



## **CONTENTIONS OF THE PARTIES**

Claimant contends that he fell off of a pallet jack at work, stacked 5½-6 feet tall, landing on his head and triggering onset of multiple sclerosis (MS). On his behalf, John F. Foley, M.D., a specialist in the care and treatment of MS, testified that he has seen “close to hundreds” of patients over his 20-year career whose MS symptomatology was initiated or exacerbated following surgery or other physical trauma. Dr. Foley posited that Claimant likely had dormant precursors to MS when the industrial accident initiated a chain of symptoms that, over time, established the diagnosis. In acknowledging the dearth of supporting medical literature, he believes that obtaining statistically significant proof of a causal link between trauma and MS would require unethical research activities because it would be necessary to expose test subjects to physical trauma.

Defendants do not dispute that Claimant has MS, or that he was first treated for symptoms related to that disease a few weeks after his industrial accident. Instead, Defendants argue that there is inadequate support in the medical literature for Dr. Foley’s opinion that trauma may trigger or exacerbate MS. In support of their position, Defendants rely on the testimony of Richard W. Wilson, M.D., a neurologist and independent examiner. Dr. Wilson acknowledged that Dr. Foley’s opinion is not unique among neurologists. However, he testified that the theory is not supported by either the American Academy of Neurology or the medical literature and, therefore, it is speculative and not scientifically based.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The prehearing deposition of Claimant;
2. The testimony of Claimant taken at the hearing;

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

3. The testimony of Carry Gene Hill, Claimant's wife, taken at the hearing;
4. Claimant's Exhibits 1-5 (including subparts) admitted at the hearing;
5. Defendant's Exhibits A-L admitted at the hearing;
6. The post-hearing deposition of John F. Foley, M.D., taken by Claimant on December 15, 2009;
7. The post-hearing deposition of Richard W. Wilson, M.D., taken by Defendants on December 17, 2009; and
8. The exhibits attached to the post-hearing depositions identified above.

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

#### **FINDINGS OF FACT**

1. Claimant was 58 years of age at the time of the hearing and resided in Idaho Falls. For the past 17 years, he has worked for Employer, serving in a number of capacities. Most recently, he was a sergeant who supervised facility and inmate programs and due process hearings concerning violations occurring at the jail. In addition, he served as a lead firearms instructor and a POST instructor. He has been named Deputy of the Year and was honored twice as Supervisor of the Year, most recently in 2009.

2. Claimant describes his health over the years as "exceptional." As a child he had chicken pox, measles, a tonsillectomy and a double hernia repair. As an adult, he has undergone ankle surgery to repair ligaments and intestinal surgery to treat ulcers. He has also been treated for a right hip injury that healed on its own, kidney stones, injuries he incurred after stepping on a nail, and various cuts and minor injuries.

3. Claimant consistently testified, at his pre-hearing deposition and at the hearing,

that at work he fell off of a pallet jack, stacked 5½-6 feet-tall, onto his head. At his deposition, Claimant stated that he believed this accident occurred on July 7, 2005. Indeed, his accident report was prepared on that date, and July 7, 2005 is recorded thereon as the date of injury.

4. A June 30, 2005 medical note of treatment apparently shows a mistaken date. Claimant's treating physician acknowledges that Claimant's medical records were misfiled and thus were, at least temporarily, lost. The physician described his recollection of Claimant's initial 3 visits and the dates thereof. Thus, the retrospective nature of the chart note renders it less credible than a contemporaneously recorded note.

5. Claimant's testimony is supported by a contemporaneous writing. Therefore, the Referee finds that Claimant was injured in an industrial accident on July 7, 2005. The Claimant's demeanor and testimony in all regards is credible.

**Jeffrey E. Keller, M.D., Emergency Medicine Physician**

6. On the day of his industrial accident, Claimant presented to Jeffrey E. Keller, M.D., a general practitioner specializing in emergency medicine, who was working on-site at Employer's. Dr. Keller closed a laceration on Claimant's scalp and recorded findings consistent with a complaint of mild low back pain. Claimant then returned to work.

