

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RONNIE GARDNER,

Claimant,

v.

BARRETT BUSINESS SERVICES, INC.,  
Employer, and IDAHO STATE INSURANCE  
FUND, Surety,

and

TOM FLOYD, CASEY FLOYD, and EVELYN  
FLOYD dba ACTION AG, LLC; and  
CLOVERDALE FARMS, LLC; and ACTION  
AG TRANSPORT, LLC; and ACTION  
MILLING, INC.; and WILDER FEEDLOT,  
LLC, and WESTERN STATES DUST  
CONTROL, LLC,

Uninsured Employers,

Defendants.

**IC 2010-028770**

**IC 2011-001088**

**ORDER TO CLARIFY  
AND AMEND DECISION**

**Filed January 31, 2013**

On June 19, 2012, the Commission issued a decision in the above-captioned case, finding that the employers Action Ag, LLC (“AA”), Action Milling, Inc. (“AM”), and Barrett Business Services, Inc. (“Barrett” or “BBSI”) were jointly and severally liable for Claimant’s workers’ compensation benefits. Additionally, the decision held that AA was liable for attorney fees and a statutory penalty under Idaho Code § 72-210 for failure to secure workers’ compensation insurance.

On November 9, 2012, Claimant filed a motion to correct order for manifest injustice. Claimant requests that the language in the June 19 decision be altered to reflect that Tom and Evelyn Floyd, owners of Action Ag, are also liable for the attorney fees and penalty awarded to Claimant. Defendants Barrett and Idaho State Insurance Fund did not reply to the motion.

Defendants Tom Floyd et al. objected to Claimant's motion.

On January 9, 2013, the Commission conducted a telephone conference with the parties at which time Claimant's motion was discussed and argued. The parties declined to file briefs on the matter, and agreed that Claimant's motion be considered in light of the record at hand.

Pursuant to I.C. § 72-719(3), at any time within five (5) years following the date of accident, the Commission may, on its own motion, review a case in order to correct a manifest injustice. The statute does not prevent the Commission from considering the issue of manifest injustice merely because the issue is first brought to the Commission's notice by way of the motion of one of the parties. *Banzhaf v. Carnation Company*, 104 Idaho 700, 662 P.2d 1144 (1983). Manifest injustice as a ground for review of an order must be construed broadly. *Sines v. Appel*, 103 Idaho 9, 644 P.2d 331 (1982). Here, Claimant asserts that unless the Commission's order is amended, the party most responsible for the decision not to procure workers' compensation insurance for AA will avoid liability. It is argued that such a result would be manifestly unjust. After having considered the arguments of the parties, and reviewed the evidence of record, we find that clarification of the Commission's decision is necessary to prevent a manifest injustice.

Pursuant to Idaho Code § 72-319(1), in any case where the employer is an uninsured limited liability company, a manager or employee of such limited liability company who was vested with authority to secure the payment of compensation on behalf of the company, yet failed to do so, is guilty of a misdemeanor. Moreover, pursuant to Idaho Code § 72-319(2), any such employee or manager shall also be held "personally liable jointly and severally" with such limited liability company for any compensation which may accrue under the workers'

compensation laws of this state with respect to any injury suffered by an employee of such limited liability company.

As set forth in the original decision, the evidence in this case establishes that AA is an uninsured limited liability company. *See* Hearing Tr. 117. The evidence further reflects that Tom Floyd acted as a manager for AA, and was vested with the authority to secure workers' compensation coverage for AA. *See e.g.* Hearing Tr. 119, 132, 217; Claimant's Ex. 10(a); BBSI Ex. G. Finally, during the January 9, 2013 telephone conference, Mr. Floyd's attorney, Richard Eismann, conceded that Tom Floyd had authority to secure workers' compensation coverage for AA. Counsel for Claimant concedes that neither Evelyn Floyd nor Casey Floyd was ever vested with authority to secure workers' compensation coverage for AA, and the record before the Commission is likewise devoid of any evidence suggesting that either Evelyn Floyd or Casey Floyd could be held personally liable under Idaho Code § 72-319.

Where AA failed to obtain workers' compensation insurance as required by Idaho Code § 72-301, it is the intent of the Commission that responsible managers/employees of AA be held personally liable, along with AA, for the payment of workers' compensation benefits, as well as for the attorneys' fees and penalty owed by AA. The Commission's intent in this regard was not made clear by the decision. Therefore, the decision is AMENDED to read as follows:

1. Paragraph 40 shall now read: "Based on the foregoing, and except as qualified below, the Commission concludes that Claimant has met his burden of establishing that AA and AM are equally, and jointly and severally, liable to Claimant for the payment of the benefits to which Claimant is entitled. Further, pursuant to Idaho Code § 72-319, Tom Floyd, as a manager or employee of AA with authority to secure the payment of compensation, is personally liable jointly and severally with AA for the payment of

benefits owed by AA.”

2. Paragraph 41 shall now read: “Pursuant to Idaho Code §§ 72-210 and 72-319, Claimant is entitled to recover from AA and/or its manager, Tom Floyd, Claimant’s reasonable attorney fees incurred in prosecution of the claim, along with a penalty equal to 10% of the benefits awarded in this decision.”
3. Conclusion of Law 3 shall now read: “At the time of the accident giving rise to this claim, Claimant’s actions benefitted both AA and AM/Barrett, such that his employment is not severable and tied to one employer in particular, leaving both employers equally, and jointly and severally, liable for the payment of workers’ compensation benefits. Further, pursuant to Idaho Code § 72-319, Tom Floyd, as a manager or employee of AA with authority to secure the payment of compensation, is personally liable jointly and severally with AA for the payment of benefits owed by AA;”
4. Conclusion of Law 9 shall now read: “Claimant is entitled to recover his reasonable attorney fees incurred in connection with the prosecution of this case, along with a penalty equal to 10% of the benefits awarded in these proceedings; AA and Tom Floyd are jointly and severally liable for payment of the attorney fees and the penalty;”
5. Paragraph 3 of the Order shall now read: “At the time of the accident giving rise to this claim, Claimant’s actions benefitted both AA and AM/Barrett, such that his employment is not severable and tied to one employer in particular, leaving both employers equally, and jointly and severally, liable for the payment of workers’ compensation benefits. Further, pursuant to Idaho Code § 72-319, Tom Floyd, as a

manager or employee of AA with authority to secure the payment of compensation, is personally liable jointly and severally with AA for the payment of benefits owed by AA;”

6. Paragraph 9 of the Order shall now read: “Claimant is entitled to recover his reasonable attorney fees incurred in connection with the prosecution of this case, along with a penalty equal to 10% of the benefits awarded in these proceedings; AA and Tom Floyd are jointly and severally liable for payment of the attorney fees and the penalty”.

IT IS SO ORDERED.

DATED this 31st day of January, 2013.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas P. Baskin, Chairman

/s/ \_\_\_\_\_  
R.D. Maynard, Commissioner

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

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of January, 2013, a true and correct copy of the foregoing **ORDER TO CLARIFY** was served by regular United States Mail upon each of the following:

RICHARD S OWEN  
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NAMPA ID 83653

RICHARD B EISMANN  
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BRIDGET A VAUGHAN  
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/s/ \_\_\_\_\_