

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In the Matter of:)	
)	
CASEY JONES,)	
)	
Claimant.)	IC 2007-040532
_____)	IC 2007-040533
)	
KLOEPFER, INC., Employer, and)	
INSURANCE COMPANY OF THE)	
STATE OF PENNSYLVANIA, Surety,)	
)	
Claimants,)	
)	
v.)	
)	
MAVERICK BROTHERS TRUCKING,)	
L.L.C., Employer, and WORKERS)	ORDER
COMPENSATION FUND OF UTAH,)	
Surety,)	
)	
Defendants.)	
_____)	
)	
MAVERICK BROTHERS TRUCKING,)	
L.L.C.,)	FILED
)	
Cross-Claimant,)	01/27/2012
)	
v.)	
)	
WORKERS COMPENSATION FUND)	
OF UTAH,)	
)	
Cross-Defendant.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

WILLIAM A PARSONS
PO BOX 910
BURLEY ID 83318-0910

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

WORKERS COMPENSATION FUND OF UTAH
392 E 6400 S
SALT LAKE CITY UT 84107-7592

WORKERS COMPENSATION FUND OF UTAH
PO BOX 2227
SANDY UT 84091-2227

sb

_____/S/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In the Matter of:)

CASEY JONES,)

Claimant.)

IC 2007-040532

IC 2007-040533

KLOEPFER, INC., Employer, and)
INSURANCE COMPANY OF THE)
STATE OF PENNSYLVANIA, Surety,)

Claimants,)

v.)

MAVERICK BROTHERS TRUCKING,)
L.L.C., Employer, and WORKERS)
COMPENSATION FUND OF UTAH,)
Surety,)

Defendants.)

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

MAVERICK BROTHERS TRUCKING,)
L.L.C.,)

Cross-Claimant,)

FILED

v.)

01/27/2012

WORKERS COMPENSATION FUND)
OF UTAH,)

Cross-Defendant.)

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor. On November 30, 2007, Casey Jones filed his Complaint (IC 2007-040532) against Defendant Employer Maverick Brothers Trucking, L.L.C., (Maverick Brothers), and his Complaint (IC 2007-040533) against Kloepfer, Inc. (Kloepfer), and its surety, Insurance Company of the State of Pennsylvania. The claims were consolidated by order of the Commission on February 15, 2008. By August 2008, Kloepfer and its surety, in recognition of Idaho Code §§ 72-216 and 72-313, began paying benefits to Jones.

On October 30, 2008, Kloepfer and its surety filed its Complaint against Maverick Brothers. On July 17, 2009, Maverick Brothers filed its Complaint against Workers Compensation Fund of Utah (WCF). WCF did not respond. On December 21, 2009, Maverick Brothers duly filed and served its Notice of Intent to Take Default against WCF. WCF did not respond. On May 17, 2010, Maverick Brothers duly filed and served its Motion for Entry of Default against WCF pursuant to JRP 6. WCF did not respond. On September 27, 2010, the Commission issued its Order Entering Default of WCF pursuant to JRP 6.

On March 10, 2011, the Commission approved Jones' settlement agreement with Kloepfer and its surety, and dismissed Jones' claims against Kloepfer and its surety. Jones asserts no further claim against any party herein and has taken no further action in these proceedings.

On July 20, 2011, the Referee conducted a hearing in Twin Falls. Casey Jones was not present nor represented by counsel. Maverick Brothers was represented by William Parsons of Burley. Kloepfer and its surety were represented by Scott Wigle of Boise. WCF was provided notice of the hearing, but was not present nor represented by counsel at hearing. Maverick

Brothers and Kloefer presented oral and documentary evidence. No post-hearing depositions were taken. Briefs were filed and the matter came under advisement on October 7, 2011.

