

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILL DURFEE,

Respondent/Claimant,

v.

BRIAN SMITH/MICHAEL AGNEW dba
POTATO SEED SERVICES,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Petitioners/Defendants.

IC # 2021-019789

**ORDER DECLINING
PETITION FOR
DECLARATORY RULING**

**FILED DECEMBER 23, 2024
IDAHO INDUSTRIAL COMMISSION**

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Introduction

Brian Smith/Michael Agnew, d.b.a. Potato Seed Services and the Idaho State Insurance Fund (“Petitioners/Defendants”) request a declaratory ruling on Idaho Code § 72-223(5) and recovery of \$50,053.20. Attorney Paul Augustine represents Petitioners. The request and supporting memorandum, were filed on October 15, 2024, under Rule 15 of the Idaho Industrial Commission Judicial Rules of Practice and Procedure under the Idaho Workers’ Compensation Law, effective September 6, 2023. (“JRP”). Attorney Andrew Adams represents Mr. Bill Durfee (“Respondent”). A response was timely filed on October 23, 2024. The Idaho Industrial Commission (“Commission”) denies the Petition.

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Facts

1. **Accident and injury.** On July 27, 2021, Respondent/Claimant was injured in a single-car rollover accident outside of Spencer, Idaho. Pet. Mem. 2. Respondent/Claimant was a passenger. Mr. Andrus, a coworker, drove the vehicle. Resp. 2.

2. **Immediate medical expenses.** Respondent/Claimant suffered significant injuries, including a traumatic brain injury (“TMI”). Petitioners/Defendants accepted the claim and paid medical costs, as well as impairment. Pet. Ex. B.

3. **Settlement process and communications.** Settlement negotiations took place between Respondent/Claimant and the third-party co-worker, Mr. Andrus. Petitioners/Defendants asserted a subrogation right to receive a portion of the settlement funds.

4. In a letter dated November 30, 2022, Respondent’s/Claimant’s attorneys presented Respondent/Claimant with a check for \$79,425.33, representing his share of the settlement proceeds. Resp. Ex A. The letter included the following breakdown of \$250,000 in settlement proceeds:

Gross Settlement	\$250,000
Attorney’s Fees	\$70,000
Costs	\$75
Liens & Withholdings	\$100,499.67 (SIF subro \$92,016.44)
Total Fees, Costs & Liens	\$170,574.67
Net to Respondent/Claimant	\$79,425.33 ¹

5. At some point in the process of settling with Mr. Andrus, Petitioners/Defendants communicated with Respondent/Claimant about the measure of Petitioner’s/Defendant’s

¹ This sum represents the credit into which Petitioners/Defendants wish to subrogate. Respondent/Claimant points out the sum may increase to \$82,293.74 if further facts are established around the timing of a \$2,868.41 lien by Eastern Idaho Regional Medical Center. Resp. 6-7.

subrogated interest. One of Respondent's/Claimant's attorneys, Brandon Porter, contacted one Stephanie McDonald in November and Porter "was informed on November 22, 2022, that the..." Petitioners/Defendants had a subrogation interest of \$131,452.06. Resp. 2. However, after a deduction for attorney's fees, Petitioners/Defendants would accept \$92,016.44 to satisfy their subrogation interest.

6. Weeks later, in January 2023, Respondent/Claimant and Mr. Andrus signed the settlement totaling \$250,000. Resp. 2.

7. Mr. Porter forwarded to Petitioners/Defendants a \$92,016.46 check. The check was dated January 23, 2023, and paid to the order of "State Insurance Fund." The memo line of the check read "claim # 202107294 Bill Durfee (WC Subro) Paid in Full." Pet. Ex. A; Resp. Ex. C. Petitioners/Defendants deposited the check in a Zion's Bank account on January 30, 2023. Resp. Ex. D.

8. **Petitioners'/Defendants' post-settlement payment to Respondent/Claimant.** After the January 2023 settlement, Petitioners/Defendants paid Respondent/Claimant \$71,504.58 in additional workers' compensation benefits. After reducing a proportionate share of attorney's fees (30%), Petitioners/Defendants now seek from Respondent/Claimant a subrogated interest of \$50,053.21. Pet. Mem. 3.

