BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH JERRY MARAVILLA, Petitioner, v. J. R. SIMPLOT COMPANY, Self-Insured Employer, Respondent.	**IC 15-000108** **(2011-025160)** **ORDER ON PETITION FOR DECLARATORY RULING** Filed August 11, 2015

Joseph Maravilla (Petitioner) filed his Petition for Declaratory Ruling (Petition) with the Commission on May 1, 2015. The Petition was served on J.R. Simplot Company (Simplot), Respondent herein, who employed Petitioner at the time of the industrial accident giving rise to this matter. Petitioner raised a number of issues in his Petition, which he contended were the proper subject of a J.R.P. 15 Petition for Declaratory Ruling. However, following a telephone conference with the parties, the Commission has determined that only two of the issues identified by the parties are properly the subject of a petition for declaratory ruling. The facts relevant to the instant dispute can be synopsized as follows:

FACTS

1. At all times relevant hereto, Petitioner was employed by Simplot, at its Pocatello facility.

2. At some point in time prior to October 16, 2011, Simplot entered into an agreement with Idaho Industrial Contractors, Inc. (IIC), pursuant to the terms of which IIC performed certain repairs on a sulfuric acid pad located at the Simplot facility. Part of this work

involved the removal of existing stair landings in the vicinity of the acid pad. Because of the construction, Simplot placed a hose across a walkway to transport water/acid mix to a nearby pump. On the day of the accident giving rise to the underlying claim, a rain event caused a power surge which led to the buildup of water and acid in the acid pad. On October 16, 2011, Petitioner tripped on the walkway hose. His foot went through a plastic barrier erected by IIC, and into a quantity of sulfuric acid. Petitioner suffered chemical burns to his right leg, which later required skin grafts and surgery. It is alleged by Petitioner that the accident occurred as a result of the negligence of Simplot and IIC.

3. A workers' compensation claim was filed by Petitioner. A timely complaint was filed on September 24, 2012. The underlying claim (2011-025160) is an accepted claim, and workers' compensation benefits have been paid by Simplot in its capacity as a self-insured employer. The total amount of workers' compensation benefits paid to date by Simplot is unknown. Petitioner's entitlement to workers' compensation benefits in addition to those paid to date is the subject of a hearing before the Commission in the underlying action scheduled for October 7, 2015.

4. At some point following the subject accident, Petitioner filed his lawsuit against IIC in district court, as allowed by Idaho Code § 72-223, alleging, *inter alia*, that his injuries were occasioned as a result of the negligence of IIC. Simplot did not participate in that litigation. At some point prior to trial, Petitioner and IIC resolved Petitioner's claim against IIC by IIC's agreement to pay a settlement in the amount of $75,000.00. As a result of the settlement, Judge Nye entered his order dismissing the complaint with prejudice on January 22, 2015.

5. Against the $75,000.00 settlement reached in the litigation against IIC, Simplot claims that it has a right of subrogation pursuant to Idaho Code § 72-223. Simplot contends that its right of subrogation exists even if it is shown to have been partly at fault in contributing to Claimant's injuries. On the other hand, Petitioner contends that any negligence on the part of Simplot cuts off its right to subrogation under Idaho Code § 72-223.

6. With this background, the following issues are before the Commission for declaratory ruling:

ISSUES

1. How, if at all, did the abolition of the doctrine of joint and several liability in 1987 affect the historic rule that any amount of employer negligence is an absolute bar to the employer's right of subrogation under Idaho Code § 72-223?

2. Where a settlement has been reached in a third-party action without a judicial determination of how fault should be apportioned between employer, claimant and a third-party, does the Industrial Commission have subject matter jurisdiction to determine the relative fault of the parties in determining employer's Idaho Code § 72-223 right of subrogation?

DISCUSSION

I.