ISSUES

The issues to be decided are:

1. Whether WCF was the surety with coverage for Maverick Brothers at the time of Jones' industrial injury.¹
2. Whether Kloefer was Jones' statutory employer at the time of the industrial accident.
3. Whether WCF and/or Maverick Brothers and/or its principals are obligated to indemnify Kloefer and its surety for workers' compensation benefits paid to and on behalf of Jones.

CONTENTIONS OF THE PARTIES

Maverick Brothers and Kloefer acknowledge that Jones was a direct employee of Maverick Brothers and suffered an industrial accident on July 31, 2007. Kloefer acknowledges it is Jones' statutory employer. Maverick Brothers and Kloefer both assert that WCF is liable for workers' compensation benefits for Jones' industrial accident and is required to indemnify Kloefer and its surety for workers' compensation benefits paid to and on behalf of Jones. Kloefer alleges that if WCF bears no liability, Kloefer is entitled to reimbursement from Maverick Brothers and/or its principals for the benefits paid to Jones.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

¹ Pursuant to the Notice of Hearing, Maverick Brothers was allowed to present at hearing its prima facie case against WCF, against whom default was previously entered in accordance with JRP 6.

2. The testimony of Bret Andersen taken at hearing;
3. Kloepfer's Exhibits 1 through 4, admitted at hearing; and
4. Maverick Brothers' Exhibits 1 through 6, admitted at hearing.

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

FINDINGS OF FACT

1. Kloepfer is an Idaho corporation involved in road construction and maintenance.
2. Maverick Brothers is an Idaho limited liability company owned by Bret and Bart Andersen. Bret resides in Heyburn, Idaho, while Bart resides in West Hooper, Utah. At all relevant times, Maverick Brothers owned and operated dump trucks in Utah and Idaho. All trucks were licensed to operate in both Utah and Idaho. Maverick Brothers performed no more than 20% of its business in Idaho, and at least 80% of its business in Utah. Maverick Brothers maintained a shop in Ogden, Utah.
3. In preparation for commencing operations, Bret and Bart Andersen sought workers' compensation insurance in Idaho and were told: "that there was going to be too much work in Utah, that you'd be better off to get Utah workmen's comp." Transcript p. 26, ll. 9-11.
4. Bret and Bart Andersen then completed an on-line application for workers' compensation insurance coverage with WCF. The application listed Bret's mailing address in Idaho, and Bart's address in Utah. The application expressly indicated that Maverick Brothers' business included: "Dump truck business primary [sic] hauling gravel," employees who traveled outside of the State of Utah on business, and that "[a]ll work is in Utah and Idaho." Kloepfer's Exhibit 1 (Bret Andersen Deposition, Exhibit 2). A WCF employee subsequently telephoned Bret Andersen, discussed Maverick Brothers' application, and required that Bret "break down

how much work was going to be in Idaho, how much work was going to be in Utah. That's when we told them 80 percent in Utah, 20 percent in Idaho." Kloepfer's Exhibit 1 (Bret Andersen Deposition, p. 29, ll. 10-13).

5. Bret testified that he advised the WCF employee that Maverick Brothers' office was in Idaho, its trucks were licensed in Idaho, and it would be doing business in Utah and Idaho:

A. It's been a while, but I remember filling out an application on-line, and then I believe our representative was Holly. We contacted Holly. We discussed our business and what we were going to do. We explained in lots of detail that the office was in Idaho, the majority of the work was going to be in Utah, but there was going to be some work in Idaho and Utah.

....

THE WITNESS: Heather? Maybe it is Heather. Heather or Holly.

(BY MR. WIGLE) Whether it was Heather or Holly, is it your understanding that she was an employee of the workers' compensation fund, or did she work for someone else, like an independent agency?

A. No, she was definitely an employee of Utah workmen's comp.

....

Q. All right. In your discussions with this individual, Heather or Holly, were you advised that you might need a separate policy in the state of Idaho?