9. A total of \$202,956.64 in worker's compensation has been paid, and the last date of such a payment by Petitioners/Defendants was April 28, 2023. Pet. Mem. 3; Pet. Ex. B.

10. **Future medical and indemnity.** Respondent/Claimant seeks further workers' compensation benefits. The Commission takes judicial notice that according to Respondent's/Claimant's Worker's Compensation Complaint filed on October 23, 2023, issues to be adjudicated are: PPI, PPD, TPD, TTD, non-medical factor disability, past medical expenses,

future medical expenses, retraining, attorney's fees, total permanent disability, possible odd lot, negligence of employer and surety credit. Petitioner's/Defendant's Answer, filed November 12, 2024, denied each allegation not specifically admitted. While Petitioners/Defendants admitted the accident occurred at the time claimed, that an employer-employee relationship existed, that Idaho workers' compensation applies, that proper notice of the accident was given, and that Employer was insured or self-insured; much has remained in dispute. Issues disputed include: medical stability, the correct average weekly wage, entitlement to PPD, and Employer's negligence. Finally, Petitioners/Defendants have reserved the right to amend the Answer and assert additional affirmative defenses.

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Arguments of the Parties

Petitioners/Defendants allege an actual controversy exists over the applicability of Idaho Code § 72-223(5) as to whether and how much Respondent/Claimant must pay Petitioners/Defendants for their subrogated interest in Respondent's/Claimant's settlement with co-worker, Mr. Andrus. Petitioners/Defendants seek \$50,053.21 to satisfy their "future subrogated interest" which it paid to Respondent/Claimant after Respondent/Claimant settled his claim against the negligent co-worker. This "future subrogated interest" is a sum in addition to the \$92,016.46 Petitioners/Defendants received from the settlement funds in the past.

Respondent/Claimant contends Petitioners/Defendants have not provided sufficient facts upon which to base a declaratory ruling. Under Idaho Code § 72-223(5) and principles of estoppel, Petitioners/Defendants are only entitled to a *credit* against its future liability for work comp benefits; *not additional recovery* of a "future subrogated interest." The plain language of the statute envisions "...a credit against its future liability for compensation benefits." Furthermore, the issue of Petitioners'/Defendants' entitlement to recovery from

Respondent/Claimant ought to be the subject of an administrative hearing before a Commission referee. Respondent/Claimant needs additional medical care. Accordingly, Respondent/Claimant filed a complaint to litigate additional worker's compensation benefits owed, Employer's negligence, and Petitioners' entitlement to a credit. Because Idaho case law bars subrogation rights from an employer whose concurrent negligence causes a worker's injury, Petitioners/Defendants are not entitled to an Idaho Code § 72-223(5) subrogated interest. This will be argued in the administrative hearing along with employer liability under Idaho Code § 6-1607. To shore up any confusion about the settlement proceeds, Respondent/Claimant contends Petitioners/Defendants should reimburse to Respondent/Claimant \$92,016.44, which is the amount Petitioners/Defendants received from the settlement proceeds.

To address further complications in the case, Respondent/Claimant sets forth additional arguments. Petitioners may have waived their rights to be reimbursed for a portion of Rocky Mountain Holding's ambulance flight charges. Further facts are required to resolve this matter. And, because Petitioners/Defendants did not inform Respondent's/Claimant's counsel that the final subrogated amount required additional benefits processing, Respondent/Claimant did not place the settlement monies in a trust account. Thus, Petitioners/Defendants simply failed to exercise their right to a credit. Now, Respondent/Claimant no longer has the \$50,053.21 that Petitioners/Defendants seek. Furthermore, the purpose of the "credit" envisioned in Idaho Code § 72-223(5) is to prevent an injured worker from double recovery. Under Idaho Code §72-316, Petitioners'/Defendants' overpayment of income and medical benefits is to be deducted from amounts yet owing.

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Issues

1. Whether the contents of the Petition meet the requirements of JRP 15(c).
2. Whether the Commission should decline to make a ruling for any of the reasons set forth in JRP 15(F)(4).