7. Within 2-3 weeks, Claimant developed a "catch" in his left lower extremity. His wife grew concerned and, in late August 2005, Claimant returned to see Dr. Keller. Claimant reported back pain radiating down his left leg and weakness in his foot. Examination revealed foot drop, so Dr. Keller ordered an MRI, which indicated a herniated disc. Dr. Keller referred Claimant to Philip McCowin, M.D., an orthopedist and spine specialist, for follow-up.

**Philip McCowin, M.D., Orthopedist**

8. On December 13, 2005, Claimant presented to Dr. McCowin with pain in his

left and lower back, pain in his buttocks, numbness and tingling in his thigh and reduced strength in his legs. Following examination and review of an MRI Claimant brought with him, Dr. McCowin assessed a collapsed disc at S-1 with a small posterior protrusion that, he believed, could be interfering with the L-5 nerve root. However, Dr. McCowin did not believe that the collapsed disc was responsible for all of Claimant's symptomatology. He suspected a herniated nucleus pulposus of the cervical spine with a myelopathic presentation, so he ordered a cervical spine MRI.

9. On December 19, 2005, Claimant underwent a cervical spine MRI with and without contrast. The radiologist found, among other things, spinal cord signal abnormalities at C1-2 ventrally towards the left, at C2-3 right dorsally, at C4-5 ventrally and also at T1 and T2. In addition, the findings indicated no enlargement of the cord and no atrophy. According to the radiologist, the results were consistent with a demyelination disease such as MS so he recommended a brain MRI.

10. Based upon the above MRI information and his own concern that Claimant may have suffered a stroke, Dr. McCowin referred Claimant to neurologist Stephen Vincent, M.D., to determine whether Claimant should undergo brain imaging.

**Stephen Vincent, M.D., Neurologist**

11. On January 5, 2006, Dr. Vincent examined Claimant and prepared a letter communicating his findings to Dr. McCowin. According to Dr. Vincent, Claimant began experiencing symptoms in his left leg about three weeks after his industrial accident:

The leg seemed to be less responsive. He was feeling numb in the left hip area and noticed with walking that he was catching his toes on carpets and uneven surfaces. Over time, the tingling got worse involving the left buttock in [sic] the anterior portion of his thigh. He denies any changes in mentation or

memory...[or]...with the right leg or arms...He has noticed that his balance is off when he turns to the left and feels it is mainly because the left leg wants to give away. The patient has had some headaches for the last 3 months. They have been bitemporal and biparietal and have been relatively mild. There [sic] are new since the injury.

12. On examination, Dr. Vincent found decreased strength throughout Claimant's left lower extremity, a steppage gait with the left foot and some hyperextension at the knee. Claimant also had a positive Romberg test (indicating poor proprioception).

13. Dr. Vincent also reviewed Claimant's cervical spine MRI. He noted that demyelination was suggested by the presence of multiple white matter lesions. Diagnosing transverse myelitis (TM), Dr. Vincent discussed with Claimant the possibility that he may have MS or may have an increased risk of developing MS in the future. Dr. Vincent ordered MRIs of Claimant's thoracic spine and brain, and prescribed an ankle-foot orthosis ("AFO") and physical therapy for Claimant's left foot drop.

14. Claimant underwent brain and thoracic spinal cord MRIs on January 5, 2006. The brain MRI showed distinct white matter lesions in Claimant's corpus callosum and temporal lobe. The radiologist noted, "Even though at this time, criteria for multiple sclerosis are not met, this constellation of findings is strongly suggestive of an early multiple sclerosis presentation." The thoracic spine MRI showed an unremarkable thoracic spine, with an "abnormal increased T2 signal intensity at the C7-T1 level resembling a multiple sclerotic plaque." In addition, the radiologist identified Schmorl's node involvement at T7-T9 and no evidence of compression fractures.

