BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WILLIAM E. BARNHART, Claimant, v. HANEY TRUCK LINE LLC, Self-Insured Employer, and PENSER NORTHAMERICA, INC., Defendants.	**IC 2016-011958** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION** Filed September 13, 2017

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-referenced matter to Referee Michael E. Powers who conducted a hearing in Boise on February 17, 2017. Claimant was present with his attorney, Todd Joyner of Nampa. Self-insured (in Washington) Employer, Haney Truck Lines, LLC (Haney) was represented by W. Scott Wigle of Boise.[1] Oral and documentary evidence was presented. The parties submitted post-hearing briefs and this matter came under advisement on May 1, 2017. Referee Powers submitted proposed findings of fact and conclusions of law for review by the Commission pursuant to Idaho Code § 72-506. Referee Powers concluded that Idaho does not have jurisdiction over the April 7, 2016 accident/injury. The Commission disagrees, and hereby issues its own findings of fact, conclusions of law, and order.

[1] All pleadings filed in this case designate Penser Northamerica, Inc. as surety for Employer. As explained by Defense counsel at hearing, Penser is really just Employer's claim's administrator in the State of Washington for its self-insurance program. (See Transcript 5/9-11).

ISSUE

The sole issue to be decided is whether Idaho has jurisdiction over Claimant's workers' compensation claim.

CONTENTIONS OF THE PARTIES

Claimant contends that even though he has an open, accepted workers' compensation claim in the state of Washington covering an Oregon accident, Idaho should assume jurisdiction over his claim. While acknowledging that Haney has a terminal, dispatchers, and conducts its business from its headquarters in Yakima, Washington, its business is "principally localized" in Idaho. Claimant lives in Fruitland, his contract of hire was made in Idaho, he drops off and picks up his assigned tractor/trailer in a "drop lot" in Nampa provided by Haney, and he makes deliveries in Idaho. Further, Haney holds itself out as an Idaho company on its website. Finally, the Idaho Industrial Commission's Compliance Department (Compliance) has concluded that Haney does business in Idaho and that they did not but should have carried workers' compensation insurance in Idaho.

Haney contends that Claimant's work is principally localized in Yakima. Claimant's orientation and contract of hire was in Yakima. Claimant signed a document requiring that any workers' compensation claim he may have, regardless of where he was injured, must be administered in the state of Washington. Haney has no "brick and mortar" facilities in Idaho and merely leases a portion of a business parking lot as a drop lot for their drivers to park their trucks when not on the road. Haney and Claimant are subject to a reciprocity agreement between Washington and Idaho that confers jurisdiction of this matter in Washington. Further, the finding of the Compliance Department that Haney should have had workers' compensation insurance in Idaho is different than a finding of jurisdiction. Finally, Washington's Labor and

Industries (L & I) has already awarded medical and TTD benefits and will be called upon to decide additional contested matters. For Idaho to assume jurisdiction at this point in time, even if it could, would lead to a "procedural nightmare."

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Evan Sailor, Manager of Compliance at the Idaho Industrial Commission, and Peter Carlander, the President of Haney Trucking, taken at the hearing.

2. Claimant's Exhibits (CE) A-J admitted at the hearing.

3. Defendants' Exhibits (DE) 1A-11 admitted at the hearing.

Claimant objects to Haney's attaching to its brief a "Litigation Order" from the State of Washington Board of Industrial Insurance Appeals as not being timely disclosed. Because Claimant's Washington claim was discussed at the hearing, Claimant's objection is overruled and the document will be given little weight as it is, for the most part, irrelevant to these proceedings.

FINDINGS OF FACT

Hearing Testimony Summary

Claimant:

1. Claimant was a 50-year-old truck driver residing in Fruitland at all times relevant to these proceedings. He has 30 years of truck driving experience and has worked for 15 or so trucking companies. He began driving for Haney in March 2015 as the result of an online application contained on Haney's website and accessed from his cell phone. Claimant was

contacted by a representative from Haney a few days after he applied and was told he was "hired"[2] after he passed a pre-employment drug test.

2. Haney provided Claimant with a bus ticket from Ontario to Yakima, Haney's headquarters, where he completed a four-and-a-half day orientation. Upon completion of his orientation, he was provided with a truck and trailer that was to be delivered to a fenced "drop lot" in an "old lumber yard" in Nampa rented by Haney to park some of its trucks when not in use. According to Claimant, about 20 other Haney drivers parked their trucks in that drop lot. Haney's drop lot eventually moved to the Gem State Truck Stop in Nampa where Haney reserved the last three rows next to I-84. When Claimant dropped off his truck, he would take his own vehicle to his home in Fruitland. If he had an early Sunday morning load, he would take his tractor with an empty trailer home.

3. Claimant testified that he spent the majority of his time driving in Idaho. He was dispatched out of Yakima using Qualcomm, a computer system that keeps track of a truck's whereabouts, among other things.