Pursuant to JRP 15, the Commission may entertain a petition for declaratory ruling where it is demonstrated that an "actual controversy" exists over the construction of a statute which directly affects the interests of the Petitioner. Prior to the 1987 amendment of Idaho Code § 6-803, Idaho case law was well-developed concerning how responsibility for damages should be apportioned between a third-party, an employer and an injured worker in an action brought under Idaho Code § 72-223. However, both parties acknowledge that the legislature's abolition

of the doctrine of joint and several liability in 1987 casts some doubt on the continued validity of the rules developed in *Runcorn v. Shearer Lumber Products, Inc.*, 107 Idaho 389, 690 P.2d 324 (1984); *Tucker v. Union Oil Co. of California*, 100 Idaho 590, 603 P.2d 156 (1979); *Schneider v. Farmers Merchant, Inc.*, 106 Idaho 241, 678 P.2d 33 (1984), *Barnett v. Eagle Helicopters, Inc.*, 123 Idaho 361, 848 P.2d 419 (1993), and other cases. Strange as it seems, the policies and principles guiding apportionment in such cases have not been readdressed by the Court at any time since 1987.[1]

7. Whether the rule announced in *Schneider, Runcorn and Tucker* must be amended following the abolition of joint and several liability is an issue that is controverted by the parties, and one which will impact their rights and responsibilities in connection with Simplot's assertion of a right of subrogation under Idaho Code § 72-223. We believe that this is an appropriate subject for a Petition for Declaratory Ruling under J.R.P. 15, and we also believe that addressing the matter in this vehicle, rather than in connection with the underlying workers' compensation claim, will assist both the parties and the Commission; as Petitioner has pointed out, absent guidance from the Commission at this juncture, the parties must be prepared to put on proof to address all possible outcomes of the legal issues referenced above. Knowing in advance what rule the Commission will apply to the subrogation issue will streamline proceedings and proof

[1] As Petitioner has noted, there is at least one case decided by the Court since 1987 which arguably demonstrates the Court's continued adherence to the rules developed in the various pre-1987 cases treating the issue of apportionment. In *Izaguirre v. R&L Carriers Shared Services*, 155 Idaho 229, 308 P.3d 929 (2013), the Court quoted with approval the rule set forth in *Schneider v. Farmers Merchant, Inc.*, 106 Idaho 241, 678 P.2d 33 (1984), dealing with the apportionment of damages under facts similar to those at bar. However, in *Izaguirre*, the issue before the Court was dissimilar to the issue before the Commission in the instant matter. First, in *Izaguirre*, it was conceded that employer was not at fault in causing claimant's injuries. Second, the issue in *Izaguirre* was whether the employer's right of subrogation extended to the entirety of the third-party recovery, as opposed to that portion of the third-party recovery which could fairly be said to represent damages of a type compensable under the workers' compensation system. Although the Court quoted from that portion of *Schneider* which addresses the impact of employer fault on the apportionment of the employee's damages, *Schneider* was referenced by the *Izaguirre* Court only to support the Court's conclusion that there is nothing in Idaho law which limits an employer's right of subrogation to that portion of a third-party recovery which compensates an injured worker for the same type of injuries compensable under the workers' compensation law. We believe that in connection with the issue before the Commission in this Petition, the *Izaguirre* citation to *Schneider* must be treated as dicta.

when the underlying matter eventually goes to hearing in October. Moreover, the Commission recognizes that this is an issue of some import, and that it is very likely that the party aggrieved by this decision will desire an immediate review by the Supreme Court. Addressing the issue in connection with a J.R.P. 15 Petition for Declaratory Ruling, as opposed to treating it separately as a bifurcated issue in the related case, will allow such review, without the necessity of trying the balance of the case before appeal could be taken.

8. The Workers' Compensation Laws of Idaho (Act) provide the exclusive remedy for injuries sustained as a result of a work accident. Our statutory scheme is a shield as well as a sword. While the Act guarantees compensation to an injured worker regardless of fault, it also limits the employer's liability. *See* Idaho Code § 72-209. However, this exclusivity is subject to the provisions of Idaho Code § 72-223, which specifies that an injured worker may receive workers' compensation benefits and thereafter bring a negligence action against a third-party tortfeasor who is responsible for the injured worker's injuries. The remedies afforded to the injured worker under the provisions of Idaho Code § 72-209 and Idaho Code § 72-223 are cumulative. *See Schneider v. Farmers Merchant, Inc., supra*. Because these remedies are cumulative, it was necessary to establish a system of apportioning the employee's damages between the employer and the third-party in order to achieve an equitable distribution of liability between the employer and the third-party, and to prevent double recovery by the employee. *Schneider, supra*.

