

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHARLES K. McKINNEY,)
)
 Claimant,)
)
 v.)
)
 AMERICAN ROOF MASTERS, INC.,)
)
 Employer,)
 and)
)
 HUNT BUILDING CO., LTD., Employer,)
 and ZURICH AMERICAN)
 INSURANCE COMPANY, Surety,)
)
 Defendants.)
)
 _____)

IC 2008-014334

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

FILED 11/18/2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor. Claimant filed his Complaint on June 30, 2008, through Bradford Eidam of Boise. Defendant American Roof Masters, Inc., (American Roof Masters) filed its Answer, through an attorney not licensed in Idaho, on July 18, 2008. Hunt Building Company, LTD, (Hunt Building) and Zurich American Insurance Company (Zurich American) filed their Answer on September 4, 2008, through Alan Hull of Boise. On October 14, 2008, American Roof Masters filed its Amended Answer through Idaho licensed attorney Richard Dredge of Boise.

On October 29, 2008, the Commission entered its order, pursuant to Idaho Code § 72-313, granting benefits to Claimant from Hunt Building and Zurich American. By order of the

Commission entered February 13, 2009, Richard Dredge withdrew from representation of American Roof Masters. Thereafter the Referee repeatedly admonished American Roof Masters to appear through appropriate counsel. However, no attorney appeared on behalf of American Roof Masters.

On February 22, 2010, Claimant moved the Commission for an order requiring American Roof Masters to appear through Idaho licensed counsel or be found in default. American Roof Masters was duly served with Claimant's motion, but did not respond. On June 22, 2010, the Commission ordered American Roof Masters to appear through a licensed attorney as required by JRP 2 or be found in default, pursuant to JRP 16. American Roof Masters did not timely respond to the Commission's order. On July 20, 2010, the Commission entered default against American Roof Masters.

On June 24, 2011, Claimant settled his claims against Hunt Building and Zurich American. On July 17, 2011, the Commission approved a lump sum settlement agreement and dismissed all claims between Claimant and Hunt Building and Zurich American.

On September 8, 2011, the referee conducted a hearing in Boise. Claimant, Charles McKinney was not present, but was represented by Bradford Eidam, of Boise. Defendant Employer, American Roof Masters, was not present nor represented by counsel. Former Defendants Hunt Building and Zurich American were represented by Alan Hull of Boise. Claimant presented oral argument and documentary evidence. No post-hearing depositions were taken. No briefs were filed. The matter came under advisement on September 8, 2011.

ISSUE

The issue to be decided is Claimant's entitlement to entry of an award of judgment against American Roof Masters pursuant to Idaho Code § 72-210.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file; and
2. Claimant's Exhibits 1 through 4 admitted at the September 8, 2011 hearing.

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

FINDINGS OF FACT

1. On or about April 1, 2008, American Roof Masters was a corporation and subcontractor to Hunt Building, the general contractor for a project in Mountain Home, Idaho.

2. On or about April 1, 2008, Claimant suffered an industrial accident arising out of and in the course of his employment as a roofer with American Roof Masters on the project in Mountain Home when he fell approximately 12 feet from a roof onto concrete, fracturing his wrist, ankle, and foot.

3. At the time of the accident American Roof Masters had failed to insure its liability under the Idaho Workers' Compensation Laws in a manner to provide benefits to Claimant. At the time of the accident, Hunt Building, as the statutory employer, had assured its liability under the Idaho Workers' Compensation Laws with Zurich American.

4. On or about April 12, 2008, Claimant and Bradford Eidam executed an Attorney/Client Contract whereby Claimant agreed to pay attorney fees of 25% of any amounts recovered without necessity of a hearing and 30% of any amounts recovered or awarded by the Commission. The contract further provided that no attorney fee would be charged against benefits received which were not disputed and not due to the attorney's efforts.

5. Claimant, Hunt Building, and Zurich American resolved all claims between

themselves by a lump sum settlement agreement which was approved by the Commission on July 17, 2011. In accordance with the lump sum settlement agreement, Zurich American paid Claimant workers' compensation benefits pursuant to Idaho Code § 72-216 including reasonable medical expenses totaling \$79,021.82 and income benefits totaling \$101,825.61. In addition, and as required in the lump sum settlement agreement, Zurich American paid to the Veterans Administration (VA) the amount of \$1,277.25, for the VA's outstanding subrogation claim for medical services rendered to Claimant for treatment of his industrial injuries. All of the benefits paid to Claimant were the result of Claimant's counsel's efforts.

6. Pursuant to the lump sum settlement agreement approved by the Commission, Claimant's counsel received attorney fees prior and subsequent to the agreement of \$26,493.88, and costs of \$709.42, together totaling \$27,203.30. This amount is reasonable as evaluated by the factors enumerated in Hogaboom v. Economy Mattress, 107 Idaho 13, 684 P.2 990 (1984), given the anticipated time, effort, and issues involved in proceeding against an uninsured direct employer and a statutory employer, the fees customarily charged for workers' compensation matters, the possible recovery, the time constraints imposed, the length of the attorney-client relationship, Claimant's counsel's extensive experience, Claimant's limited ability to pay for legal services, and the risk of no recovery given an uninsured direct employer.

7. Idaho Code § 72-210 allows Claimant to collect reasonable attorney fees, costs, and a statutory penalty equal to 10% of the compensation awarded from an uninsured employer.

8. The record herein establishes workers' compensation benefits received by Claimant, the 10% penalty, and attorney fees and costs owing pursuant to Idaho Code § 72-210 as follows:

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2011, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

BRADFORD S EIDAM
PO BOX 1677
BOISE ID 83701-1677

AMERICAN ROOF MASTERS, INC.
C/O JAMES AND GLENDA CAMPBELL
6608 HEMSWORTH TER
CHARLOTTE NC 28227-3213

ALAN K HULL
PO BOX 7426
BOISE ID 83707-1426

srn

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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 Claimant,)
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 AMERICAN ROOF MASTERS, INC.,)
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 Defendants.)
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ORDER

FILED 11/18/2011

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 has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee’s proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven his entitlement to attorney fees, costs, and a penalty from American Roof Masters, pursuant to Idaho Code § 72-210, in the amount of \$45,415.77.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