4. On April 7, 2016, Claimant was returning to Nampa from Pendleton on I-84 at the top of Cabbage Hill when his left front steering tire blew out, causing injuries to his left shoulder and neck when he gripped the steering wheel to keep his truck from entering the median. Claimant sought medical care upon his return to the Nampa lot. Washington L & I, through Haney's third party administrator, paid for medical treatment for Claimant's shoulder, but not his neck. He is appealing through Washington counsel the neck issue in Washington. Washington L & I has also paid Claimant some income benefits that Claimant contends are less (60%) than Idaho's rate of 67%.

[2] Claimant testified that he was at home in Fruitland when he received a phone call telling him that he was hired.

5. Claimant testified that by the time of his orientation in Yakima, he already knew that he had been hired. (*See,* finding number 1 above):

> Because what Doug told me and I had experienced orientation before, that the only way that you don't get hired is if they find something wrong with you, but most companies do their background check and everything before they bring you to orientation, work out the money for the bus ticket, airplane ticket, and motel expense.

HT, p. 49.

Peter Carlander:

6. Peter Carlander has been in the trucking business for about 30 years and has been the president of Haney Truck Line, LLC for four years. Haney, an Oregon company, started in 1924 and runs about 450 company-owned trucks and 80 owner-operator rigs. Haney employs about 500 people including 300 company drivers (like Claimant) and 75-80 owner/operator drivers. Haney primarily operates in Washington, Oregon, Idaho, British Columbia, Alberta, Montana, Utah, and California.

7. Haney is headquartered in Yakima, Washington, that Mr. Carlander described as:

> "Well, it's a full service facility. All of our back office administrative staff, so that we would be safety, human resources, operations, sales and marketing, and maintenance are headquartered there, billing and finance as well."

HT, p. 79.

8. Mr. Carlander explained Haney's dispatching system: "Currently our operations center is in Yakima and the drivers would receive instructions from Yakima as to what their work assignments are either via our satellite mobile com unit referred to as Qualcomm or potentially on their cell phone and then backed up with a Qualcomm message." *Id.*, p. 81.

9. While acknowledging that Haney drives its trucks in Idaho to service customers, Mr. Carlander denies that Haney has any dispatchers, back office people, real estate, or repair shops in Idaho.

10. Mr. Carlander testified that it would not be accurate to describe Haney's Nampa drop lot as a "terminal" because, "A terminal is defined as having a maintenance operation and potentially a dispatch function." *Id.*, p. 82. At the time of Claimant's accident, Haney had arrangements with Jackson Truck Stop in Nampa to park some of its trucks in Jackson's parking lot (mostly on weekends) in exchange for the payment of rent. The only 'fixture' in the lot was a porta-potty. "Just simply a drop lot, dirt drop lot, for us to drop loaded trailers and pick up empty trailers and go about our business." *Id.*, p. 84.

11. Regarding Haney's hiring policy, Mr. Carlander testified as follows:

> You would make the - - you would fill out the application. It would be transmitted to our HR department. They would vet the application and then it would be that our recruiting department would reach out to the applicant, go through their criteria and see if there's kind of a match, and then they would be asked to come to Yakima for a skills assessment and a drug and a hearing test and proceed through the orientation process, and at the end of the week they would be - - if they passed all of that, they would become a Haney employee and be assigned to a truck.

HT, p. 85.

12. Mr. Carlander doubts that Claimant was "hired" as he described; however, it is possible that the recruiter may have informed Claimant that he may be hired depending on the results of his driving test and the other requirements of orientation.

13. Regarding Haney's workers' compensation coverage, Mr. Carlander testified, "Historically we operated on the basis that our Washington workmen's compensation coverage through a reciprocity agreement with Idaho would cover any drivers that may live in Idaho. We had done that for 30 plus years and it had never come up or been challenged." HT, p. 92.

14. Haney is now insured in Idaho for workers' compensation purposes. We agree with the Referee that Haney's reliance on the reciprocity agreement was in good faith and that they were not intentionally trying to evade their responsibility under Idaho's workers' compensation scheme.

Cross examination

15. Haney is incorporated in Oregon, has a maintenance facility in Portland, and is covered under Oregon's workers' compensation laws. Idaho is the only state where Haney operates and where their drivers live that is not covered by that state's workers' compensation laws. Mr. Carlander testified that it chose to insure its Idaho drivers in Washington because the compensation benefits there are better than in Idaho. He does not know why its Oregon drivers are not similarly treated or what benefits are better in Washington than in Idaho.

Redirect examination

16. DE 4, p. 120 is a chart showing the percentage of driving time Claimant spent driving in Idaho from March 1, 2015 through July 2016 with Haney as being 31% versus 69% driving in other states.