A. Never. Not once was [sic] we advised to have two different coverages.

Q. What was your understanding of what you were buying from this company?

A. Workmen's comp for our drivers in Idaho and Utah.

Q. Did Heather or Holly ever say anything differently to you?

A. No, she did not.

Q. Did you get a policy through the Workers' [sic] Compensation Fund of Utah?

A. Yes. And part of that application is you had to, you know, state where you're licensing the trucks, how you were licensing them. I mean, there was quite a bit of detail that went into the application.

Q. Where were the trucks licensed, and how did that work?

A. We licensed them in Idaho. And they call it, I believe, an IRP, which you can run those from state to state. So an IRP license would let us run in Idaho and Utah under the Idaho license plate.

....

Q. Was that disclosed to the people at the Utah fund?

A. Yes. It was called, I believe, IRP plates on the commercial trucks.

Transcript, p. 25, l. 23 through p. 28, l. 18.

6. On March 25, 2006, WCF issued a workers' compensation insurance policy to Maverick Brothers. Maverick Brothers paid annual premiums of \$2,367.50.

7. Between March 25, 2006, and March 26, 2007, a Maverick Brothers' employee, Brandon White, smashed his finger while helping remove a tarp from a truck in Burley. White worked for Maverick Brothers in both Utah and Idaho. He received emergency medical treatment at a hospital in Burley. The industrial injury required skin grafting in an effort to save White's finger. He was off of work for approximately six months. WCF was notified that the industrial accident occurred in Idaho and that White received medical treatment in Idaho. WCF accepted the claim.

8. On March 27, 2007, Maverick Brothers renewed its workers' compensation insurance policy with WCF. Maverick Brothers timely paid all premiums.

9. In the summer of 2007, Brandon White worked full-time for Maverick Brothers. In July 2007, Maverick Brothers subcontracted with Kloepfer, a contractor for several Idaho road maintenance projects, to provide two dump trucks and drivers for Kloepfer's projects. Kloepfer paid Maverick Brothers by the hour for use of the two trucks and drivers. Maverick Brothers paid its drivers and maintained liability insurance on the trucks and workers' compensation insurance for the drivers.

10. On or about July 6, 2007, Bret Andersen met with Casey Jones and another driver in Burley. After a brief discussion, Maverick Brothers hired Jones to drive one of its dump trucks. Jones and the other driver were present when Bret Andersen “called the insurance company, had us put on the insurance.” Kloefer’s Exhibit 3 (Jones Deposition, p. 46, ll. 1-3). Jones believed this was on the liability insurance. Kloefer’s Exhibit 3 (Jones Deposition, p. 97, ll. 6-7). Jones then traveled with Bret Andersen to north Salt Lake City where Jones was assigned a Maverick Brothers’ dump truck, which Jones then drove back to Idaho. Maverick Brothers assigned Jones to work on Kloefer’s Idaho projects. Maverick Brothers anticipated, and Jones understood at the time of hiring, that upon completion of the Idaho projects, Maverick Brothers would return the truck to Utah and Jones would be assigned work in Utah.

11. On July 31, 2007, Jones suffered an industrial accident arising out of and in the course of his employment with Maverick Brothers when the engine brake failed and he lost control of the dump truck he was driving on a steep mountain road. Jones bailed out of the truck immediately before it ran over an embankment by Pomerelle Ski Resort near Burley. He sustained serious injuries, including multiple fractures of his left lower extremity. As a result of his industrial accident, Jones underwent extensive medical treatment, was unable to work for an extended period, and ultimately sustained permanent impairment of 4% of the whole person.

12. At the time of the accident, Maverick Brothers fully believed it had insured its liability to Jones under the Idaho Workers’ Compensation Act through WCF. At the time of the accident, Kloefer had assured its liability under the Idaho Workers’ Compensation Act with the Insurance Company of the State of Pennsylvania.

