *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 212, 998 P.2d 1122, 1125 (2000). The application of § 72-318(2) to the language in ISIF lump sum agreements is a matter of first impression. After thorough research, I was unable to find a case with similar facts and an equivalent argument. Now that the ISIF's prospective language is being challenged, the Commission is charged by the Legislature and directed by the Court to apply the facts of this case to the law. If the statute is unambiguous, it must be applied as written. The majority's desire to interpret the statute differently for public policy reasons is not permissible when the statute's plain meaning is clear. Any agreement by a claimant to waive his or her rights to workers' compensation is invalid.

Assuming, *arguendo*, that ISIF could leap the initial hurdle posed by the plain meaning of Idaho Code § 72-318(2), the matter of ISIF's authority to enter into this agreement must be addressed. Idaho Code § 72-332(1) addresses the circumstances that must exist in order for a claimant to be entitled to payment from the Industrial Special Indemnity account:

If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease— suffers

total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.

ISIF is not a surety. ISIF was created to encourage employers to hire handicapped persons with the obligation only to pay compensation for an industrial injury to the handicapped person such amount as the employer would have had to pay an employee who had not been handicapped with ISIF assuming responsibility for the balance of the total permanent disability. *Tagg v. Industrial Special Indemnity Fund*, 123 Idaho 95, 97, 844 P.2d 1345, 1347 (1993) (internal citations omitted). Therefore, it is axiomatic that ISIF's lump sum agreements should not be entered into as a means to unreasonably limit its liability. ISIF should not be assessing whether it is better to enter into a lump sum agreement with the claimant now because, in the future, he or she might suffer an injury that puts ISIF on the hook for greater liability. That is, in fact, why ISIF was created to pay benefits to a claimant who suffers a work injury that combines with a pre-existing condition that renders him or her totally and permanently disabled. Settling a case prematurely (*i.e.* before there is some amount of evidence that the claimant is actually totally and permanently disabled and unable to return to work) as a "business decision" does not follow the intent for the creation and purpose of the ISIF.

Additionally, it is *not* irrelevant that ISIF did not concede total and permanent disability. The majority would have you believe that a claimant's assertion of total and permanent disability is adequate information for all parties, including the Commission, to proceed with the settlement. On the contrary, it is proper for the Commission to consider the underlying merits of the Claimant's [sic] claims when making its statutorily required determination as to whether the settlement agreements were for the best interest of all parties. Without some preliminary

inquiry into the merits of the claim, the Commission cannot properly judge whether an injured worker is surrendering a strong claim for too small a settlement, or whether the ISIF is unwisely satisfying spurious claims at great cost. *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 137, 106 P.3d 455, 463 (2005). By this, the Idaho Supreme Court declared that the Commission's approval of lump sum settlements was not simply a rubber stamp to the wishes and assertions of the parties.

Moreover, the proposition that a void finding would impose a drastic handicap on ISIF and claimants is overstated. The only situation that should give ISIF pause is one in which a claimant's total and permanent disability status is so questionable that more than a mere chance exists the claimant may return to work. Even then, the only event that could trigger additional ISIF liability is another industrial accident that causes additional impairment and, again, combines with the claimant's prior impairment. Hardly a situation that would effect thousands of settlements.

Of paramount importance is the understanding that this dissent's interpretation of Idaho Code §§ 72-318(2) and 72-332(1) in no way opens the door for duplicate claims against the ISIF. As long as a modicum of evidence exists that a claimant was totally and permanently disabled and met the requirements of § 72-332(1), and ISIF stipulated to the claimant's condition and its liability in the prior agreement, a new claim against ISIF could be defended on the basis that the claimant was totally and permanently disabled prior to the new injury. A strong defense since the claimant and ISIF would have stipulated to total and permanent disability when settling the prior dispute. Collateral estoppel applies to issues that actually and necessarily have been decided in prior litigation. *Brown v. Industrial Special Indemnity Fund*, 138 Idaho 493, 496, 65

P.3d 515, 518 (2003). Therefore, not only is prospective language waiving a claimant's right to future benefits in violation of § 72-318(2), it is wholly unnecessary in curtailing ISIF's future liability.

Finally, it bears repeating that the provisions of the Worker's [sic] Compensation Law are to be liberally construed *in favor* of the employee. *Sprague v. Caldwell Transp. Inc.*, 116 Idaho 720, 721, 779 P.2d 395, 396 (1989). The humane purposes for which the law was promulgated leave no room for narrow, technical construction. *Id.* ISIF's attempt to draft an agreement within which Claimant waives future rights to workers' compensation benefits voids the agreement. A void agreement renders ISIF's arguments in favor of a declaratory ruling moot. Therefore, ISIF's motion for a declaratory ruling should be denied, and Claimant's claim against ISIF should be allowed to proceed through the regular administrative hearing process.

For the above reasons, I must respectfully dissent.

Dated this 19th day of January, 2007.

INDUSTRIAL COMMISSION

_____/s/_____
R.D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January 2007, a true and correct copy of **Order on Petition for Declaratory Ruling** was served by regular United States Mail upon each of the following:

CHARLES L GRAHAM
PO BOX 9344
MOSCOW ID 83843

MARK T MONSON
PO BOX 8456
MOSCOW ID 83843

KENNETH L MALLEA
PO BOX 857
MERIDIAN ID 83680

 /s/ _____