Evan Sailor:

17. Claimant called Mr. Sailor as a witness. Mr. Sailor has been with the Industrial Commission for about two years and is the Employer Compliance manager. His job is to: ". . . ensure - - we are the custodian of records for proof of coverage for the State of Idaho, and we also investigate and determine whether or not we believe employers are required to have workers' compensation insurance." HT, p. 16.

18. In June 2016, Compliance began an investigation of Haney regarding its responsibility to maintain workers' compensation insurance within the State of Idaho. Mr. Sailor

spoke with Tom Anderson, Haney's safety manager regarding his investigation. Mr. Sailor testified that the primary factor he looks at is whether the employee is working within the State of Idaho. In this case, Compliance so found:

> Well, that part of the investigation was actually conducted by Investigator Matlock and I know he spoke telephonically at length with Mr. Barnhart to determine if he was a resident of Idaho, domiciled resident living out of Fruitland. He went on to advise him that he picked up his truck and responded to work every day in the City of Nampa. I believe it was a Shell truck stop off of Northside Boulevard or something like that prior to the injury. After the injury, they moved their location to a Pepsi plant parking lot, but they were required to show up, pick up their truck, and at the termination of their work, they would drop the truck off at the same location.

HT, pp. 18-19.

19. Besides the consideration of Claimant's domicile, Compliance considers whether an employer has its business "principally localized" in Idaho:

> Well, we look at, again, he's a domiciled resident of Idaho. The business, we believe, was principally localized in Idaho. Now, we know, the headquarters is out of Yakima, but, again, the parking lot, although not a brick and mortar building, was their place of business. They kept, according to Barnhart, 22 trucks. I know in this case Mr. Matlock went out there on June 29th and he said he counted 11 trucks parked there, and Mr. Anderson didn't dispute that part of it, there was just some confusion, but we do determine that to be a permanent place of business being conducted in the State of Idaho.

Id., pp., 21-22.

20. Mr. Sailor shared the results of his investigation with Mr. Anderson who did not dispute Mr. Sailor's findings. He did, however, indicate that he was confused regarding coverage because Washington L & I led him to believe that Haney was covered in Washington for its Idaho employees. In any event, Haney has since secured Idaho workers' compensation insurance.

21. Mr. Sailor did not personally visit the Nampa drop lot, but his investigator, Mr. Matlock, did. Mr. Matlock did not see any permanent facility there; just a parking lot. Mr.

Matlock did not observe any Haney employees, or anyone else, in the lot. Mr. Sailor does not know why Mr. Matlock referred to the drop lot as a "terminal" and does not know if that description is accurate.

22. Mr. Sailor's conclusion that Haney's business was principally localized within the State of Idaho was based on Mr. Matlock's investigation and the fact the Haney's trucks were observed at the Nampa drop lot. Mr. Sailor's focus was on whether or not Haney needed Idaho workers' compensation coverage; not on whether or not Claimant has a viable workers' compensation claim against Haney in Idaho.

DISCUSSION AND FURTHER FINDINGS

23. Employer, Haney Truck Line LLC, is a qualified self-insured Employer under Washington law. Claimant filed a timely workers' compensation claim in the State of Washington and benefits have been paid to Claimant, or on his behalf, pursuant to Washington workers' compensation law. Further proceedings in the State of Washington are anticipated. Claimant believes that he is entitled to additional benefits under Washington law. The Commission accepts that jurisdiction over Claimant's workers' compensation claim is properly exercised by the State of Washington. Defendants argue that since Washington does have jurisdiction over Claimant's claim, there the matter should forever reside. However, Defendants also recognize that it is possible for two or more states to concurrently exercise jurisdiction over the single claim of an injured worker. Indeed, Idaho law explicitly recognizes this:

> **Award subject to credit for benefits furnished or paid under laws of other jurisdictions.** The payment or award of benefits under the workmen's compensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury, occupational disease or death to the benefits of this law shall not be a bar to a claim for benefits under this law, provided that claim under this law is filed within two (2) years after the accident causing such injury, or manifestation of such disease, or death. If compensation is paid or awarded under this law:

> (1) The medical and related benefits furnished or paid by the employer under such other workmen's compensation law on account of such injury, occupational disease, or death shall be credited against the medical and related benefits to which the employee would have been entitled under this law, had claim been made solely under this law;
> (2) The total amount of all income benefits paid or awarded the employee under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employee had claim been made solely under this law;
> (3) The total amount of death benefits paid or awarded under such other workmen's compensation law shall be credited against the total amount of death benefits payable under this law.

Idaho Code § 72-218.

Therefore, even though Claimant may have an actionable workers' compensation claim in the State of Washington, this does not preclude a claim for the same accident/injury from being pursued in the State of Idaho. However, to protect against a double recovery, benefits paid in the State of Washington must be credited against benefits owed in the State of Idaho.

