BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

THE INDUSTRIAL COMMISSION v. OASIS LEGAL FINANCE, L.L.C., Real Party in Interest, Defendant.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON ORDER TO SHOW CAUSE**
BRET TYLINSKI, Claimant, v. GUERDON ENTERPRISES, L.L.C., Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	Filed January 13, 2012 IC: 2007-028248 1998-038640 2005-506894 2007-024933
JONATHON GOULD, Claimant, v. ORMOND BUILDERS, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	IC: 2008-017154

TERRY DENNY, Claimant, v. URS, Employer, and INSURANCE CO. OF THE STATE OF PENNSYLVANIA, Surety, Defendants.	)	IC: 2009-017004

INTRODUCTION

By Order dated January 26, 2011, Oasis Legal Finance, L.L.C., ("Oasis") was ordered to show cause why certain legal funding contracts between Oasis, and two Idaho Workers' Compensation Claimants, Bret Tylinski and Jonathan Gould, should not be found to be invalid under the Idaho Workers' Compensation laws. Subsequent thereto, the Commission was presented with a proposed lump sum settlement in the case of *Terry Denny v. URS*, for review and approval. That agreement anticipated a payment from the proceeds of the lump sum settlement to Oasis, in satisfaction of another legal funding contract. The Industrial Commission consolidated the three matters for the purposes of a show cause proceeding held on November 3, 2011 at Boise, Idaho. Present for Oasis was R. Daniel Bowen, Esq., of Boise, Idaho, and William M. McErlean, Esq., of Chicago, Illinois. At hearing, the testimony of Lisa Foreman, General Counsel for Oasis, was taken. Oasis offered Exhibits 1 – 15, which were admitted into evidence. The prehearing deposition of James Arnold was also admitted into evidence. In

addition to the foregoing, the Commission takes judicial notice of its own legal files on each of the three matters consolidated for purposes of the show cause proceeding.

Oasis submitted a post-hearing brief and the matter came under advisement on December 5, 2011. Being fully apprised in the law and the premises, the Commission issues the following decision regarding the applicability of the provisions of I.C. § 72-802 to the Oasis purchase agreements.

FINDINGS OF FACT

Gould v. Ormond Builders, Inc.

1. Jonathan Gould suffered a work related injury on or about May 22, 2008. His timely claim was accepted by Surety, and workers' compensation benefits were paid to Claimant, or on his behalf, for the effects of the injury. The parties disputed the extent and degree of both Claimant's impairment and disability in excess of impairment. These and other disputes were resolved via a lump sum settlement approved by the Industrial Commission on or about September 2, 2010. Pursuant to the terms of that agreement, it was anticipated that Claimant would receive $32,391.50 lump sum consideration. The Commission approved attorney's fees in amount of $8,097.88, and costs in the amount of $1,000.00. Per the terms of the agreement, it was anticipated that Claimant would net $23,293.62 after the payment of attorney's fees and costs. On or about September 9, 2010, the Industrial Commission was contacted by Claimant who had questions about additional funds withheld from the settlement. An inquiry from the Industrial Commission revealed that following approval of the lump sum settlement agreement, Surety contacted the Idaho Department of Health and Welfare to ascertain whether or not a child support withholding order was in effect. Upon being advised of the settlement, the Department of Health and Welfare immediately issued a withholding order and

delivered the same to Surety. Surety deducted the sum of $11,646.81 from the settlement amount for payment to the Department of Health and Welfare in satisfaction of the withholding order. Surety then forwarded a check in the amount of $20,744.69, ($32,391.50 - $11,646.81) to Claimant's counsel.

2. The Commission also learned that an additional payment had been made directly from counsel's client trust account to an entity identified as Oasis Legal Finance, L.L.C., in the amount of $7,461.00. Claimant's counsel explained that this payment was made to satisfy Claimant's obligation under the terms of an agreement he had previously made with Oasis. After deductions for costs and attorney's fees approved by the Commission, the valid child support order, and the payment to Oasis, Claimant netted $4,185.81 from the original settlement of $32,391.50.

3. At the request of the Commission, counsel provided the Commission with a copy of an Oasis "Purchase Agreement" executed by Claimant on June 16, 2009, pursuant to the terms of which he received the immediate payment of $3,650.00. The agreement describes the transaction as follows:

> Seller [Gould] sells all of Seller's interest in and to the Purchased Interest to Purchaser [Oasis], and Purchaser purchases the Purchased Interest from Seller on the terms and conditions provided in this Purchase Agreement. The purchase of the Purchased Interest shall entitle Purchaser to receive the Oasis Ownership Amount . . . As consideration for the sale of the Purchased Interest, Purchasers shall pay the Purchase Price to Seller. . ."

Oasis Ex. 8, p. 55.

4. The terms "Purchased Interest" and "Oasis Ownership Amount," are defined as follows:

> "Oasis Ownership Amount" is the amount Purchaser is to be paid out of the Proceeds and as determined as of the date Purchaser receives payment based on the Payment Schedule on Page 1 of this Purchase Agreement.

. . .

> "Purchased Interest" means the right to receive a portion of the Proceeds equal to the Oasis Ownership Amount on the further terms and conditions provided for in this Purchase Agreement.