15. On January 10, 2006, Claimant followed up with Dr. Vincent. Dr. Vincent's working diagnosis was MS based on Claimant's brain MRI in combination with the prior evidence of his cervical spine plaques. Dr. Vincent prescribed Avonex (interferon) and again

spoke to Claimant about getting an AFO. Claimant declined to obtain one at that time.

16. On December 20, 2006, Claimant underwent a follow-up brain MRI. It revealed no changes since the prior study and “no frank demyelination.”

17. Dr. Vincent examined Claimant again on June 5, 2007. Subsequently, Dr. Vincent wrote a letter to Claimant’s attorney in which he reported that Claimant had no new MS symptoms, but was experiencing amplification of his existing symptoms. Also, Claimant was experiencing strong side effects with Avonex. Dr. Vincent prescribed a trial of Rebif.

18. Claimant followed up again on November 9, 2007, undergoing MRIs of his brain and cervical spine. The brain MRI showed no changes. The cervical spine MRI indicated a significant decrease in the size and conspicuity of Claimant’s spinal cord plaques. In addition, it indicated possible changes at level C6 that could not be confirmed on axial images.

**John F. Foley, M.D., MS Specialist**

19. On January 31, 2008, Claimant was examined by John F. Foley, M.D., following a referral by Dr. Vincent. Dr. Foley is a neurologist specializing in the treatment of MS. He is certified by the American Boards of Medical Examiners, Psychiatry and Neurology and Electrodiagnostic Medicine. Dr. Foley runs the Rocky Mountain Multiple Sclerosis Clinic in Salt Lake City, Utah, and his clinical practice “primarily revolves around adult multiple sclerosis, its care and research of new therapeutics.” In addition, Dr. Foley holds a clinical faculty appointment at the University of Utah, serves as chief of staff at LDS Hospital, and is a member of the board of directors of the Utah chapter of the National Multiple Sclerosis Society.

20. After reviewing Claimant’s November 2007 and December 2006 MRIs and examining Claimant, Dr. Foley determined that Claimant’s symptoms and findings supported a

diagnosis of TM with “possible to probable multiple sclerosis.” He noted that it is unusual for an individual with MS to have only left leg symptoms and, further noting that Claimant’s left leg symptoms are worsening, ordered a thoracic spine MRI. Notwithstanding Dr. Foley’s hesitation to diagnose MS, he recommended continuing Claimant’s medical treatment for MS because “50% of people with transverse myelitis develop multiple sclerosis within 5 years.”

21. By the time of his deposition, Dr. Foley had altered his diagnosis to MS because, upon examining Claimant again on December 10, 2009, he determined that Claimant’s condition was worsening. Dr. Foley testified that, given the progression of Claimant’s symptoms over time, Claimant had MS all along, which initially presented as TM. He explained that he does not apply the “multiple sclerosis” moniker until he is reasonably certain of that diagnosis.

**Richard W. Wilson, M.D., Independent Medical Examiner**

22. On February 20, 2009, Surety provided Richard W. Wilson, M.D., a neurologist, with Claimant’s medical records related to the June 2005 industrial accident, along with a request for his opinion on a number of issues related to these proceedings. Dr. Wilson is certified by the American Boards of Psychiatry and Neurology, and Electrodiagnostic Medicine. His practice is focused on out-patient adult neurology as well as independent medical examinations. He is a staff member and past medical staff president at Elks Rehabilitation Hospital in Boise, past secretary of the medical staff at St. Alphonsus Regional Medical Center in Boise, past chairman of the Neurology, Neurosurgery Department (a joint department between St. Alphonsus and St. Luke’s Regional Medical Center in Boise), and founder and past president of the Idaho Neurological Society.

23. By the time he was examined by Dr. Wilson, Claimant had undergone two additional cervical spine MRIs, in February and December 2008, and one additional brain MRI,

in December 2008. Mild disc desiccation from T4-5 through T8-9 and early degenerative disc disease were identified; however, no significant changes from the prior studies, related to Claimant's myopathy, were noted.