13. Maverick Brothers assisted Jones in filing his claim for workers’ compensation benefits with WCF; however, WCF denied coverage. Jones then filed his claim in Idaho against

Maverick Brothers and Kloepfer. After discussions with Maverick Brothers, Kloepfer and its surety commenced payment of workers' compensation benefits to Jones pursuant to Idaho Code § 72-216.

14. Jones, Kloepfer and its surety resolved all claims between themselves by a lump sum settlement agreement which was approved by the Industrial Commission on March 10, 2011. In accordance with the lump sum settlement agreement, Kloepfer's surety paid to Jones, or on his behalf, workers' compensation benefits pursuant to Idaho Code § 72-216 totaling \$218,604.99. Maverick Brothers, Kloepfer and its surety now seek reimbursement for this amount from WCF.

15. Having observed Bret Andersen at hearing, and compared his testimony to other evidence in the record, the Referee finds that Bret Andersen is a credible witness.

DISCUSSION AND FURTHER FINDINGS

16. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

WCF'S LIABILITY

17. The first and primary issue is whether WCF was the surety with coverage for Maverick Brothers of Jones' industrial accident. Resolution of this issue requires analysis of the Commission's jurisdiction, review of coverage under WCF's written policy, and examination of whether WCF should be estopped to deny coverage for Jones' accident.

Commission jurisdiction

18. WCF is a creation of Utah statute, with statutory authority to provide workers'

compensation insurance in Utah and other states. See Utah Code § 31A-33-103.5. However, WCF is not a state agency, its assets are not owned by the State of Utah, and the State of Utah has no control over WCF or its assets. “As a quasi-public corporation, the WCF exists to serve an essential public purpose, providing workers’ compensation insurance, all the while being private in ownership.” Workers’ Compensation Fund v. State, 125 P.3d 852, 859 (Utah 2005).

19. Kloepfer asserts that since WCF had statutory authority to write workers’ compensation coverage in states other than Utah, it had the ability to offer coverage for Maverick Brothers in the state of Idaho. Granted that WCF may have had the ability, conferred by statute, to write workers’ compensation policies in the state of Idaho, it does not follow that it had the authority to do so. At all relevant times, WCF was not approved by the Industrial Commission to transact workers’ compensation insurance covering the liability of Idaho employers, which is a prerequisite for conducting such business under Idaho Code § 72-301. Clearly, any surety having received such approval has also agreed to submit to the jurisdiction of the Industrial Commission. The question presented by the instant matter is whether the Industrial Commission may exercise jurisdiction over an out of state surety who has neither sought, nor obtained, the approval of the Commission to transact business in this state.

20. The facts of this case establish that the Industrial Commission does have jurisdiction over WCF in the instant matter.

21. First, the Industrial Commission has jurisdiction to determine all questions arising under the workers’ compensation laws of this state. See, Idaho Code § 72-707. Next, it is axiomatic that when the Industrial Commission has jurisdiction over an employer, it also has jurisdiction over the employer’s surety. See, Idaho Code § 72-307; Smith v. O/P Transportation, Inc., 120 Idaho 123, 814 P.2d 23 (1991). Here, and as developed below, WCF entered into a

contract with an Idaho employer, Maverick Brothers, to provide workers' compensation coverage for Idaho claims. That WCF did so without the approval of the Industrial Commission is largely irrelevant to the question of whether WCF's actions implicate the jurisdiction of the Commission. In addition to contracting with Maverick Brothers, WCF has a past history of adjusting and paying benefits on another Idaho claim, that of Brandon White, for the same employer. The conduct of WCF in connection with Maverick Brothers is sufficient to allow the Industrial Commission to exercise jurisdiction over WCF in this case.

WCF's policy coverage

22. WCF expressly confirmed that Maverick Brothers had a workers' compensation policy with WCF for the period March 25, 2007 to July 31, 2007, yet WCF has denied coverage for Jones' industrial accident. Kloefer's Exhibit 1 (Andersen Deposition, Exhibit 3).