§§ 1.2 and 1.4, Oasis Ex. 8, p. 56.

Therefore, the interest that Oasis purchased for the sum of $3,650.00 is its right to recover from the proceeds of the workers' compensation case the "Oasis Ownership Amount," an amount which equals the original purchase price plus an additional amount that increases with the passage of time. Per the Gould agreement, the Oasis ownership amount payable to Oasis at any particular time is described in the payment schedule:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount: (Payoff Amount)
June 16, 2009 to December 15, 2009	$5,475.00
December 16, 2009 to June 15, 2010	$6,022.50
June 16, 2010 to September 15, 2010	$8,212.50
September 16, 2010 to December 15, 2010	$9,125.00
December 16, 2010 to June 15, 2011	$10,057.50
June 16, 2011 to December 15, 2011	$11,862.50
December 16, 2011 and thereafter	$12,775.00
Fees Due at Repayment:	
Case Servicing Fee every 6 months	$20.00
Subsequent Case Review for each additional funding	$20.00
Facsimile and Photocopying Costs per Funding	$ 9.00

Oasis Ex. 8, p. 55

5. The purchase agreement further specifies that the Oasis ownership amount shall be determined as of the date Oasis receives payment in full from or on behalf of seller. Importantly, the agreement specifies that seller is not entitled to receive any proceeds from the workers' compensation claimant until Oasis has received the Oasis ownership amount. (See,

Oasis Ex. 8, p. 58). To this end, Oasis required both Gould, and his attorney, to execute an "irrevocable letter of direction" contemporaneous with the execution of the purchase agreement. Pursuant to the terms of irrevocable letter of direction, both Claimant and his attorney acknowledge and agree that the Oasis ownership amount is to be paid from the proceeds of any settlement of the workers' compensation claim before any funds are released to Claimant. The letter further anticipates that any settlement monies paid by Employer/Surety will be paid by check to Claimant's attorney, and that all disbursements of funds will be made through the attorney's client trust account. (*See*, Oasis Ex. 10, p. 64).

6. The purchase agreement also makes it clear that in the event Gould takes nothing on his underlying worker's compensation claim, he has no obligation to pay the Oasis ownership amount.

7. Notwithstanding that the payment schedule for the Oasis ownership amount bears some similarities to the repayment of the principal amount of a loan, plus interest thereon, the agreement goes to some length to dispel any notion that the transaction should be construed as a loan versus a purchase and sale:

> Risk of Loss; No Loan Transaction. The purchase of the Purchased Interest and the other transactions contemplated by this Purchase Agreement involve a substantial economic risk and a bona fide risk of loss to Purchaser. The Oasis Ownership Amount has been negotiated to account for such risk. The sale of the Purchased Interest is an absolute sale and not a loan secured by a collateral assignment of the Purchased Interest.
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> . . .
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> Treatment of Transaction. Seller agrees to treat and report this sale and purchase of the Purchased Interest as a sale transaction and not as a loan for all purposes (including tax purposes).
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> . . .

> Treatment in Bankruptcy. If Seller commences or has commenced against it any case or other proceeding pursuant to any bankruptcy, insolvency or similar law prior to payment of the full Oasis Ownership Amount to Purchaser, Seller shall cause the Purchased Interest to be described as an asset of Purchaser (and not as a debt obligation of Seller) in any oral or written communications, including, without limitation, any schedule or other document filed in connection with such case or proceeding.

§§ 3.1, 5.1, 5.2, Oasis Ex. 8, p. 57.

8. As of the date of settlement of the underlying workers' compensation claim, the payment schedule specifies that Oasis was entitled to collect the sum of $8,212.50. However, through the efforts of Claimant's counsel, and with the agreement of Oasis, that sum was reduced to $7,461.00.

9. On learning of the existence of the purchase agreement, and in view of the direct payment to Oasis from counsel's client trust account in the amount of $7,461.00 from the proceeds of the lump sum settlement, the Commission filed its timely notice of reconsideration of the lump sum settlement agreement pursuant to the provisions of I.C. § 72-718. Under that section, the Commission is empowered to reconsider its decision to approve the lump sum settlement agreement on its own initiative. Reconsideration of the approval of the settlement was thought necessary because of concerns over the legality of the payment to Oasis under the provisions of I.C. § 72-802.

10. Following notice to the parties, the Commission held a hearing in Idaho Falls on November 30, 2010, for the purpose of obtaining additional information concerning the nature of Claimant's agreement with Oasis, Mr. Wetzel's involvement in the transaction, and the manner of the disbursement of funds. A copy of the transcript of those proceedings has been offered into evidence as Oasis Exhibit 2.

11. Many of the Commission's concerns over the legality of the $7,461.00 payment could not be adequately addressed by the parties in attendance at the November 30, 2010 hearing. In furtherance of its duties to administer the Idaho Workers' Compensation laws, and pursuant to I.C. § 72-714(3), the Commission is empowered to make such inquiries and investigations as may be necessary to assure the proper administration of the Workers' Compensation laws of this state. The Commission ordered Oasis to appear and show cause why the Commission should not enter an order finding that the payment made from counsel's client trust account in satisfaction of the June 16, 2009 purchase agreement is illegal under the Workers' Compensation laws of this state, and further requiring Oasis to return the sum of $7,461.00 to Claimant.