24. In order to determine whether it is appropriate for Idaho to exercise jurisdiction over the April 7, 2016 accident/injury, attention must first be directed to the provisions of Idaho Code § 72-217. That section provides:

> **Extraterritorial coverage.** If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:
> (1) His employment is principally localized in this state; or
> (2) He is working under a contract of hire made in this state in employment not principally localized in any state; or
> (3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or
> (4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

As applied to the facts of this case, Idaho may exercise jurisdiction over this claim if Claimant's employment is principally localized in this state or he was working under a contract of hire made in this state and employment was not principally localized in any state. Turning first to Idaho Code § 72-217(2), it is to be noted that while Claimant has not relied on this route to Idaho jurisdiction, Defendants do devote some attention to this means of applying Idaho law to an injury occurring without the State of Idaho. Claimant testified that after passing the company mandated drug test, he received a call at his home in Fruitland from Doug Driscoll, Employer's agent, who told Claimant that he was hired, and inquired of Claimant when he (Claimant) wanted to start his orientation. On these facts, Claimant might argue that his contract of hire was made in Idaho, where he received Mr. Driscoll's offer of employment. On the other hand, Defendants contend that Claimant was actually hired in the State of Washington after completing his orientation. Against the assertion that Claimant was hired in Idaho, Defendants point out that not everyone who attends Employer's orientation is eventually hired by the company. Some potential employees cannot pass the Employer's driving test, a test that is among the first administered at orientation. Those who fail the driving test are either not hired or they are referred to a Company sponsored training program. Mr. Carlander testified that approximately 15% of applicants who go through orientation are not hired for one reason or another. He found it difficult to believe that Mr. Driscoll would have offered Claimant a job before orientation, although he conceded that Claimant might have been given an offer subject to completing orientation. Defendants persuasively argue that it would make little sense to hire someone prior to orientation, when part of the orientation process is to determine whether such applicant has the skills and training necessary to operate one of Defendants' vehicles. We agree with the Referee

that the most likely scenario is that Claimant was not in fact hired until he completed Employer's orientation. Therefore, his contract of hire was made in the State of Washington.

25. However, even if it be assumed Claimant's contract of hire was made in the State of Idaho, this would not satisfy the requirements of Idaho Code § 72-217(2). That section specifies that in order for Idaho law to apply, not only must the contract of hire be made in Idaho, but it must also be shown that Claimant's employment is "not principally localized in any state." Of course, it is the principal assertion of the parties that Claimant's employment is principally localized in a particular state, either Idaho or Washington, depending on who is arguing. For these reasons, we conclude that the route to extraterritorial coverage of Idaho law under the facts of this case is more appropriately evaluated pursuant to the provisions of Idaho Code § 72-217(1). If Claimant's employment can be said to be principally localized in the State of Idaho, then it is appropriate for Idaho to exercise jurisdiction over the accident occurring in the State of Oregon. The provisions of Idaho Code § 72-220 provide further guidance on the issue of when, and under what circumstances, an injured worker's employment can be said to be localized in this or some other jurisdiction. Idaho Code 72-220 provides:

> **Locale of employment.** (1) A person's employment is principally localized in this or another state when:
> (a) His employer has a place of business in this or such other state and he regularly works at or from such place of business; or
> (b) He is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.
> (2) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this law.

26. Turning first to Idaho Code § 72-220(2), Defendants assert that at orientation, Claimant executed a document by which he agreed to the application of Washington workers' compensation law to any claim that might arise in the course of his employment:

> Finally, Claimant was advised that his workers' compensation coverage would be under the employer's State of Washington self-insurance program. He acknowledged his understanding of this arrangement, in writing. During the orientation process, potential employees are given information regarding the company's benefits and its workers' compensation program. The company's drivers who reside in the State of Idaho are covered under the company's self-insured program in the state of Washington. This has been the company's practice for decades. As part of that arrangement, potential employees are given information as to the handling of claims and the fact that their claims will be handled under Washington law. Claimant was given this information and signed an acknowledgment form, indicating his understanding that work injuries would be handled under Washington worker's compensation. <u>This is in essence an agreement between Haney and Mr. Barnhart that his claims will be handled in Washington.</u>

Defendant's Response Brief at 13 (emphasis supplied).

27. A review of Defendants' Exhibit 5 quickly dispels this notion. That document only reflects Claimant's acknowledgement of receipt of the workers' compensation filing information for Employer's workers' compensation program. Attached to this acknowledgement is a copy of Employer's workers' compensation filing information. That document reflects that Employer's workers' compensation program is through the State of Washington, and that claims must be filed with Employer's Washington TPA. Claimant's signed acknowledgement of receipt of this information is only that; it is not "in essence an agreement between Haney and Mr. Barnhart that his claims would be handled in Washington" (Defendants' Brief at 13). Moreover, even if there was an agreement between Employer and Claimant that the law of the State of Washington would govern any workers' compensation claim he might have, such an agreement would not satisfy the provisions of Idaho Code § 72-220(2). That section only specifies that an employer and an employee may come to an agreement as to where a claimant's employment may

be deemed to be principally localized. The section does not authorize an employer and an employee to specify that the law of this, or some other state, shall govern the employee's right to workers' compensation benefits. Indeed, such an agreement might well run afoul of the provisions of Idaho Code § 72-318.