23. The Information Page of WCF's policy to Maverick Brothers provides: "Workers Compensation Insurance: Coverage A of the policy applies to the Workers Compensation Law of the states listed here: Utah[.] Other states insurance: NONE[.]" Maverick Brothers' Exhibit 4. An exclusion endorsement to the WCF policy expressly excluded Bart and Bret Andersen from coverage. Maverick Brothers' Exhibit 5. However, the complete policy is not contained in the record, nor does the record contain any policy provision excluding coverage for non-Utah employees. Such an exclusion was referenced by WCF through its claims adjuster, William Dobbs, who wrote to Maverick Brothers' counsel on February 20, 2008:

We acknowledge that you believe our denial of coverage was inappropriate because your client's application for insurance showed that they intended to do 80% of the work in Utah, and 20% in Idaho. We acknowledge that Maverick Brothers advised us some work would be done in Idaho. The reason for our denial, however, is that Mr. Jones was not a Utah employee.

As we said in our letter of October 19, 2007 to Mr. Jones (with a copy to Maverick Brothers Trucking) he was hired in Idaho, did all of his work in Idaho,

and had his accident in Idaho. There was no coverage for Idaho employees, or any other out of state employees, under Maverick Brothers [sic] policy with the Workers Compensation Fund.

Maverick Brothers' Exhibit 2.

24. WCF's denial, as set forth by Mr. Dobbs' letter, arises at least in part from a mistaken understanding of Jones' work for Maverick Brothers. Contrary to Mr. Dobb's letter, Jones did not do "all of his work in Idaho;" he also worked for Maverick Brothers in Utah. As already noted, his first day of work for Maverick Brothers required him to travel from Burley to Ogden, Utah, and then drive a Maverick Brothers' truck from Ogden back to Burley. Jones worked only approximately three weeks before his accident; however, both Jones and Maverick Brothers anticipated that after completing the Idaho projects, Maverick Brothers would assign Jones truck driving work in Utah.

25. While the record establishes that WCF's stated reason for denial was based, at least in part, upon erroneous information, without the complete policy of insurance—including criteria for defining a Utah employee—a conclusive determination of whether WCF's policy covered Maverick Brothers for Jones' industrial accident is not possible. Neither Maverick Brothers nor Kloepfer have proven that WCF's written policy of insurance with Maverick Brothers provided coverage for Jones' industrial accident.

Estoppel

26. Maverick Brothers and Kloepfer assert that WCF should be estopped to deny coverage for Jones' industrial accident. Both Idaho and Utah law recognize that under limited circumstances, an insurer may be estopped to deny coverage not provided—even expressly excluded—by its written policy.

27. In Lewis v. Continental Life and Accident Co., 93 Idaho 348, 461 P.2d 243

(1969), Bannock County changed life insurers in reliance upon Continental's agent's assurance that all individuals covered by the county's prior policy with Aetna would be covered by the new Continental policy. Several years later, Lewis claimed benefits after her husband's death. Continental denied the claim, asserting a policy provision that death benefits could be claimed only for active employees at the policy's inception, and noting that Lewis' husband had been disabled, and not an active employee, at all relevant times. The Court found that the county had changed insurers in reliance upon Continental's agents' assurance that all employees covered by the county's prior policy would be covered by Continental's policy. The Court then observed:

We have, on a number of occasions, cited and quoted with approval the words of the Supreme Court of Utah in the case of *Browning v. Equitable Life Assurance Society*,

'Insurance policies, while in the nature of written contracts, are not prepared after negotiations between the parties, to embrace the terms at which the parties have arrived in their negotiations. They are prepared beforehand by the insurer, and the company solicitors then sell the insurance idea to the applicant. Normally, the details and provisions of the policy are not discussed, except that the particular form of policy is best suited to give the applicant the protection he seeks. If he reads the policy he is generally not in a position to understand its details, terms, and meaning except that, in the event against which he seeks insurance, the company will pay the stipulated sums. He seldom sees the policy until it has been issued and is delivered to him. He signs an application blank in which the policy sought is described either by form number or by a general designation, pays his premium, and in due course thereafter receives, either from the agent or through the mails, his policy. Many of its terms and all of its defenses and super-refinements he has never heard of and would not understand them if he read them.' [*Browning v. Equitable Life Assurance Society*, 94 Utah 532, 561-562, 72 P.2d 1060, 1073 (1937).]