Tylinski v. Guerdon Enterprises

12. On or about August 10, 2007, Bret Tylinski suffered an accident/injury arising out of and in the course of his employment. The claim was accepted by the Workers' Compensation Surety, and benefits were paid to Tylinksi, or on his behalf.

13. As did Gould, Tylinksi sold the right to a portion of the proceeds of his workers' compensation settlement to Oasis. Tylinki's case, however, involves two purchase agreements. The first agreement was made on or about December 20, 2008, pursuant to the terms of which Tylinksi agreed to sell his interest in a portion of the proceeds of any subsequent recovery on his workers' compensation claim to Oasis for the sum of $1,050.00. The Oasis ownership amounts and the payment schedule differed from the payment schedule at issue in Gould, because of the lower purchase price. In connection with the December 20, 2008 purchase agreement, the following payment schedule applies:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
December 19, 2008 to June 18, 2009	$1,575.00
June 19, 2009 to December 18, 2009	$1,732.50
December 19, 2009 to March 18, 2010	$2,362.50
March 19, 2010 to June 18, 2010	$2,625.00
June 19, 2010 to December 18, 2010	$2,887.50
December 19, 2010 to June 18, 2011	$3,412.50
June 19, 2011 and thereafter	$3,675.00

Oasis Ex. 3, p 36.

14. On or about January 5, 2009, Tylinksi entered into a second purchase agreement with Oasis, under the terms of which Claimant received $550.00 consideration from Oasis in exchange for Oasis' purchase of an interest in the proceeds of any subsequent workers' compensation settlement. The payment schedule for the Oasis ownership amount for this purchase is set forth in the agreement as follows:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
December 31, 2008 to June 29, 2009	$825.00
June 30, 2009 to December 30, 2009	$907.50
December 31, 2009 to March 30, 2010	$1,237.50
March 31, 2010 to June 29, 2010	$1,375.00
June 30, 2010 to December 30, 2010	$1,512.50
December 31, 2010 to June 29, 2011	$1,787.50
June 30, 2011 and thereafter	$1,925.00

Oasis Ex. 6, p. 46.

15. The purchase agreements at issue in the Tylinski matter are substantially similar to the agreement at issue in Gould. However, the Gould agreement contains the following provision:

> **No Assignment.** The parties agree and affirm that this contract does not represent an assignment of workers compensation benefits as defined under state law.

See, § 6.6, Oasis Ex. 8, p. 59.

The Tylinski agreements are bereft of this "no assignment" language.

16. As did Gould, Tylinski and his attorney executed two irrevocable letters of direction.

17. On or about November 5, 2010, Tylinski submitted a proposed lump sum settlement agreement for review and approval by the Industrial Commission, under the terms of which Tylinski would receive $18,000.00 in settlement of his claims. After deduction of attorney's fees and costs of suit, Claimant was expected to net $11,226.00.

18. Although not disclosed in the lump sum settlement agreement, the Memorandum of Attorney's Fees and Costs submitted by Claimant's counsel reveals that counsel expected to pay, from the proceeds of the lump sum settlement, the sum of $4,945.00 to Oasis. On or about December 9, 2010, the Commission entered its order approving the lump sum settlement in part, but requiring Claimant's counsel to retain the sum of $5,220.00 from the proceeds of the settlement, representing the amount that would be payable to Oasis if paid subsequent to January 6, 2011, but prior to June 19, 2011. Counsel was ordered to hold this sum in trust, pending further order from the Commission on the validity of the contract between Tylinski and Oasis.

Terry Denny v. URS

19. At all times relevant hereto, Terry Denny was employed by URS. On June 29 or June 30, 2009, Denny suffered an accident/injury arising out of and in the course of his employment with Employer. The claim was accepted by Employer/Surety, and workers' compensation benefits were paid to Denny or on his behalf.

20. On or about September 9, 2010, Denny entered into a purchase agreement with Oasis, under the terms of which he was paid the sum of $5,150.00 in consideration of Oasis'

receipt of an interest in the proceeds of any future recovery made by Denny in connection with his worker's compensation claim. The purchase agreement specifies the following payment schedule of the Oasis ownership amount:

Oasis Ownership Amount

Payment Schedule	Oasis Ownership Amount (Payoff Amount)
September 9, 2010 to March 8, 2011	$7,725.00
March 9, 2011 to September 8, 2011	$8,497.50
September 9, 2011 to December 8, 2011	$11,587.50
December 9, 2011 to March 8, 2012	$12,875.00
March 9, 2012 to September 8, 2012	$14,162.50
September 9, 2012 to March 8, 2013	$16,737.50
March 9, 2013 and thereafter	$18,025.00
Fees Due at Payment	
Case Servicing Fee every 6 months	$30
Subsequent Case Review for each additional funding	$20
Facsimile and Photocopying Costs per Funding	$25

21. The terms of the Denny purchase agreement are substantially similar to those at issue in both the Gould and Tylinski transactions. However, the Denny "no assignment" language differs slightly from the language used in the Gould contract. In this regard, the Denny agreement specifies:

> **No Assignment of Workers Compensation Benefits.** The Parties agree and affirm that this contract does not represent an assignment as defined under state law.