28. Therefore, we are left with the provision of Idaho Code § 72-220(1)(A) and (B) to determine the locale of Claimant's employment. It must first be noted that Idaho Code § 72-220(1)(A) and Idaho Code § 72-220(1)(B) are stated in the disjunctive. A claimant's employment is principally localized in Idaho if his employer has a place of business here and claimant regularly works at or from such place of business (Idaho Code §72-220(1)(A)) or claimant is domiciled and spends a substantial part of his working time in the services of his employer in the state of Idaho (Idaho Code § 72-220(1)(B)). A claimant satisfying either of these paths has demonstrated that his employment is localized in the State of Idaho. Defendants argue that the reciprocity agreement between Idaho and Washington, authorized pursuant to the provisions of Idaho Code § 72-222, modifies the disjunctive language of Idaho Code § 72-220. The current reciprocity agreement, enacted in 1971, provides for Washington coverage of Washington employees, temporarily working in Idaho and for Idaho coverage of Idaho employees temporarily working in the State of Washington.[3] Defendants argue that under the

[3] Mr. Sailor testified that the reciprocity agreement does not provide Washington coverage for Employer's Idaho employees where Employer has a place of business in Idaho (HT, 22/24-23/15). Interestingly, Sailor also testified that in investigating the coverage issue in this case the Compliance Division learned that Washington L&I allegedly told Employer that as a self-insured employer under Washington law, Employer's Idaho workers were also covered under Washington law:

> Q [By Mr. Joyner]: Okay, and if I understood correctly, it was your understanding that Washington Labor & Industries had told them they didn't need to have coverage here?
> A[By Evan Sailor]: Well, they told them that their Washington Labor & Industries policy would cover their workers in the State of Idaho, and, again, that's something commonplace that we do experience a lot. We do know they tell them.
> Q: But as far as Idaho Industrial Commission is concerned, is that a proper way to handle an Idaho resident under worker's comp?
> A: Not in this case, no. (HT, 22/24-23/15).

reciprocity agreement, the locale of Claimant's employment must be judged solely by whether Employer has a place of business in Washington from which Claimant regularly works:

> In the statute quoted above, the two clauses (a & b) are separated by the disjunctive "or" indicating that they are alternative approaches to determining where the employment is principally localized. However, the Reciprocity Agreement between Idaho and Washington clarifies that subsection (b) is to be utilized if the first clause "is not applicable." Application of the Reciprocity Agreement leads to Claimant being a "Washington worker," covered under Washington law. The pertinent portion of the agreement reads:
>
> A person whose employment is "principally localized" in Washington shall be deemed to be a Washington worker. A person's employment is "principally localized" in Washington when:
>
> > (1) his/her employer has a place of business in Washington and he/she regularly works (or it is contemplated that he/she shall regularly work) at or from such place of business; or
> >
> > (2) if clause (1) is not applicable, he/she is domiciled and spends a substantial part of his/her working time in the service of his/her employer in Washington.
>
> Clause No. 1 is applicable and it points to Washington as the state where employment is "principally localized." Under the agreement, Washington is the appropriate place for jurisdiction over Claimant's claim.
>
> Defendants Brief at 9 (emphasis in original).

Therefore, the argument goes, if it is demonstrated that Employer has a place of business in Washington from which Claimant works, the inquiry ends and no consideration is to be given to whether Claimant is domiciled in Washington and spends a substantial part of his working time in Washington.

Mr. Carlander alluded to this as well:

> Q [By Mr. Wigle]: What was the status of Haney Truck Line's worker's compensation coverage in the spring of 2016?
>
> A [By Mr. Carlander]: Historically we operated on the basis that our Washington worker's compensation through a reciprocity agreement with Idaho would cover any driver that may live in Idaho. We had done that for 30 plus years and it had never come up or been challenged. (HT, 92/4-10).

If true, Washington L&I gave assurances concerning the scope of Washington coverage to Employer, and perhaps other similarly situated employers, that is inconsistent with the reciprocity agreement.

29. A review of a more extensive excerpt from the 1970 Idaho/Washington reciprocity agreement leads us to reject Defendant's argument:

> 2. For the purposes of this agreement:
>
> A person whose employment is "principally localized" in Idaho shall be deemed to be an Idaho workman. A person's employment is "principally localized" in Idaho when (1) His/her employer has a place of business in Idaho and he regularly works (or it is contemplated that he shall regularly work) at or from such place of business, or (2) If clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his/her employer in Idaho.
>
> A person whose employment is "principally localized" in Washington shall be deemed to be a Washington workman: A person's employment is "principally localized" in Washington when (1) His employer has a place of business in Washington and he regularly works (or it is contemplated that he shall regularly work) at or from such place of business, or (2) If clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his/her employer in Washington.