This Court, recognizing the character of the written insurance 'contract,' has long held, where a policy holder is induced to enter into contract in reasonable reliance on promises of or agreements with the soliciting representative of that insurance company thereby leaving the insured person or property otherwise unprotected, and the company profits from that change of position, that the insurance company is estopped to deny the liability for which it actually

contracted by raising provisions from its own printed policy form.

....

Here the defendant insurance company promised Bannock County it would cover all of its employees who had been covered under the Aetna plan. In reliance on that promise the county changed its insurer. Lewis also relied on that assurance and made no other provisions. Because of the county's reliance on its promise, the company has benefited through being able to collect premiums from the county which, for two years, included Lewis' contribution. All of the elements of estoppel are present[:] a promise, reliance, detriment to the insured person, and consequential profit to the company.

Lewis, 93 Idaho at 351-352, 461 P.2d at 246-247.

28. In Youngblood v. Auto-Owners Insurance Company, 111 P.3d 829 (Utah App. 2005), Youngblood's corporation purchased underinsured motorist coverage in reliance on Auto-Owners' representative's assurance that the policy would provide coverage if Youngblood were the victim of a pedestrian accident. Youngblood subsequently claimed benefits after being struck by a vehicle while walking through a parking lot. Auto-Owners denied coverage, citing express policy provisions. After reviewing estoppel cases from other jurisdictions, the Utah Court of Appeals concluded: "estoppel may bar an insurer's defense of noncoverage in the limited circumstances when an insurance agent makes material misrepresentations to a prospective insured before or at the inception of the contract and the prospective insured reasonably relies upon such misrepresentations in purchasing the insurance." Youngblood, 111 P.3d at 835. On appeal, the Utah Supreme Court affirmed, applying basic principles of estoppel and stating: "A party may recover under the doctrine of estoppel when an insurance agent makes material misrepresentations as to the policy provisions, the party reasonably relies on those misrepresentations in buying the coverage, and that reliance results in legal injury to the party." Youngblood v. Auto-Owners Insurance Company, 158 P.3d 1088, 1096 (Utah 2007).

29. In the present case, the elements of estoppel must be examined:

misrepresentation by the insurer, reasonable reliance by the insured, detriment to the insured, and profit by the insurer.

30. Misrepresentation by WCF. Bret Andersen testified in his deposition that after completing the on-line application for workers' compensation coverage, an employee of WCF, named Holly or Heather, telephoned him and extensively discussed Maverick Brothers' business and its application for workers' compensation insurance coverage. Holly or Heather was the representative assigned by WCF to work with Maverick Brothers. She required that Bret "break down how much work was going to be in Idaho, how much work was going to be in Utah. That's when we told them 80 percent in Utah, 20 percent in Idaho." Kloepfer's Exhibit 1 (Bret Andersen Deposition, p. 29, ll. 10-13). Bret further testified that WCF's employee assured him that, given Maverick Brothers' work allocation, 80% in Utah and 20% in Idaho, WCF would provide workers' compensation insurance coverage for Maverick Brothers' work in Idaho:

Q. Did Holly ever make a representation to you that you would be covered for work in Idaho?

A. Yes. Most definitely.

Q. She actually told you that?

A. Eighty/twenty.

Q. I don't quite understand by 80/20. What do you recall her saying?

A. That the work would be 80 percent Utah, 20 percent Idaho, on workman's comp. That's what we were paying for, that's what we believed was represented to us that we were covered.