§ 5.8, Denny Purchase Agreement.

22. On or about April 8, 2011, Denny and Employer/Surety presented a proposed lump sum settlement to the Commission for review and approval, under the terms of which Claimant would receive $20,000.00 new money. The explanatory attorney fee letter submitted by Fred Lewis, Claimant's counsel, reflects that as of April 18, 2011, the Oasis ownership amount was approximately $7,800.00. By Order filed April 25, 2011, the Industrial Commission

approved the proposed lump sum settlement agreement, except that the Commission ordered counsel to hold the sum of $7,724.25, representing the Oasis ownership amount, in trust, pending the Commission's determination of the validity of the purchase agreement between Denny and Oasis.

23. Following the issuance of the Industrial Commission's January 26, 2011 Order to Show Cause in the Gould matter, the Commission entered its May 18, 2011 Order consolidating the Tylinski, Gould and Denny matters for purposes of the Order to Show Cause hearing.

24. Preparatory to hearing, the hearing testimony of James Arnold was taken by way of prehearing deposition.

25. James Arnold is an attorney practicing in eastern Idaho. His practice involves primarily the representation of injured workers before the Idaho Industrial Commission.

26. He testified that approximately five years ago he became aware of the existence of Oasis, and other legal financing companies whose business model involved the "loan of monies to injured workers against the anticipated recovery in a personal injury or workers' compensation action." He testified that he was initially very leery of these companies since the money "loaned" to the injured worker was very expensive. However, he testified that as his experience with Oasis increased, he found the company easy to work with, and willing to negotiate what the company would accept in satisfaction of the Oasis ownership amount. Mr. Arnold testified that because of the expensive nature of the Oasis money, he attempts to persuade clients to utilize Oasis' services only as a last resort, i.e. after his clients have exhausted more conventional, and cheaper, loan opportunities.

27. Mr. Arnold testified that he has no business relationship with Oasis, and that he has never received a client referral from Oasis.

28. Mr. Arnold testified that Oasis does vet the cases of injured workers who offer to sell an interest in the proceeds of their workers' compensation claim to Oasis. He testified that Oasis is ordinarily reluctant to provide money in cases where liability is disputed. However, he noted that in the cases where this has become an issue, he has persuaded Oasis to complete the transaction because of his representations about the strength of a particular case. He stated that as he developed a relationship with Oasis, the vetting of cases with Oasis became easier as the company developed confidence in Mr. Arnold's ability to evaluate cases.

29. Finally, Mr. Arnold testified that in spite of the expensive nature of the Oasis money, the company fills a real need in the Idaho Workers' Compensation system. Where $3,000 or $5,000 means the difference between being evicted from one's apartment, or missing a mortgage payment, during the pendency of a workers' compensation claim, it is worth obtaining money from Oasis, when all other resources have been exhausted.

30. Lisa Foreman is General Counsel for Oasis. She is licensed to practice law in the state of Illinois, and has been employed by Oasis since September 2005. Her job responsibilities include oversight of litigation in which the company is involved. As well, she assists with the company's regulatory initiatives nationwide. She testified that the business model utilized to purchase interests in the proceeds of workers' compensation claims is used in 45 states inclusive of Idaho. In five states, Oasis has either chosen not to do business, or is prohibited from following this business model by applicable law.

31. Ms. Foreman testified that the Oasis purchase agreement was drafted so as not to conflict with non-assignment statutes similar to I.C. § 72-802. Specifically, she testified that although the purchase agreement may involve an "assignment," the assignment anticipated by the agreement is <u>not</u> the prohibited assignment of a workers' compensation "claim." Rather, per

Ms. Foreman, the purchase agreement anticipates the assignment of a contingent interest in the proceeds of a workers' compensation settlement. If the purchase agreement was intended to effectuate the assignment of the injured worker's claim, then one would expect Oasis to be the only entity which could prosecute the claim following the assignment. Clearly, the purchase agreement does not anticipate that anyone but claimant can prosecute the claim. The only assignment which Ms. Foreman would concede might be anticipated by the language of the purchase agreement is the assignment of a contingent interest in the proceeds of the workers' compensation settlement. Per Oasis, when it comes to applying the language of I.C. § 72-802, there is a real and significant difference between the assignment of a workers' compensation claim, and the assignment of the proceeds of a workers' compensation claim. The former is prohibited, the latter is not.

32. Although the purchase agreement bears some similarities to a loan transaction, neither would Ms. Foreman concede that the agreement should be treated as a loan. In the main, her argument is that a true loan creates an obligation for the repayment of a debt certain, whereas the Oasis purchase agreement creates an obligation only upon the occurrence of certain contingencies, including, *inter alia*, claimant's receipt of an award or settlement of some type following the prosecution or settlement of his claim

33. For the same reason, Ms. Foreman argued that neither does the Oasis purchase agreement create a creditor/debtor relationship. Importantly, however, Ms. Foreman acknowledged that at some point in the course of an Oasis transaction with an injured worker, the relationship might mature into one of a creditor and a debtor. If a settlement is obtained, and if there is money remaining in the attorney's client trust account following the payment of

medical bills and attorney's fees, then Oasis may become a creditor with respect to the proceeds of settlement owed to Oasis per the purchase agreement. (See, Hr. Tr., 16/18-18/14).