30. Therefore, the reciprocity agreement also specifies when a worker's employment is deemed to be principally localized in the State of Idaho. Assuming, for the sake of argument, that Claimant is unsuccessful in demonstrating that Employer has a place of business in Idaho, then it is clear that clause one is not applicable and Claimant may then attempt to prove that his employment is principally localized in the state of Idaho by demonstrating that he spends a substantial part of his working time in the state of Idaho. Even though the reciprocity agreement uses a slightly different terminology than the provisions of Idaho Code § 72-220, these differences are of little or no significance when evaluating the facts of this case.

31. Even were we to assume that Defendants have correctly appreciated a significant difference between the reciprocity agreement and the provisions of Idaho Code § 72-220, this difference would not avail Defendants, since the provisions of Idaho Code § 72-222 clearly specify that a reciprocity agreement between the State of Idaho and the State of Washington

cannot be inconsistent with the provisions of the Idaho Workers' Compensation Law. Therefore, the statutory language of Idaho Code § 72-220 trumps any constraints on identifying the principal locale of employment which might spring from the reciprocity agreement.

32. Finally, an accident occurring in the State of Oregon falls outside the scope of the reciprocity agreement. The agreement specifies in pertinent part:

> THE PARTIES AGREE:
>
> 4. The Idaho IAB in keeping with the provisions of the Idaho WC Law will assume and exercise extra-territorial jurisdiction of compensation claims of any Idaho workman injured in the State of Washington and of his dependents upon any Idaho employer under its jurisdiction and the latter's surety or insurance carrier.
>
> 5. The Washington DOLAI in keeping with the provisions of Washington WC Law will provide protection of any Washington employer under its jurisdiction and benefits to any Washington workman injured in the course of his employment while working in the State of Idaho.

The agreement covers accidents involving Washington workers injured in Idaho and Idaho workers injured in Washington, not Idaho or Washington workers injured in some other state.

33. Under the provisions of Idaho Code § 72-220(1), Claimant may establish where his employment is principally localized in one of two ways. First, under Idaho Code § 72-220(1)(a) Claimant's employment may be principally localized in Idaho if Employer has a place of business in Idaho and Claimant regularly works from at or from such place of business. It is argued that the successive drop-lots used by Employer in the Nampa area during the period of Claimant's employment constitute a "place of business" in the State of Idaho. Further, it is argued that Claimant worked from such place of business since he started and ended almost all trips at the drop-lot then in use. Claimant's testimony in this regard was not challenged, and therefore, in order to determine that Claimant's employment was principally localized in Idaho pursuant to Idaho Code § 72-220(1)(a) we must decide whether Employer's drop-lot constitutes a "place of business." It is undisputed that Employer rented drop-lots in at least two successive

locations near Nampa during the period of Claimant's employment. One of these locations was at an abandoned lumberyard and another was at an area truck stop. Madison lumberyard was a fenced facility. There was testimony that at any given time 11- 20 Haney drivers might have rigs parked in the drop-lot. The Madison lot also had a shed where employees parked their personal vehicles to keep them out of the weather. Aside from the drivers who visited the drop-lots, Employer maintained no employees on site, although there was a "drop-box" at the site, which Claimant described as a metal box provided for the delivery of paperwork related to driving. There was also a porta-potty at the Madison facility. (HT, 58/18-60/14). Employer maintained no other infrastructure on site. Dispatching was accomplished entirely through Employer's Yakima facility. The drop-lots were simply a place to begin a trip or end a trip for Employer's Idaho drivers. However, it was the only place out of which Claimant worked, and it was Employer's only presence in the state of Idaho, with the exception of a similar drop-lot arrangement in Lewiston. The drop-lots may have been a very small component of Employer's overall operations, but they did provide the only jumping-off and ending points for Employer's Idaho drivers. Although we have found no case directly on point, we conclude that the drop-lots did constitute a place of business in the State of Idaho simply because Employer's business was conducted from these sites. As noted above, we further conclude that Claimant worked regularly from the drop-lots.

34. Even if it be assumed that Employer's drop-lots do not constitute a "place of business" in Idaho, we believe that Claimant's employment is nevertheless principally localized in Idaho pursuant to the provisions of Idaho Code § 72-220(1)(b). Claimant is domiciled in Idaho, and if he spends a "substantial" part of his work time in the service of his Employer in Idaho, then his employment is principally localized in Idaho. As explained below, we believe

that the evidence demonstrates that Claimant spent a "substantial" amount of his work time in the State of Idaho. Defendants' Exhibit 4 reflects miles driven by Claimant during his employment in Idaho, Montana, Oregon, Washington, Utah, and Wyoming for the period April 1, 2015 through May 31, 2016. Total miles driven during this period per state are as follows:

IDAHO	**29,691**
MONTANA	**4,594**
OREGON	**38,011**
WASHINGTON	**22,997**
UTAH	**1,275**
WYOMING	**41**

Therefore, 31% of Claimant's total time behind the wheel was spent driving within the State of Idaho. In fact, he drove more miles in Idaho than he did in Washington, and the only state in which he spent more time driving than Idaho was Oregon. In determining whether Claimant's time behind the wheel in Idaho constitutes a "substantial" part of his total work for Employer, the Commission must first determine the legislature's intention in using this term. To determine the meaning of a statute, the Commission applies the plain and ordinary meaning of the terms used in the statute. Robinson v. Bateman-Hall, Inc., 139 Idaho 207, 76 P.3d 951 (2003). "Substantial" is defined as follows: ample or considerable amount, quantity or size. Dictionary.com Unabridged. Random House, Inc. Accessed July 3, 2017. Several Idaho cases involving the trucking industry have discussed the meaning of the term in connection Idaho Code § 72-220(1)(b). In Elbert v. Eagle/F.D. Truck Line Company, 1984 IIC 0001, claimant argued that his employment as a truck driver was localized in the State of Idaho because he did a substantial amount of his work in Idaho. In that case, defendants prepared a list of all trips taken by claimant during the year of injury. Claimant took a total of 40 trips in 1981, 17 of which originated or terminated in the State of Idaho. Idaho was the point of origin or destination of

more of the claimant's trips than was any other state. The Commission concluded that this was sufficient to demonstrate that claimant spent a substantial part of his working time in the state of Idaho. In Sankey v. Osborne Transportation, 1987 IIC 0217, claimant was employed by Osborne from August 18 to December 20, 1982. During that time he drove approximately 42,000 miles for his employer. Of these 42,000 miles, 3,000 were driven in Idaho. Claimant drove more miles in Idaho than in all but two of the states in which he drove. On this evidence, the Commission concluded that claimant spent a substantial part of his working time in the service of his Employer in the State of Idaho. In Smith v. Gordon Trucking, 1990 IIC 0733, a different result was reached. There, it was shown that only 12.6% of the total miles driven by claimant for his Employer were driven in the State of Idaho. He picked up two loads in Idaho, but made no deliveries here. He had greater contact with other states and most of his loads were picked up or delivered in Washington, Oregon, or California. In ruling that claimant had failed to demonstrate that a substantial part of his work for employer was conducted in Idaho, the Commission stated: "we do not believe that it is necessary for a claimant to show that he performs more that one half of his work for an employer within Idaho for such employment to be localized in this state. However, his contact with Idaho should be more that occasional in order to meet the statutory test of "a substantial part of his working time."" In Victory v. Paul Abbott, dba Paul Abbott Trucking Company, 1991 IIC 0303, claimant's driving work took him from the Northwest to the Southeast. In the period July 1988 through June 30, 1989, claimant drove approximately 10% of his total mileage in the state of Idaho. Idaho ranked 4th highest in the total miles driven by Claimant during his employment. At least 13 of 31 east bound loads were loaded in the State of Idaho. On this evidence, the Commission determined that claimant performed a "substantial" amount of his work for employer within the State of Idaho.

35. Based on these decisions, the Commission concludes that on the evidence before us Claimant has demonstrated that a substantial part of his work for Employer was conducted within the State of Idaho. Nearly one-third of Claimant's total miles driven for Employer were driven in Idaho. As well, almost all of his trips began and ended in Idaho at Employer's drop-lot. We believe that this evidence is sufficient to conclude that Claimant's employment was principally localized in the State of Idaho pursuant to Idaho Code § 72-220(1)(b).

36. Having reached this conclusion, we further conclude that pursuant Idaho Code § 72-217, Idaho must exercise jurisdiction over Claimant's accident of April 7, 2016. In this regard, we note that Idaho Code § 72-217 does not vest the Commission with discretion to accept or reject jurisdiction over an accident occurring outside the State of Idaho. Rather, the statute specifies that on meeting the qualifying conditions, Claimant shall be entitled to benefits provided by Idaho law. However, we agree with Defendants that it makes little sense to encourage simultaneous prosecution of the claims in Idaho and Washington. For one thing, the offset provisions of Idaho Code § 72-217 cannot be employed without first knowing what Claimant is entitled to under Washington law. The Idaho claim should not be calendared for hearing until Claimant's Washington claim is resolved.

CONCLUSIONS OF LAW AND ORDER

1. Pursuant to Idaho Code § 72-217, the Idaho Industrial Commission has jurisdiction over the April 7, 2016 accident. The Commission will not entertain calendaring of this matter for hearing until proceedings in the State of Washington have been concluded.

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

DATED this 13th day of September, 2017.

INDUSTRIAL COMMISSION

_____/S/_____
Thomas P. Baskin, Commissioner

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

ATTEST:

_____/S/_____
Assistant Commission Secretary

Dissenting Opinion of Chairman, Thomas E. Limbaugh

After reviewing the record and controlling case law in this matter, I respectfully dissent.