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Discussion

5.1 Filing requirement standards of JRP 15(C) are met.

The issues presented have satisfied the filing requirements of JRP 15(c). A party may request a declaratory judgment to resolve a dispute with a written petition when there is “an actual controversy over the construction, validity or applicability of a statute, rule, or order.”

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

JRP 15(C).

Both parties’ filings are complete and timely for purposes of JRP 15(C). The controversy regards the language and intent of Idaho Code § 72-223(5) in the context of the facts of the settlement, the distribution of settlement proceeds, and the payment verses a credit for workers’ compensation medical and indemnity payments made after a settlement.

Petitioners’/Defendants’ \$50,053.21 interest would be defined if a declaratory ruling were

undertaken.

Having found the Petitioners/Defendants have satisfied the requirements of JRP 15(C), the Commission will now address the merits of the request.

5.2 Petition for declaratory ruling is declined per JRP 15(F).

“The Commission may hold a hearing on the petition, issue a written ruling providing guidance on the controversy or decline to make a ruling when it determines that there is no controversy or that the issue at hand is better suited through resolution in some other venue, or by some other administrative means.” *Miller v. Yellowstone Plastics, Inc.*, 100722 IDWC, IC 2019-024650 (Commission Decision, 2022).

The Commission finds this case does not warrant a declaratory ruling. First, there is good cause why a declaratory ruling should not be made. JRP 15(F)(4)(f). The parties initiated workers’ compensation proceedings by filing a Complaint and an Answer. Proceedings are currently assigned for adjudication before Referee Brian Harper. Employer negligence is included in the issues noticed by Respondent/Claimant. Depending on the outcome of this issue, the subrogation rights of Petitioner/Defendant may be barred under tort law precedent which holds that an employer who was concurrently negligent in a worker’s injury is not “...allowed the benefit of subrogation because it runs counter to the policy of law to allow someone the ‘take advantage of his own wrong.’” *Maravilla v. Jr. Simplot Co*, 161 Idaho 455, 463, 387 P. 3d 123, 131 (2016); citing *Liberty Mutual Insurance Co. v. Adams*, 191 Idaho 151, 156, 417 P.2d 417, 422 (1966). To take up a declaratory ruling in this case would require the Commission assume no contributory negligence on Petitioners’/Defendants’ part. Such an assumption could later prove inaccurate. Petitioners’/Defendants’ subrogation interest under Idaho Code §72-223(5) depends on factual determinations which are not presented here.

Second, aside from the question of whether contributory negligence on Employer's part exists, the Commission finds the facts of this case are also insufficient to form a basis for a declaratory ruling which determines the measure of Petitioners'/Defendants' subrogation rights. JRP 15(F)(4)(d). The majority of the facts presented in this case come from allegations or proffered facts contained in the parties' briefs; not exhibits, testimony, or even a stipulation. Respondents'/Claimants' briefing explains additional evidence is needed to explore whether Petitioners/Defendants potentially settled the entirety of their subrogation interest, or whether a distinct portion that arose later based on the timing of the bills Petitioners/Defendants received, which is currently unknown to Respondents/Claimants. The Commission similarly lacks evidence on the parties' communications and efforts to track the Petitioners'/Defendants' "credit against future liability" under Idaho Code §72-223(5). The Commission also lacks information about the terms of the settlement. Whatever questions of law may exist, it would be problematic to answer them without being certain of the underlying facts.

Employer's possible negligence along with some essential missing facts dissuade the Commission from issuing a declaratory ruling on the Petitioners'/Defendants' Idaho Code § 72-223(5) subrogation interests. The issues are best resolved as part of the full worker's compensation case.

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Order

1. The Petition for Declaratory Ruling meets the standards of JRP 15(C).
2. Under JRP 15(F)(4)(d) and (f), the Commission declines to issue a declaratory ruling.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23rd day of December, 2024.



INDUSTRIAL COMMISSION

Claire Sharp
Claire Sharp, Chair

Aaron White
Aaron White, Commissioner

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 23rd day of December, 2024 a true and correct copy of the foregoing **ORDER DECLINING PETITION FOR DECLARATORY RULING** was served by Electronic Mail or email upon each of the following:

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