34. Confirming Mr. Arnold's testimony, Ms. Foreman acknowledged that the Oasis money is "expensive," but that Oasis purchase agreements fill a need that goes largely unfilled among a sizeable minority of the population of workers' compensation claimants; without Oasis type purchase agreements, such claimants would be unable to bridge the financial abyss that lies between the curtailment of workers' compensation benefits and the resolution of the workers' compensation claim. Ms. Foreman explained that Oasis is not as draconian as might be suggested by the repayment schedules described above. Oasis frequently agrees to a reduction of the repayment amount depending on the facts and circumstances of a particular case.

35. During the pendency of the Commission's consideration of this matter, Oasis has agreed to freeze the payment schedule for each of the three cases at issue in this proceeding.

ISSUES

The following matters are at issue:

1. Whether there is an actual controversy which warrants the Commission's review of the application of I.C. § 72-802 to the Oasis contracts;

2. Whether the Industrial Commission has jurisdiction to consider the legality of the Oasis purchase agreements under I.C. § 72-802;

3. Whether the Oasis purchase agreements violated the provision of I.C. § 72-802:

    a. Whether the Oasis purchase agreement is a prohibited assignment of a workers' compensation claim;

b. Whether Oasis is a "creditor," and if so, whether the settlement amounts paid following the approval of the lump sum settlement agreements at issue constitute "compensation" not subject to the claim of a creditor.

DISCUSSION AND FURTHER FINDINGS

I.

1. As Oasis has noted, the record is bereft of evidence that any of the Claimants in this consolidated proceeding take the position that Oasis is not entitled to recover the Oasis ownership amount following the settlement of their respective workers' compensation claims. Indeed, although it was Mr. Gould's inquiry concerning the propriety of the payment of the Oasis ownership amount from his attorney's client trust account that alerted the Commission to these practices and initiated the instant inquiry, Mr. Gould testified that although he and his attorney considered whether to dispute the Oasis claim to a portion of the proceeds of settlement, he ultimately decided that the indebtedness he had voluntarily incurred should be paid. Mr. Gould testified that even if the settlement proceeds in question had been paid directly to him, and contrary to the irrevocable letter of direction, he would nevertheless pay Oasis what he owed. Although it can be supposed that one or more of the Claimants in these matters might find a use for the monies that are in dispute, none of the Claimants have voiced opposition to the agreements they executed. However, we do not feel that in the absence of a challenge to the provisions of the purchase agreement by one or more of the Claimants, we are prohibited from considering whether or not the Oasis purchase agreements are invalid under I.C. § 72-802.

2. First, these matters arise under the statutory responsibilities created by I.C. § 72-404. In full, that section provides:

> Lump sum payments. Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for compensation may, on

> application to the commission by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined, with the approval of the commission.

3. Therefore, it matters not that the parties have provisionally settled their disputes unless the Commission, too, can be satisfied that the settlements are in the best interest of the parties. The fact that none of the Claimants in these proceedings have seen fit to challenge the propriety of the Oasis purchase agreements informs, but does not govern, the Commission's inquiry into whether or not these settlements are in the best interest of the parties. Indeed, were we to adopt Oasis' reasoning, the Commission would never be able to consider whether or not a proposed settlement is in the best interest of the parties since the parties, having provisionally settled their disputes, can no longer be said to have matters in controversy.

4. In summary, I.C. § 72-404 vests the Commission with the responsibility to ascertain whether the proposed lump sum settlements are in the best interest of the parties. Part and parcel of that determination is the Commission's assessment of whether or not the provisions of I.C. § 72-802 bar Oasis from access to the proceeds of settlement. In each of the three cases referenced above, the Commission still has before it for consideration whether the lump sum settlement agreement should be approved. Therefore, notwithstanding that the parties are in apparent agreement concerning the disposition of the proceeds of settlement, the Commission's inquiries concerning the proposed settlement are not only appropriate, but required.

II.

5. Oasis also challenges the Industrial Commission's jurisdiction to review the propriety of the purchase agreements between Oasis and the Claimants, and each of them. Under I.C. § 72-707, the Commission has jurisdiction to consider all questions arising under the Workers' Compensation laws of this state. *See, Williams v. Blue Cross of Idaho*, 2011 Idaho

126, 260 P.3d 1186 (2011); *Van Tine v. Idaho State Insurance Fund*, 126 Idaho 688, 889 P.2d 717 (1994); *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 106 P.3d 455 (2005). Per I.C. § 72-404, the Commission has the responsibility to approve lump sum settlement agreements and, in so doing, must determine that the settlement is in the best interest of the parties. It necessarily follows that the Commission has jurisdiction to clarify claimant's rights under the lump sum settlement agreement that is presented to the Commission for approval. *See, Williams v. Blue Cross of Idaho, supra*. It is also worth noting that the statutory provision which may invalidate the Oasis purchase agreement is a statute specific to the Workers' Compensation laws, and the Commission clearly has jurisdiction to consider whether one of the provisions of the statutory scheme it administers affects Oasis' claim to the proceeds of a workers' compensation settlement.