24. Dr. Wilson reported on March 5, 2009 that Claimant has clinical and MRI findings consistent with MS, noting lesions involving the cervical and upper thoracic spinal cord and deep white matter of the brain including the corpus callosum. He further noted that Claimant's subjective complaints of weakness, numbness and loss of coordination of his left leg were corroborated with objective findings on examination. He attribute these symptoms to the demyelinating lesions in Claimant cervical and upper thoracic spinal cord.

### **Causation Opinions**

25. On January 31, 2008, Dr. Foley (along with his nurse practitioner, Kara L. Manning) opined that Claimant's TM (later determined to be MS) was precipitated by his industrial accident:

It is our belief that most likely the injury that he sustained while at work acted as a precipitating factor for the development of this autoimmune disease symptomatology of primarily spinal cord transverse myelitis versus multiple sclerosis.

26. At his deposition on December 15, 2009, Dr. Foley confirmed his opinion:

...we can come at [Claimant's] case in this fashion, what are the odds that someone would have a major neurological event within a few, a week or two of a fairly significant head injury just by random chance? ... I have seen this maybe not hundreds of times but probably close to hundreds of times, where you have some sort of surgical event or a traumatic event, and a first attack or relapse occurs shortly thereafter.

27. His ultimate opinion notwithstanding, Dr. Foley confirmed that medical research has not yet established a causal link between physical trauma and MS. Dr. Foley explained why he believes the literature is lacking. First, he testified that a class 3 study to prospectively

investigate such a connection is not possible because it would require test subjects to be intentionally subjected to physical assault, which would be unethical. Second, he expressed doubts as to whether any class 1 or 2 study, both of which are retrospective in nature, could ever isolate the factors necessary to properly analyze this question.

28. Dr. Wilson diagnosed MS, but did not believe that Claimant's condition was related to his industrial accident:

The correlation between injuries such as [Claimant] incurred and the subsequent development of symptoms and objective imaging findings of multiple sclerosis is debated in the neurological literature. An objective correlation cannot be established. Most experts feel that the reports correlating injury with first onset of symptoms are anecdotal. I certainly support that viewpoint.

29. In support of his opinion, Dr. Wilson provided three professional journal research articles, including a copy of the Report of the Therapeutics and Technology Assessment Subcommittee of the American Academy of Neurology. In the reports a meta-analysis was performed based upon information harvested from multiple studies investigating the potential connection between physical trauma, including head trauma, and MS. Each study reported in these articles failed to establish a significant connection between head trauma and MS.

30. On multiple occasions, Dr. Vincent also addressed the causation issue:

a. After his initial examination of Claimant, on January 5, 2006, Dr. Vincent acknowledged a possible causal connection between Claimant's pain symptoms and the industrial accident:

...he does have headache following this injury. It is possible this headache is related to the initial injury. It is also important to note that demyelinating events often follow traumas. In this way, it is possible that the timing, between the injury at work, and the onset of symptoms, could be related.

b. However, in a March 22, 2006 letter responding to an inquiry from Surety,

Dr. Vincent wrote, “I agree that the finding of multiple sclerosis is not related to the industrial accident.”

c. Then, in June 5, 2007 letter to Claimant’s attorney, Dr. Vincent wrote:

...I cannot say, with any degree of medical certainty, that [Claimant’s] injury caused multiple sclerosis. It is possible that his injury caused the multiple sclerosis attack that was first noted by the patient. His MRI suggests that he had had lesions prior to his first symptom.

There is controversy as to whether or not traumas trigger multiple sclerosis attacks. The literature has flipped back and forth on this possibility multiple times. I therefore cannot say that it’s “more probable than not” or any other statement with certainty. If that kind of statement is necessary for my patient’s case I might suggest that you contact someone who treats only multiple sclerosis. That is not found in this state. I might suggest that he see a multiple sclerosis expert (University of Utah or perhaps University of Texas Southwestern Medical Center, or Rush Medical Center in Chicago).