Kloepfer's Exhibit 1 (Bret Andersen Deposition, p. 30, l. 22 through p. 31, l. 7).

31. Regardless of possible written policy exclusions for non-Utah employees, and without distinguishing between Utah and non-Utah employees, WCF's employee represented that WCF would provide workers' compensation coverage for Maverick Brothers' work, 80% in

Utah and 20% in Idaho. This representation occurred during the application process and before Maverick Brothers initially contracted with WCF for workers' compensation insurance coverage.

32. Reasonable reliance by Maverick Brothers. Maverick Brothers' reliance on the representation must be shown to have been objectively reasonable at the time it entered into the contract of insurance with WCF.

33. Analysis of reasonable reliance begins with the policy to the extent contained in the record. The policy information page indicates it applies to the state of Utah and no other state. For purposes of analysis, the Referee presumes that WCF's written policy contains one or more provisions effectively denying coverage for Jones' industrial accident, for the reason that Jones was not a Utah employee.

34. Balanced against these presumed policy provisions is unrefuted evidence that Maverick Brothers went to significant length to communicate the full extent of its operations to WCF, including and especially its work in Idaho, its mailing address in Idaho, and the licensing of its trucks in Idaho. Maverick Brothers' application also arguably notified WCF that Maverick Brothers' employees would be permanently located in both Utah and Idaho.

35. The WCF on-line application that Maverick Brothers' completed, contains a list of more than ten questions, each with a yes or no answer box and an area for explanation. Two questions appearing consecutively, and Maverick Brothers' responses, are particularly significant: "DO EMPLOYEES TRAVEL OUT OF STATE ON BUSINESS? YES All work is in Utah and Idaho[.] DOES APPLICANT HAVE EMPLOYEES PERMANENTLY LOCATED IN OTHER STATES? NO[.]" Maverick Brothers' Exhibit 1. While it may be that WCF intended by the second question to inquire whether the applicant had employees permanently located outside of Utah, these two consecutive questions, and Maverick Brothers' responses, can

reasonably be read as Maverick Brothers' representation to WCF that Maverick Brothers had no employees located in states other than Utah and Idaho, thus fairly notifying WCF that Maverick Brothers had employees permanently located in both Utah and Idaho. Ambiguity in WCF's application form, insofar as it is the foundation for issuance of WCF's insurance policy, or becomes part of the insurance contract, is resolved against WCF and in favor of Maverick Brothers. See Lewis v. Continental Life and Accident Co., 93 Idaho 348, 461 P.2d 243 (1969).

36. Maverick Brothers clearly informed WCF of the extent of its operations in Idaho, and specifically sought assurance from WCF's employee that WCF would cover Maverick Brothers for work done in both Utah and Idaho. Having fully communicated the extent of its Idaho operations, Maverick Brothers' reliance upon WCF's employee's representation that WCF would cover Maverick Brothers in Idaho is reasonable.

37. Additionally, Maverick Brothers' reliance is rendered more reasonable by its experience with WCF's coverage of Brandon White's claim for an Idaho industrial injury prior to Maverick Brothers' renewal of its WCF policy in March 2007.² Bret Andersen explained:

Q. Did you ever receive any documents that there was any exclusion for people connected with Maverick other than you and your brother?

A. No, we did not.

Q. Was the first time you knew that Workmen's Compensation Fund of Utah was not going to provide coverage was after you submitted the [Jones] claim?

A. That's correct.

Q. And you never knew before?

A. Absolutely not. We'd previously had a claim with a Brandon White on a finger. Everything went fine on that one.

² White's industrial injury to his finger occurred before Jones' accident. White was off of work due to his finger injury for approximately six months. In the summer of 2007, White was working full-time for Maverick Brothers when it hired Jones. Thus it is clear that WCF accepted White's claim during the first year of Maverick Brothers' coverage with WCF.

Q. Where did that happen?

A. That actually happened in Idaho, and he was working in Utah for us.

....