6. For these reasons, the Commission rejects Oasis' assertion that it does not have jurisdiction over the subject matter of this dispute. The questions before the Commission are clearly questions arising under the Workers' Compensation laws of this state.

III.

I.C. § 72-802 provides:

> Compensation not assignable -- Exempt from execution. No claims for compensation under this law, including compensation payable to a resident of this state under the worker's compensation laws of any other state, shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors, except the restrictions under this section shall not apply to enforcement of an order of any court for the support of any person by execution, garnishment or wage withholding under chapter 12, title 7, Idaho Code.

7. This statute, and similar provisions found under the laws of other states, appears, at first blush, to bar two types of actions. First, the statute prohibits the assignment of claims. Second, the statute prohibits the claims of creditors against compensation and claims therefor.

With respect to the statutory prohibition against the assignment of claims, Oasis acknowledges that an assignment took place. However, it argues that the assignment was not a prohibited assignment of a claim. Rather, the assignment made by each of the three Claimants to Oasis is of a non-prohibited type; the assignment made by the Claimants was of a contingent right to the proceeds of a workers' compensation settlement. Oasis argues that had the Idaho legislature intended to prohibit this type of assignment, the statute would have so stated. In other words, the legislature would have prohibited not only the assignment of "claims for compensation," but also the assignment of "compensation." This argument, according to Oasis, finds its best support in the fact that the prohibition applicable to creditors applies not only to "claims for compensation," but to "compensation" as well. The argument is that the legislature clearly appreciated a distinction between compensation and claims therefor in connection with the prohibition against the claims of creditors, and it must therefore be presumed that it understood the significance of prohibiting the assignment of only "claims for compensation," instead of "claims for compensation" and "compensation." This argument has found good traction in several jurisdictions.

8. In *Kentucky Employers' Mutual Insurance v. Novation Capital, LLC*, 2011 W.L. 832316 (Ky. Ct. App. February 25, 2011) claimant entered into a settlement of his workers' compensation case under the terms of which he would receive $400 per week for 70 weeks, one lump sum payment of $150,000 and $486 for 520 weeks. Thereafter, claimant entered into an agreement with Novation Capital, pursuant to the terms of which claimant assigned his right to the proceeds of his structured settlement in exchange for a lump sum of $112,952.

The workers' compensation surety objected to the agreement, arguing that it violated the anti-assignment provisions of the Kentucky Workers' Compensation laws, which provided in pertinent part:

> [n]o claim for compensation under this chapter shall be assignable, except court or administratively ordered child support pursuant to KRS 403.212. All compensation and claims therefor, except child support obligations, shall be exempt from all claims of creditors.

Noting the general rule that courts are required to construe words and phrases according to their usual, ordinary and every day meaning, the court rejected the surety's challenge, reasoning that by its express language the statute only prohibited the assignment of "claims," not the assignment of "compensation." Supporting this conclusion was the court's analysis of the broader language prohibiting the claims of creditors. In this regard, the court stated:

> Significantly, the second sentence of the statute distinguishes claims and compensation. As pointed out by the circuit court in its thoughtful analysis, had the General Assembly intended to prohibit the assignment of an award or settlement, it could have simply included language expressing such intent. Based on similar facts, the Kentucky Supreme Court reached the same result.
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> In *Newberg*, the injured employee and his employer entered into a settlement agreement that provided for reimbursement by the Special Fund for amounts determined to be the responsibility of the Fund but paid by the employer pursuant to the terms of the agreement.

9. In *Rapid Settlements LTD's Application for Approval of Structured Settlement Payment Rights v. Symetra Assigned Benefits Service Company*, 133 Wash. Ct. App. 350, 136 P.3d 765 (2006), North Carolina resident Hargette was the beneficiary of a structured settlement in a North Carolina workers' compensation case. To fund the settlement payments, employer/surety purchased an annuity from Symetra Life Insurance Company. The settlement agreement and the annuity contract prohibited Hargette from assigning his right to payment. Time passed, and at some point, Hargette arranged to give up his right to some of his future

periodic payments to Rapid Settlements LTD, in exchange for a lump sum payment. As required by Washington law, Rapid notified Symetra and sought court approval over Symetra's objection.

In addition to arguing that the annuity contract itself prohibited the assignment of the right to periodic payments, Symetra argued that applicable North Carolina Workers' Compensation law also prohibited the assignment by Hargette of his right to receive periodic payments under the annuity contract. In particular, North Carolina law provided:

> No claim for compensation under this Article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

To this argument, Rapid responded that by its specific language, the North Carolina Act bars assignment only of "claims for compensation," not the right to payments achieved by the settlement of such claims.

10. The Washington court ruled that the phrase "all compensation and claims therefor" clearly expressed an intention on the part of the North Carolina legislature to distinguish between claims for compensation and compensation itself. Had North Carolina intended to bar assignment of compensation itself, the statute would have been worded differently. For example, North Carolina could have stated the statutory prohibition against assignments as follows, had it wished to prohibit both the assignment of claims and compensation therefor:

> No compensation and no claims for compensation under this article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

11. The statutory language at issue in both cases discussed above is similar, but not identical, to the Idaho statutory scheme. In connection with the issue currently before the Industrial Commission, the language of the statute prohibiting the assignment of claims bears

closer examination. Following the 2009 amendment to I.C. § 72-802, the section of the statute dealing with the prohibited assignments reads as follows:

> Compensation not assignable – exempt from execution. No claims for compensation under this law, including compensation payable to a resident of this state under the workers' compensation laws of any other state shall be assignable . . .