I certainly want the best for my patient. I just can’t make a strong enough statement given the uncertainties of this disease and its triggers.

d. Finally, in a July 9, 2009 response to a form inquiry from Claimant’s attorney, Dr. Vincent again acknowledged the possibility of a causal relationship between Claimant’s industrial accident and his left lower extremity symptomatology:

[Preprinted Statement]: I have read the medical report of Dr. Foley dated January 31, 2008 relating to Blake Hill, wherein he establishes a causal [sic] relationship between [Claimant’s] transverse myelitis and work accident of June 30, 2005, and hereby opine to a reasonable degree of medical probability that:

[Preprinted Statement]: That I agree with Dr. Foley for the following reasons:  
[Dr. Vincent’s Writing]: The timing is suspicious. The stress of trauma has [sic] linked to the onset of demyelinating disorders.

## **DISCUSSION AND FURTHER FINDINGS**

31. The provisions of the Workers’ Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187,

188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

### **Causation.**

32. The Referee found, above, that Claimant sustained an industrial injury when he fell off a pallet and onto his head at work on July 7, 2005. The remaining issue is whether Claimant's MS is causally related to that industrial accident and injury. The claimant in a worker's compensation case has the burden of proving compensable disablement caused by an accident arising out of and in the course of employment. The proof must establish a probable, not merely a possible, connection between cause and effect to support the contention that the claimant suffered a compensable accident. *Callantine v. Blue Ribbon Linen Supply*, 103 Idaho 734, 653 P.2d 455 (1982); *Vernon v. Omark Industries*, 115 Idaho 486, 767 P.2d 1261 (1989). Moreover, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. *Dean v. Dravo Corp.*, 95 Idaho 558, 511 P.2d 1334 (1973); *Bowman v. Twin Falls Construction Co., Inc.*, 99 Idaho 312, 581 P.2d 770 (1978). "Magic words" are not required. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000).

33. Dr. Foley's opinion that trauma can trigger the onset of MS is based upon his personal belief, backed by considerable anecdotal experience. It is supported by a minority opinion in the medical community. The belief itself is based upon an anecdotally observed temporal association between trauma and MS. He acknowledges that his belief is neither generally established nor accepted as scientifically based within the medical community or literature. It is not supported by scientific observation or studies. The perceived temporal

association has not been shown to be more than mere coincidence.

34. Dr. Foley's opinion is admissible and is entitled to weight. It would not be admissible if the *Daubert* standard were applied. *See, Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, L.Ed.2d 469 (1993). However, the Commission applies a relaxed standard of evidence in worker's compensation hearings. Moreover, in another area of Idaho law an expert opinion, unsupported by medical literature, was deemed to present substantial and competent evidence to support a jury's medical malpractice verdict. *See, Coombs v. Curnow*, 148 Idaho 129, 219 P.3d 453 (2009) (Order JNOV reversed where judge reconsidered the admissibility of an expert medical opinion after having previously admitted it at trial.) Still, the scientific infirmity of Dr. Foley's opinion is considered in weighing the opinions of the experts.

35. In this case, we have Dr. Foley and Dr. Wilson providing opposing opinions, each asserting his opinion to a reasonable degree of medical probability. Dr. Foley relies upon his considerable experience as an MS specialist and his personal belief that trauma can precipitate MS to conclude that Claimant's MS symptomatology resulted from his industrial accident, even though medical research has yet to establish his belief. Conversely, Dr. Wilson, whose practice includes but does not exclusively focus on MS patients, determined that no causal relationship exists primarily because of the lack of scientific support in the medical literature. Dr. Vincent's inconsistent opinions illustrate a treating physician's struggle with this controversial topic; however, they are not assistive due to their inconsistency. They received little weight.

36. Here, the record establishes that Dr. Foley and Dr. Wilson are both experienced and accomplished neurologists; they are each familiar enough with basic principles of

medicine to form an opinion. The question, then, shifts to the extent to which each opinion is scientifically reliable.

37. The record establishes that peer-reviewed medical research supports Dr. Wilson's position and, therefore, the Referee finds his testimony is scientifically reliable.