9. In *Tucker v. Union Oil of California*, *supra*, the Court discussed rules to advance these policies. *Tucker* demonstrates the tension between the no-fault workers' compensation system and the common law doctrine of joint and several liability, in apportioning responsibility between an injured worker, his employer and a negligent third party. Tucker was an employee of

Feed Services. He suffered injuries when aqueous ammonia spurted into his eyes while he was attempting to transfer the substance between two trucks. He filed a claim for workers' compensation benefits, and eventually received benefits totaling $16,916.50. Tucker also pursued a third-party claim against Collier Carbon. That case went to trial, and eventually a special verdict was returned finding Tucker to be 10% at fault, Feed Services 30% at fault and Collier Carbon 60% at fault. Tucker's damages were found to be $350,000.00. Linda Tucker's damages were determined to be $12,000.00. The Court reduced these damages by 10%, representing the negligence attributable to Tucker, and entered judgment in favor of the Tuckers in the amount of $325,800.00. Feed Services was immune from suit as Tucker's employer. Therefore, although Collier Carbon was only 60% at fault, it was held responsible for 90% of claimant's damages pursuant to the common law doctrine of joint and several liability. To this allocation of negligence Collier Carbon objected, arguing that its liability should be limited to its comparative fault found by the jury.

10. In treating the issue, the Idaho Supreme Court first noted that it was appropriate to reduce Tucker's damages by the amount of his negligence under the version of Idaho Code § 6-801 in effect at the time of trial. Under that section, damages allowed to a plaintiff should be reduced in proportion to the amount of negligence attributable to the person recovering damages.

11. However, the Court balked at Collier Carbon's suggestion that it should only be held responsible for Tucker's damages in proportion to the amount of fault it shared in producing those damages. To do so would create the intolerable inequity of shifting responsibility for the negligence of Feed Services to Tucker and from the shoulders of Collier Carbon, and this result was not mandated by Idaho Code § 6-801. To do as Collier Carbon suggested would be to undermine the fundamental rationale of the doctrine of joint and several liability. The Court

found no evidence in the workers' compensation laws of the State to suggest that the doctrine of joint and several liability should not apply to a third party action brought by an injured worker pursuant to the provisions of Idaho Code § 72-223. Therefore, while it might be argued that it was inequitable for Collier Carbon to bear responsibility for 90% of Tucker's damages when the jury found it to be only 60% at fault, a greater inequity to Tucker would result from requiring him to bear the burden of his employer's negligence.

12. Having determined that the doctrine of joint and several liability required Collier Carbon to bear responsibility for 90% of Tucker's damages, the Court addressed Collier Carbon's next argument that notwithstanding the application of the doctrine of joint and several liability to it, Collier Carbon's damages should nevertheless be reduced by the amount of workers' compensation benefits received by Tucker. Considering this argument, the Court recognized that to allow claimant to receive 90% of his civil damages from Collier Carbon while retaining all workers' compensation benefits paid by Feed Services would result in a double recovery, or nearly so, to Tucker. To avoid this outcome, the Court quoted with approval the procedure utilized in *Associated Construction & Engineering Co. v. Workers' Compensation Appeals Board*, 22 Cal.3d 829, 150 Cal. Rptr. 888, 587 P.2d 684 (1978), to avoid double recovery. Pursuant to that case, where it is shown that the employer is concurrently at fault in causing damages to the injured worker, once the degree of employer fault is identified, the third party's responsibility to pay damages is reduced by the employer's percentage of fault, up to the amount of workers' compensation benefits paid. In this way, the negligent third party is protected against a double, or at least inflated, recovery by the injured worker.

13. *Associated Construction & Engineering Co., supra*, is also important for its treatment of the negligent employer's right to be subrogated to the injured worker's recovery