The Referee concluded that Claimant failed to establish that the Idaho Industrial Commission has jurisdiction to hear and decide his workers' compensation case. I agree with the Referee's recommendation that Claimant's employment was not principally localized in the State of Idaho at the time of the subject accident and that his contract of hire was not made in this state under Idaho Code § 72-217[4].

[4] Idaho Code § 72-217 EXTRATERRITORIAL COVERAGE. If an employee, while working outside the territorial limits of this state, suffers an injury or an occupational disease on account of which he, or in the event of death, his dependents, would have been entitled to the benefits provided by this law had such occurred within this state, such employee, or, in the event of his death resulting from such injury or disease, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of the accident causing such injury, or at the time of manifestation of such disease:

Claimant's injury occurred in Oregon, not Idaho. When an injury occurs out of the state, the specific statute addressing extraterritorial coverage, Idaho Code § 72-217, applies. The majority opinion addresses extraterritorial workers' compensation coverage under the "principally localized" and the "contract of hire made in this state in employment not principally localized in any state" prongs of Idaho Code § 72-217. While I agree with the majority that Claimant does not satisfy the second prong, I disagree that Employer's "drop-lots" constitute a place of business. Employer's business is trucking with 450 company-owed trucks and 80 owner-operated rigs handling routes in Washington, Oregon, Idaho, British Columbia, Alberta, Montana, Utah, and California. Employer is an Oregon company, headquartered in Washington, and it conducts payroll, employee benefits, hiring and firing through its Washington offices. Employer accomplished trucking dispatching entirely through Employer's Yakima, Washington facility. Employer does not have dispatchers in Idaho. Employer does not have any back office people in Idaho. (HT, p. 81). Employer does not have any "brick and mortar" facilities in Idaho and merely leases a portion of a business parking lot as a drop lot for their drivers to park their trucks when not on the road. Again, there were no permanent facilities. There were no employees at the drop lot, and the Commission's investigator spent an hour at the lot without observing anyone, let alone an employee. (HT, p. 26). Because the "drop-lots" were simply a place to begin a trip or end a trip for Employer's Idaho drivers, and Employer did not maintain

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(1) His employment is principally localized in this state; or
(2) He is working under a contract of hire made in this state in employment not principally localized in any state; or
(3) He is working under a contract of hire made in this state in employment principally localized in another state, the workmen's compensation law of which is not applicable to his employer; or
(4) He is working under a contract of hire made in this state for employment outside the United States and Canada.

any employees on site, Claimant has not established that his employment was "principally localized" in Idaho.

In its analysis of the term substantial, the majority concludes that Claimant has enough Idaho mileage to make Employer's business principally localized in Idaho, yet Claimant completed more truck driving miles in Oregon, his accident was in Oregon, and Employer has places of business in Oregon and Washington. The cases relied upon by the majority were not resolved by mileage alone. In Victory v. Paul Abbott, dba Paul Abbott Trucking Company, 1991 IIC 0303, the employer hired claimant in Idaho, the employer maintained an office in Idaho and required employees to stop through Idaho for inspection, and would even relay messages through the employer's Boise facilities. Similarly, in Sankey v. Osborn Transportation, 1987 IIC 0217, the employer maintained a terminal in Caldwell, Idaho with a manager onsite, and the employer would occasionally dispatch the claimant from the Idaho terminal. While Elbert v. Eagle/F.B. Truck line Company, 1984 IIC 001, commented that the claimant spent a substantial part of his working time in Idaho, the crucial matter before the Commission in that case was whether an employer-employee relationship existed; the Commission held that claimant was an independent contractor and not entitled to Idaho workers' compensation coverage. Therefore, even though Claimant's Idaho mileage is a relevant factor, I do not consider it dispositive for Idaho jurisdiction absent a place of business, in-state employees, or the Employer directing the Claimant in Idaho.

It is worth noting that Employer has provided workers' compensation coverage to Claimant through the Washington Department of Labor and Industries' self-insurance program. The Washington Department of Labor and Industries accepted responsibility for handling Claimant's claim by order of April 27, 2015, and Employer has paid Claimant medical and

temporary disability benefits. Claimant is presently litigating his Washington claim for additional benefits. Notwithstanding thirty years of covering similarly situated employees, Employer is now required to obtain an Idaho workers' compensation insurance policy based on Claimant's report, which I find overstates the significance of a simple parking lot and an insufficient basis for concurrent jurisdiction for Claimant's Oregon injury.

DATED this 13th day of September, 2017

INDUSTRIAL COMMISSION

_____/S/_____
Thomas E. Limbaugh, Chairman

ATTEST:

_____/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 2017, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION** was served by regular United States Mail upon each of the following:

TODD M JOYNER
1226 E KARCHER RD
NAMPA ID 83687-3075

W SCOTT WIGLE
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_____/S/_____