38. Dr. Foley opined that, while Claimant's industrial accident did not cause his MS, it did trigger onset of his MS symptomatology. "I would go on the record saying that the trauma is not causal to production of MS. Trauma is at the best precipitating."

39. Concerning the methodology of causation, Dr. Foley testified:

Well, some people, and I don't think this is fully established, but some people believe that a traumatic injury can actually open the blood/brain barrier or the blood/cord barrier to some degree. That's a barrier that generally separates what's flowing through the blood vessels from the actual tissue of the spinal cord or the brain. And that in the circumstance of a traumatic event of some sort there can be some local opening of a blood/brain barrier or the blood/cord barrier. Again, that hasn't really been definitively proven. Again, I don't think we can really say whether and to what degree these lesions were there in a kind of inert state prior to the activation.

40. After explaining why clinical trials to establish evidence of a causal connection between MS and trauma are not possible due to ethical considerations, he testified:

I think that what drives the recrudescence of this issue time and again, after big statistical trials like those that you mentioned, is the fact that we see this time and time again in clinical practice. And I really don't feel that the trial analysis of this question has been adequate. And part of that is not the fault of the investigator, it is the difficulty of designing a prospective trial to adequately address this...the literature, in my mind, is not adequate to really formulate an acceptable opinion that corresponds to that clearly seen in the clinical practice.

41. There is no dispute that the medical community has failed, through medical research, to confirm a causal link between physical trauma and MS. According to Dr. Foley, with regard to the medical literature:

I don't disagree that the preponderance of evidence is essentially lacking. I mean

I think that that is true, that we don't have prospective analysis that adequately answers this question. I think that is true...

...it is a huge problem. What keeps driving it back to the forefront is the people that do MS on a regular basis keep feeling that there is an association, and that the statistically getting at the question is so darn hard, I mean you just – it drives you crazy. I wish we had better data.

42. Dr. Foley is a credible witness. His frustration with the lack of research study support for his clinical observations is palpable. However, Dr. Foley's testimony establishes that he is unable to quantify his own clinical observations or, more importantly, to provide any significant medical support for a likely physiological mechanism linking trauma and MS.

43. Claimant argued that Dr. Foley's practical experience and specialized knowledge are sufficient to support his opinion. He cited *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000), in which the claimant suffered renal failure after ingesting "Pain Off". Factually, *Jensen* is inapposite. The opening physician in that case faced a different problem than Dr. Foley does here. It is well-settled, through scientific evidence, that toxic substances can cause renal failure. So, the mechanism by which the claimant in *Jensen* suffered his injury was not under scrutiny. In the face of several competing causes, that claimant's physician refused to opine it to be the probable cause. Rather, he rated it as his highest possibility among several possibilities. Here, by contrast, Dr. Foley opined trauma to be the probable cause of Claimant's MS even though scientific evidence has not established this mechanism as a possibility. Claimant's reliance upon *Stevens-McAtee v. Potlatch Corp.*, 145 Idaho 325, 179 P.3d 297 (2008) suffers from a similar weakness.

44. Dr. Foley's testimony is speculative. As a result, the Referee allocates more weight to Dr. Wilson's opinion and, consequently, Claimant has failed to meet his burden of proving that his industrial accident caused his MS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 15**

**CONCLUSIONS OF LAW**

1. Claimant has proven that he suffered an industrial accident and injury on July 7, 2007.

2. Claimant has failed to prove it likely that his MS resulted from injuries incurred in his industrial accident.

**RECOMMENDATION**

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 6<sup>TH</sup> day of July, 2010.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary



3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 19<sup>th</sup> day of JULY, 2010.

INDUSTRIAL COMMISSION

Participated but did not sign.

\_\_\_\_\_  
R. D. Maynard, Chairman

/S/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

/S/\_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>TH</sup> day of JULY, 2010, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Michael R. McBride  
1495 East 17<sup>th</sup> Street  
Idaho Falls, ID 83404

Russell E. Webb  
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db

/S/\_\_\_\_\_

**ORDER - 2**