against the negligent third party. The *Tucker* Court noted that in Idaho, the historic rule is that if an employer is found to be in any degree responsible for the injured worker's damages, such negligence, regardless how small, is a complete bar to employer's right of subrogation against the negligent tortfeasor. *See Liberty Mutual Ins. Co. v. Adams*, 91 Idaho 151, 417 P.2d 417 (1966) and *Witt v. Jackson*, 57 Cal.2d 57, 17 Cal. Rptr. 369, 366 P.2d 641 (1961). This rule, applied to the facts of the instant matter, would result in a complete bar to Simplot's right of subrogation under Idaho Code § 72-223 in the event that Simplot is found to be in any respect responsible for causing Petitioner's injuries. However, as noted by the *Tucker* Court, both *Witt* and *Liberty Mutual* were decided prior to the adoption of comparative negligence, and at a time when contributory negligence on the part of an injured employee was an absolute bar to his recovery. The *Associated* Court addressed how the employer's negligence should affect its right of subrogation after the adoption of comparative negligence. As described in *Tucker, supra,* the *Associated* Court concluded that a concurrently negligent employer should be entitled to exercise its statutory right of subrogation in the amount by which the employer's workers' compensation liability exceeds the proportionate liability it would suffer as a non-insulated tortfeasor. Application of this rule to the facts before the Court in *Tucker* would not yield a different result than the rule of *Witt* and *Liberty Mutual*. Recall that employer paid workers' compensation benefits in the approximate amount of $16,000.00. However, on the special verdict form it was found to be responsible for 30% of claimant's damages, or $105,000.00. Under either the rule of *Witt* or *Associated*, Feed Services would not be entitled to pursue subrogation against Collier Carbon. Only where the amount of workers' compensation benefits paid exceeded Feed Services' proportionate share of fault would the rule of *Associated* yield a different result. It was for that reason that the *Tucker* Court stated:

> As to that portion of the *Associated* decision relating to the right of the employer to be subrogated to a portion or all of the workmen's compensation benefits dependent upon the extent to which negligence has been assessed against the employer, we find such to be unnecessary to our decision today.

14. The apportionment scheme discussed in *Tucker* was followed in subsequent Idaho cases dealing with Idaho Code § 72-223 third-party cases. For example, in *Schneider v. Farmers Merchant, Inc.*, 106 Idaho 241, 678 P.2d 33 (1983), the Court described the *Tucker* rule as follows:

> Based on our focus in apportionment, and on the foundation of § 72-223, the system of apportionment generally works as follows. In those situations where the employer is not negligent, the employer is entitled to subrogate to the employee's recovery against a third party, and thus obtain a reimbursement of the workmen's compensation benefits he paid. Conversely, in those situations where the employer is negligent, the employer is denied this reimbursement and the third party is entitled to a credit against his judgment in the amount of the workmen's compensation benefits the employer pad. *Tucker*, 100 Idaho at 603, 603 P.2d at 169. Thus, the employee's award is reduced by the amount of workmen's compensation he received. In either event, the employee does not retain both the workmen's compensation benefits and the full tort recovery.

The rationale for altogether denying the right of subrogation to a concurrently negligent employer, à la *Liberty Mutual*, is that, "It is contrary to the policy of the law for an employer … to profit from his own wrong". *Schneider*, *supra*. Under the doctrine of joint and several liability then in effect, the negligent employer, if uninsulated by the exclusive remedy provisions of the workers' compensation law, would be liable for 100% of claimant's injuries like the negligent third party. The existence of the doctrine of joint and several liability therefore explains why to allow a modestly negligent employer to recover some portion of the workers' compensation payments it made could be viewed as allowing the negligent employer to profit from his wrong.

15. Therefore, and notwithstanding *Tucker's* hint that the rule of *Associated Construction & Engineering Company, supra*, might have some traction, the rule in Idaho, at

least prior to the abolition of joint and several liability, is as Petitioner has suggested: any fault on the part of employer, regardless how minimal, is an absolute bar to employer's right of subrogation to the proceeds of an injured worker's recovery against a negligent third party under Idaho Code § 72-223.

16. In 1987, the Idaho Legislature abolished the common law doctrine of joint and several liability, except in limited situations not argued in the instant matter.[2] Following the amendment of Idaho Code § 6-803, liability among joint tortfeasors is to be apportioned as follows:

> . . . In any action in which the trier of fact attributes the percentage of negligence or comparative responsibility to persons listed on a special verdict, the court shall enter a separate judgment against each party whose negligence or comparative responsibility exceeds the negligence or comparative responsibility attributed to the person recovering. The negligence or comparative responsibility of each such party is to be compared individually to the negligence or comparative responsibility of the person recovering. Judgment against each such party shall be entered in an amount equal to each party's proportionate share of the total damages awarded . . . .

As a prescient *Tucker* Court observed, to shift the inequity of joint and several liability from the shoulders of the negligent third party to the shoulders of the injured worker would require action of the Legislature as opposed to action by the Court. Although that action was taken by the Legislature in 1987, the Court has had no occasion to consider the impact of the abolition of joint and several liability on the *Tucker* rules of apportionment since 1987.