Q. And they covered that?

A. They covered that.

Transcript, p. 37, l. 14 through p. 38, l. 8.

38. The fact that WCF covered White's industrial accident, knowing White's accident occurred in Idaho and he received medical treatment in Idaho, makes Maverick Brothers' reliance on WCF's employee's initial representation even more reasonable, as WCF's coverage of White's claim occurred prior to Maverick Brothers' decision to renew the WCF policy in March 2007.

39. The Referee finds that Maverick Brothers reasonably relied upon WCF's employee's representations that WCF would cover Maverick Brothers' workers' compensation liability in Idaho as well as in Utah.

40. Detriment to Maverick Brothers. Maverick Brothers reasonably relied upon WCF's employee's misrepresentation of Idaho coverage, not realizing the need to seek any other workers' compensation insurance coverage for its work activities in Idaho. Absent coverage by WCF, Maverick Brothers stands uninsured for Jones' industrial accident and benefits due him, totaling \$218,604.99.

41. Profit to WCF. WCF received annual premiums from Maverick Brothers of \$2,367.50 for at least two years for workers' compensation insurance coverage.

42. Conclusion. The Idaho Supreme Court has summarized the function of the doctrine of estoppel in such cases:

The purpose of the doctrine of estoppel in insurance cases is to enforce the contract as originally agreed upon by the parties. We are not writing a new contract. We are only refusing to allow the insurance company to replace the original bilateral agreement with its own unilaterally drafted insurance form.

Lewis v. Continental Life and Accident Co., 93 Idaho 348, 353, 461 P.2d 243, 248 (1969).

43. The Referee finds that WCF is estopped to deny coverage for Jones' industrial accident. At the time of Jones' industrial accident, Maverick Brothers was insured for its liability under the Idaho Workers' Compensation Act by WCF. WCF is the workers' compensation surety for Maverick Brothers for the liability of Maverick Brothers to Jones for his industrial accident and injuries in Idaho.

STATUTORY EMPLOYER

44. The second issue is whether Kloefer was Jones' statutory employer at the time of the industrial accident. Kloefer has acknowledged that it contracted with Maverick Brothers who in turn employed Jones. Kloefer was Jones' statutory employer pursuant to Idaho Code § 72-216.

INDEMNIFICATION

45. The final issue is whether WCF and/or Maverick Brothers and/or their principals are obligated to indemnify Kloefer and its surety for workers' compensation benefits paid to and on behalf of Jones. Pursuant to Idaho Code § 72-216, WCF is obligated to indemnify Kloefer \$218,604.99, the total amount of Jones' workers' compensation benefits. Having assured their obligations under the Idaho Workers' Compensation Act through WCF, Maverick Brothers' principals are not personally liable to indemnify Kloefer for any benefits due Jones.

CONCLUSIONS OF LAW

1. Maverick Brothers and Kloefer have proven that WCF is estopped to deny coverage for Maverick Brothers for Jones' industrial accident and resulting injuries in Idaho.

2. Kloefer was Jones' statutory employer at the time of Jones' industrial accident.

3. WCF is obligated to indemnify Kloefer and its surety for all amounts Kloefer or its surety paid for Jones' workers' compensation benefits, that amount totaling \$218,604.99. Maverick Brothers' principals are not personally liable to Kloefer or its surety for Jones' workers' compensation benefits.

RECOMMENDATION

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

DATED this 26th day of January, 2012.

INDUSTRIAL COMMISSION

_____/S/_____
Alan Reed Taylor, Referee

ATTEST:

_____/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

WILLIAM A PARSONS
PO BOX 910
BURLEY ID 83318-0910

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

WORKERS COMPENSATION FUND OF UTAH
392 E 6400 S
SALT LAKE CITY UT 84107-7592

WORKERS COMPENSATION FUND OF UTAH
PO BOX 2227
SANDY UT 84091-2227

sb

_____/S/_____