12. It is immediately apparent that the non-assignment provisions of I.C. § 72-802, though similar to the statutes at issue in the Kentucky and Washington cases discussed above, contains some significant differences. Against the suggestion that Idaho, too, is among those jurisdictions which distinguish between the assignment of claims and the assignment of compensation, there are two components of the statutory language which suggest otherwise. First, the title of the statute plainly states that "compensation [is] not assignable." Anticipating the need to reconcile this language with the interpretation it promotes, Oasis argues that the title of the statute must be ignored where it conflicts with the unambiguous direction of the body of the statute. In other words, Oasis argues that the title of the statute cannot be used to create an ambiguity where none otherwise exists. Cited in support of this proposition are *Kelso and Irwin, P.A. v. State Insurance Fund*, 134 Idaho 130, 997 P.2d 591 (2000); and *State v. Peterson*, 141 Idaho 473, 111 P.3d 158 (2004). In *Peterson*, the court ruled that although the title is a part of the statute, it may not be used as a means of creating an ambiguity when the body of the act itself is clear. We believe that Oasis has correctly apprehended Idaho's adoption of this general rule of statutory construction. However, as developed below, we also believe that the body of the statute is not without ambiguity, thus making it appropriate to consider the title of the statute, along with the language of the statute, itself, to infer the legislature's intentions.

13. As noted, the statute ostensibly prohibits only the assignment of claims, while protecting both claims and compensation from the claims of creditors. However, it is important

to recognize that in the section of the statute prohibiting the assignment of claims, the 2009 amendment to the statute specifies that this prohibition against the assignment of claims includes "compensation payable" to an Idaho resident under the workers' compensation laws of another state. Had it been the intent of the legislature to narrowly define the word "claim" to mean only the assignment of claimant's chose in action, not to include the proceeds payable as a consequence of the successful prosecution of that claim, then the amendment would have been stated differently, or incorporated elsewhere in the statute. To be consistent with the construction urged upon the Commission by Oasis, the statute could have been written as follows:

> No claims for compensation under this law, including claims for compensation payable to a resident of this state under the workers' compensation laws of any other state . . .

As well, to give effect to the construction urged by Oasis, the 2009 amendment could have been inserted at a different place in the statute:

> No claims for compensation under this law shall be assignable, and all compensation and claims therefor, including compensation payable to a resident of this state under the workers' compensation laws of any other state, shall be exempt from all claims of creditors . . .

14. Instead, the amendment makes it clear that "claims," which term includes compensation payable to an Idaho claimant under the workers' compensation laws of some other state, are not assignable. This structure strongly suggests that the legislature's use of the term "claim" was intended to include not only a prohibition against the assignment of the cause of action, but also a prohibition against the assignment of the proceeds payable to an injured worker as the result of his or her workers' compensation claim.

15. To the extent that the non-assignment language of the statute is deemed ambiguous, we think that the title of the statute, which is not utilized in this context to create an

ambiguity, actually lends further support to the proposition that what the legislature intended was to prohibit both the assignment of claims, and proceeds thereof.

16. This reading of I.C. § 72-802 finds support in the recent case of *Williams v. Blue Cross of Idaho, supra*. Discussing in the legislature's purpose in adopting I.C. § 72-802, the court observed:

> The purpose behind exempting workers' compensation proceeds from the claims of creditors is not to allow the injured worker to recover twice for his or her medical expenses but, rather, to protect the worker and his or her family from the financial difficulties associated with the worker's injury.
>
> > "Workers' compensation awards are intended not to make the worker rich, but to keep an injured worker and the worker's family from becoming destitute because the breadwinner has been injured and cannot work. In order to protect this award and further this policy, workers' compensation statutes typically provide that these awards cannot be attached by creditors. Moreover, they provide that the worker cannot voluntarily assign the proceeds, primarily in order to ensure that injured workers who may have a valid claim but have not yet received the first payments and are desperate for cash do not sell their rights at fire sale prices." *Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards*, 48 A.L.R.5th 473 (1997).
>
> *Williams v. Blue Cross of Idaho*, 260 P.3d at 1193.

17. The Court paraphrased the I.C. § 72-802 prohibitions as follows:

> The plain language of I.C. § 72-802 prohibits (1) a workers' compensation claimant from assigning workers' compensation proceeds to a third party, and (2) a creditor, other than one seeking to recover child support, from asserting a claim against workers' compensation proceeds paid to a claimant.