17. Let us examine how the abolition of the common law doctrine of joint and several liability would impact the apportionment of liability in *Tucker, supra*. First, the amendments to Idaho Code § 6-803 would not affect the *Tucker* Court's ruling that Tucker's damages must be

[2] Idaho Code § 6-803(5) provides that the doctrine of joint and several liability continues to abide where two or more tortfeasors were "acting in concert" or where one party was acting "as an agent or servant of another." The parties do not address, and we do not decide, whether either of these exceptions are implicated in the underlying matter.

reduced by his proportionate share of fault, i.e. 10%. As the *Tucker* Court found, the rule that the injured worker's recovery should be reduced by the percentage of fault attributable to him existed notwithstanding the doctrine of joint and several liability, pursuant to the provisions of Idaho Code § 6-801.

18. However, the 1987 amendments to Idaho Code § 6-803 have a significant impact on how responsibility for Tucker's injuries would be apportioned to Collier Carbon. With the abolition of joint and several liability, Collier Carbon would be held responsible for 60% of Tucker's damages as opposed to 90%. The inequity which the *Tucker* Court did not wish to visit on Tucker was nevertheless shifted to Tucker by the legislature.

19. Next, we come to the issue that is at the heart of this matter, i.e. whether the legislature's abolition of joint and several liability demands modification of the rule that any negligence on the part of the employer constitutes a complete bar to the employer's exercise of its right of subrogation to the Claimant's recovery against the negligent third party.

20. As explained above, the rationale for altogether denying such an employer's right of subrogation is that an employer ought not be allowed to profit from his own wrong. Possibly, this concern arises from the fact that prior to the abolition of joint and several liability an uninsulated negligent employer would be liable for 100% of the injured worker's damages, absent immunity from suit conferred by the workers' compensation laws. Therefore, why should an insulated negligent employer be allowed any recovery on his right of subrogation?

21. This rationale falls apart with the abolition of joint and several liability, and the rule of *Associated Construction & Engineering Company, supra*, begins to make more sense. Therefore, Feed Services should be allowed to exercise its right of subrogation to the extent that the workers' compensation benefits paid exceed its proportionate responsibility for Claimant's

damages. This rule does not strike us as a mechanism by which a negligent employer can "profit from its own wrong". To the contrary, it represents a mechanism by which the negligent employer will be held responsible for his wrong, yet will be afforded a right to exercise its statutory right of subrogation where it has paid workers' compensation benefits in excess of the percentage of fault assigned to it in the third party action.

22. Finally, we come to the issue of whether Collier Carbon's responsibility to pay damages should be reduced by workers' compensation benefits paid to Tucker. Recall that the rationale for doing this in *Tucker* was to prevent the injured worker from obtaining a double recovery where the doctrine of joint and several liability applied and, arguably, to give some relief to the overburdened third party. *Barnett v. Eagle Helicopters, Inc.*, 123 Idaho 361, 848 P.2d 419 (1993). With joint and several liability abolished, Collier Carbon would now be responsible only for its proportionate share of Tucker's damages, and the danger of a double, or inflated, recovery is eliminated.

23. Let us consider some examples to see how these rules play out.

1. Assume that claimant has been paid $100,000 in workers' compensation benefits. The claimant also sues a responsible third party, and at trial, claimant's damages are found to be in the amount of $200,000, with 50% fault attributed to employer and 50% to the third party. Employer's proportionate responsibility for claimant's damages is $100,000 ($200,000 x 50%) and therefore employer takes nothing on his right of subrogation. The third party is required to pay $100,000 to claimant, representing its proportionate share of claimant's damages. At the end of the day, claimant receives $100,000 in workers' compensation benefits plus $100,000 from the third party. Claimant has not received more than his damages found at trial.

2. Claimant receives $100,000 in workers' compensation benefits and, his damages are found to be $200,000 at trial. However, the employer is found to be only 10% at fault, while the third party is found to be 90% at fault. Therefore, employer's right of subrogation is reduced by only $20,000 ($200,000 x 10%), and it would be entitled to receive $80,000 ($100,000 - $20,000) from the third party in exercise of its right of subrogation. The third party would be liable for $180,000 ($200,000 x 90%). Claimant would receive $100,000 in workers' compensation benefits plus $100,000 from the third party ($180,000 - $80,000 payable to employer in exercise of its right of subrogation). Again, the total of the monies payable to claimant under the workers' compensation system, and in connection with the third party claim, do not exceed claimant's total damages found at trial of $200,000.

3. Claimant is paid $100,000 in workers' compensation benefits and damages at trial of the third party action are found to be in the amount of $200,000. This time, however, claimant is found to be 10% at fault, employer 20% at fault, and third party 70% at fault. Employer's right of subrogation is reduced to $60,000 ($100,000 - $40,000), and the third party is responsible for $140,000 ($200,000 x 70%). At the end of the day, claimant has received $100,000 in workers' compensation benefits, and $80,000 from the third party ($140,000 - $60,000 payable to employer in exercise of its right of subrogation). Again, the total benefits paid to claimant do not exceed the damages found at trial. In fact, the total "in hand" of Claimant is equal to his total damages found at trial less his proportionate share of fault.

4. Claimant is paid $100,000 in workers' compensation benefits and damages at trial of the third party action are found to be in the amount of $200.000. A special verdict is returned pursuant to which the injured worker is found to be 20% at fault, the employer 10% at fault and the third party 70% at fault. Of course, even in the absence of the exclusive remedy provisions

of the Act, the injured worker would not be able to hold employer responsible, since the negligence of the injured worker is greater than that of employer. Under Idaho Code § 6-803, quoted above, an individual tortfeasor cannot be held responsible for the payment of his proportionate share of damages where the negligence of the person seeking recovery is greater than that of said tortfeasor. In this scenario, the negligent third party would be responsible for the payment of $140,000 ($200,000 x 70%). The question is whether the employer who, if uninsulated, would have no responsibility to the injured worker, should have a full subrogation right of $100,000, as opposed to a right of subrogation which takes into account his proportionate share of fault in causing Claimant's damages. We perceive no justification in allowing the employer to recover $100,000 on the $100,000 in workers' compensation benefits paid. To do so would be to reward the employer for its negligence, notwithstanding that an uninsulated tortfeasor in employer's shoes would owe nothing to Claimant. We believe the appropriate rule is to require the employer's right of subrogation to be reduced by the percentage fault attributable to employer in causing Claimant's total damages. Therefore, employer's right of subrogation would be reduced by $20,000 ($200,000 x 10%), leaving employer with an $80,000 right of subrogation. Therefore, Claimant would receive $100,000 in workers' compensation benefits plus $60,000 from the third party ($140,000 less $80,000 payable to subrogated employer) for a total of $160,000. The total monies payable to Claimant under the workers' compensation system and from the third party claim do not exceed Claimant's total damages of $200,000. Again, the amount eventually payable to Claimant equals his total damages found at trial less his proportionate share of fault. Of course, absent the involvement of workers' compensation, Claimant would only receive $140,000, this representing the liability of the third party in causing Claimant's total damages of $200,000. Because of Claimant's

entitlement to workers' compensation he will receive $160,000. This does not trouble us, since, as the *Schneider* court observed, Claimant's entitlement to workers' compensation benefits, and his right to pursue a third party action under Idaho Code § 72-223 are cumulative remedies.

24. From these examples we conclude that the rule we have arrived at today to treat the interplay between Idaho Code § 72-223 and the provisions of Idaho Code § 6-803 honors the principles underlying both the workers' compensation laws and the legislative abolition of joint and several liability. Double recovery by the injured worker is avoided, employer is denied the opportunity to profit from its wrongs, and an equitable distribution of liability for the injured worker's injuries is achieved between employer and the third party. [3]

II.

25. Having found that the apportionment scheme envisioned by *Tucker* and other pre-1987 cases must necessarily be revised following the abolition of joint and several liability, we next turn to the question of whether the Industrial Commission has jurisdiction to determine the percentages of fault to be assigned to Petitioner, Simplot and IIC. Obviously, application of the apportionment rule we have described today requires knowing how responsibility for Petitioner's damages will be assigned between the parties. This would have been done had the case against IIC gone to trial. However, as is not infrequently the case, the third-party action against IIC was resolved short of trial, without a judicial determination of the percentage of fault to be assigned to each of the players.[4]

---

[3] The Commission is sensitive to the criticism that in so ruling it might be doing more than is strictly necessary to decide the issue raised by Petitioner. For example, to resolve the issue raised by Petitioner, it is arguably unnecessary for us to decide whether IIC's responsibility to pay damages on any negligence assigned to it should be reduced by the workers' compensation benefits paid. However, because of the interrelationship of these concepts, and the competing interests being balanced, addressing Petitioner's issue in a vacuum is likely to overlook consequences affecting the entire scheme of apportionment.