Although the Court was well aware of the specific language used by the legislature in crafting the provisions of the statute, it nevertheless concluded that the prohibition against assignment extends to the assignment of workers' compensation proceeds, exactly what has been attempted in these cases under the Oasis purchase agreement. We also think it important that the *Williams* Court made a point of emphasizing that I.C. § 72-802 is intended to protect the injured worker

against exactly the type of practice that is at issue in this matter. By its citation to the ALR 5th Article quoted above, the Court has recognized that one of the purposes of I.C. § 72-802 is to ensure that injured workers with valid, yet unrecognized, claims, will not sell their rights at "fire sale prices" in order to keep body and soul together during the pendency of their claim. The Court's explanation of the legislative purpose underline I.C. § 72-802 precisely anticipates the facts of these cases.

18. The assignment at issue was an assignment of an expectancy, or a contingent right to receive workers' compensation benefits. Certainly, at the time of the assignment, these were rights that had not yet ripened to a certainty. However, the assignment of a conditional right to something is well recognized under Idaho law. See, *Simplot v. Western Heritage Insurance Company*, 132 Idaho 582, 977 P.2d 196 (1999); *Fuller v. Callister*, 150 Idaho 848, 252 P.3d 1266 (2011); *Capps v. FIA Card Services*, 149 Idaho 737, 240 P.3d 583 (2010). We see nothing in the facts of this case that makes the Oasis purchase of a contingent right to the proceeds of a workers' compensation claim anything less than an "assignment" of an expectancy, under Idaho law.

19. We are not unmindful of the fact that the prosecution of a contested workers' compensation claim is a sometimes protracted affair. We are aware of the fact that it is not unusual for a typical workers' compensation claimant to be deemed a poor credit risk, unable to access any of the more traditional, and cheaper, forms of credit available in the community. We recognize that whatever else might be said about the cost associated with obtaining money from a legal financing company such as Oasis, these companies fill a need as lenders of last resort who can provide an injured worker with the means to obtain what is absolutely necessary to keep a roof over his head, or put food on the table, until he recognizes something from his workers'

compensation claim. We are loathe to deny the injured workers of this state this last choice, especially when we have nothing to offer Claimant during the pendency of a litigated claim. However, we believe that the Oasis business model, notwithstanding that it is styled as a purchase/sale, nevertheless relies upon an assignment of a contingent right to workers' compensation benefits. We find, therefore, that these assignments are invalid under I.C. § 72-802.

20. Because we have found that a prohibited assignment of Claimants' rights to workers' compensation benefits took place, we do not reach the question of whether or not Oasis is also a creditor who is prohibited from making a claim against compensation, or claims therefor.

21. Although we have found that the Oasis agreements rely upon a prohibited assignment, we also recognize that our ruling has the potential to create a windfall to Gould, Tylinksi and Denny. To prevent unjust enrichment to these Claimants, we believe that where a Claimant's recovery in an underlying workers' compensation case is otherwise sufficient to implicate the requirement to pay the Oasis ownership amount, the equitable solution is to require the injured worker to reimburse Oasis in the amount of the purchase price originally paid by Oasis to the injured worker at the outset of the relationship.

CONCLUSIONS OF LAW AND ORDER

1. The purchase agreement and associated documents executed by Tylinski, Gould and Denny create assignments of an expectancy in the proceeds of their workers' compensation claims, which is prohibited under the provisions of I.C. § 72-802;

However, to prevent unjust enrichment to Tylinksi, Gould and Denny, and to return the parties, as nearly as possible, to the positions they were in prior to the prohibited assignments,

Tylinksi, Gould and Denny shall each reimburse Oasis in the amount of the purchase price paid by Oasis under the terms of the purchase agreements at issue;

2. On the Commission's Notice of Reconsideration of the lump sum settlement at issue in *Gould v. Ormond Builders*, Oasis is directed to repay to Claimant the sum of $3,811.00, representing the difference between the negotiated settlement of the Oasis ownership amount ($7,461.00) and the purchase price originally paid by Oasis ($3,650.00). The subject lump sum settlement agreement is, in all other respects, approved, per the Commission's Order of September 2, 2010;

3. In the matter of *Tylinski v. Guerdon Enterprises, LLC*, and pursuant to the December 9, 2010 Order approving, in part, the lump sum agreement, counsel for Claimant is hereby ordered to release to Claimant the sum of $3,620, representing the difference between the amount retained by Counsel in his client trust account at the direction of the Commission ($5,220.00) and the purchase price paid by Oasis, ($1,600.00). Counsel is directed to release to Oasis the sum of $1,600.00;

4. In the matter of *Denny v. URS*, and pursuant to the Commission's Order approving, in part, Stipulation and Agreement for Lump Sum Settlement filed April 25, 2011, counsel for Claimant is hereby directed to release to Claimant the sum of $2,574.25, representing the difference between the amount retained by Counsel in his client trust account at the direction of the Commission ($7,724.25) and the purchase price paid by Oasis ($5,150.00). Counsel is directed to release the sum of $5,150.00 to Oasis.

5. This order is final and conclusive as to all matters decided herein pursuant to I.C. § 72-718.

IT IS SO ORDERED.

DATED this _13th___ day of ___January_____, 2012.

INDUSTRIAL COMMISSION

_/s/_____
Thomas E. Limbaugh, Chairman

_/s/_____
Thomas P. Baskin, Commissioner

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

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _13th____ day of _January_____, 2012, a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON ORDER TO SHOW CAUSE,** was served upon the parties by regular United States Mail upon each of the following:

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