[4] In its Second Memorandum in Reply to Motion for Declaratory Relief, Simplot argues that the doctrine of true *res judicata*, or claim preclusion, operates in this case to prevent Petitioner (or his privy, Simplot) from litigating the issue of how negligence should be apportioned between the parties, when that issue could have been (but was not)

26. In any number of decisions, the Court has recognized that the Industrial Commission has exclusive jurisdiction to determine the subrogation rights of an employer under Idaho Code § 72-223. *See Williams v. Blue Cross of Idaho*, 151 Idaho 515, 260 P.3d 1186 (2011); *Idaho State Ins. Fund by and through Forney v. Turner*, 130 Idaho 190, 938 P.2d 1228 (1987); *Van Tine v. Idaho State Ins. Fund*, 126 Idaho 688, 889 P.2d 717 (1994). In order to determine Simplot's right of subrogation under the rules we announce today, it is necessary to understand how responsibility for Petitioner's injuries should be apportioned between Petitioner, Simplot and IIC. The Commission has jurisdiction to consider all questions arising under the workers' compensation laws, and the employer's right of subrogation under Idaho Code § 72-223 is a right created within the context of those laws. Therefore, although the Commission would prefer not to delve into areas that are more appropriately within the expertise and province of a district judge, we conclude that we have no alternative but to entertain the question of how negligence should be apportioned between the players involved in this matter. If the Commission does not do it, who will?

27. For similar reasons, we conclude that the Commission necessarily has subject matter jurisdiction to determine how Simplot's right of subrogation has been impacted by the abolition of joint and several liability, as we have done in this decision.

CONCLUSIONS OF LAW AND ORDER

1. The Industrial Commission has subject matter jurisdiction to consider how the abolition of joint and several liability has impacted the manner in which liability has historically

---

litigated in the district court case. Therefore, the argument goes, Petitioner is now barred from contending that Simplot was negligent and that Simplot's negligence cuts off its right to subrogation. We conclude that the doctrine of true *res judicata* (claim preclusion) does not apply to these facts. For claim preclusion to apply, a valid final judgment rendered on the merits by a court of competent jurisdiction between the same parties, and upon the same claim must be demonstrated. *See Hindmarsh v. Mauk*, 138 Idaho 92, 57 P.3d 803 (2002). Simply, the district court's dismissal of the complaint with prejudice does not constitute a valid final judgment rendered on the merits. Therefore, the doctrine of claim preclusion cannot apply.

been apportioned between those involved in an Idaho Code § 72-223 case. As well, the Industrial Commission has jurisdiction to determine the percentage of fault attributable to each such party in order to ascertain the employer's right to subrogation under Idaho Code § 72-223.

2. The 1987 abolition of the common law doctrine of joint and several liability does not impact the rule of *Tucker* requiring the injured worker's damages in a third party action to be reduced by the amount of his fault.

3. Where joint and several liability has been abolished in an Idaho Code § 72-223 action, a third party tortfeasor can only be held responsible for his proportionate share of fault in contributing to the injured worker's damages.

4. Where joint and several liability has been abolished, employer's negligence is no longer an absolute bar to the exercise of its right of subrogation. Rather, employer's right of subrogation will be reduced by its proportionate share of fault in contributing to claimant's damages.

5. Where joint and several liability has been abolished, it is no longer necessary to protect against an injured workers' double recovery by reducing the third-party tortfeasor's responsibility to pay by the amount of workers' compensation benefits paid to the injured worker.

6. Per J.R.P. 15(f)(3), this declaratory ruling has the full force and effect of a final order or judgment under Idaho Code § 72-718.

DATED this 11th day of August, 2015.

INDUSTRIAL COMMISSION

___/s/_____
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 11th day of August, 2015, a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by regular United States Mail upon each of the following:

PATRICK GEORGE
PO BOX 1391
POCATELLO ID 83204-1391

DANIEL A MILLER
401 W FRONT STREET, STE 401
BOISE ID 83702

__/s/_____