

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

HOLLY DWYER,

Claimant/Petitioner

v.

WOODWARD MOTORCYCLES, LLC.,

Employer,

and

AUTO OWNERS INSURANCE COMPANY,

Surety,

Defendants/Respondents.

IC 2023-018765

**ORDER ON PETITION FOR
DECLARATORY RULING**

**FILED JANUARY 21, 2025
IDAHO INDUSTRIAL COMMISSION**

This matter is before the Idaho Industrial Commission upon Claimant/Petitioner Holly Dwyer's ("Dwyer's") *Petition for Declaratory Ruling*.

Dwyer's husband, Kyle Dwyer ("Kyle"), was fatally injured in a work-related motorcycle accident, and died after an interval of medical care covered by worker's compensation. Dwyer obtained a third-party tort settlement of \$100,000 related to the accident. Respondents belatedly asserted a subrogation interest of \$285,209.80, then failed to meaningfully respond to any communications regarding the subrogation claim, effectively freezing the settlement proceeds. Dwyer now requests a declaratory ruling holding that Respondents are barred from asserting any subrogation interest by their contributory negligence per I.C. § 72-223 and *Maravilla v. J.R. Simplot Company*, 161 Idaho 455, 387 P.3d 123 (2016), or that subrogation is limited to 2/3 of the settlement proceeds per I.C. § 72-223(4). Respondents did not respond.

The Commission declines to issue a declaratory ruling. Negligence is a factual issue requiring factual development, and the Commission also lacks information necessary to apply I.C. § 72-223(4). A worker's compensation complaint must be filed. However, the complaint may be filed directly with the Commission for an expedited hearing.

ISSUES

1. Whether the issues presented qualify for a declaratory ruling under JRP 15.
2. Whether Respondents are barred from asserting I.C. § 72-223(3) subrogation rights against Dwyer's third-party tort settlement by any contributory negligence per *Maravilla v. J.R. Simplot Company*, 161 Idaho 455, 387 P.3d 123 (2016).
3. Whether Respondents' actions in permitting the deceased worker to drive a motorcycle despite the medical condition of his left-hand caused by a prior work-related accident constituted negligence.
4. Whether any subrogation right held by Respondents is limited to 2/3 of the value of the tort settlement under I.C. § 72-223(4).

ARGUMENTS OF THE PARTIES

Petitioner Holly Dwyer moves for a declaratory ruling holding that Respondents are barred by contributory negligence from asserting subrogation rights against a third-party tort settlement related to her husband's work-related death in a motorcycle accident. Respondents permitted him to drive despite work-related medical restrictions that a medical expert has opined impaired his driving ability. Alternatively, Respondents' subrogation interest is only 2/3 of the settlement value. Respondents have not responded.

FACT STATEMENT

1. Petitioner Holly Dwyer ("Dwyer") is the wife of deceased worker Kyle Dwyer ("Kyle"). Kyle was injured in a motorcycle versus bicycle accident while test-driving a customer's motorcycle on June 22, 2023, and died from his injuries. Dwyer and her daughter brought wrongful death actions against the bicyclist and obtained individual settlements. *Affidavit of Paul Curtis in Support of Claimant's Petition for Declaratory Ruling* ("Curtis"), ¶ 6, Exhibit 11.

2. Prior to settling the tort claim, Dwyer's counsel attempted to discuss the

subrogation interest with Respondents. *Affidavit of Andrew Adams in Support of Claimant's Petition for Declaratory Ruling ("Adams")*, ¶ 1-5. Dwyer's counsel obtained a referral to surety's representative contracted to handle the subrogation interest, but received no response from the representative despite leaving several phone messages. *Id.*

3. Dwyer settled the tort claim for \$100,000. *Curtis* ¶ 6, 11, Exhibit 13. About two or three days before the check arrived, Respondents sent a letter asserting a subrogation interest of \$285,209.80 based on medical and indemnity payments. *Adams* ¶ 7-8, *Curtis* Exhibit 1, 13.

4. Dwyer's counsel sent Respondents the settlement details and a request for a waiver, but multiple emails and letters over several months – April 11, 2024, May 28, 2024, June 6, 2024, July 22, 2024, July 29, 2024, September 5, 2024, and November 19, 2024 – did not receive any meaningful response. *Curtis* ¶ 8, Exhibits 3-10, 12. Respondents' most substantive reply merely stated, "[t]he carrier is reviewing your request." *Curtis* Exhibit 9. Phone calls have similarly been ignored. *Curtis* ¶ 9. Respondents' subrogation interest is being managed by OPTUM Property and Casualty Subrogation; Respondents' adjuster did not respond when Dwyer's counsel reached out about the situation and requested direct interaction. *Adams* ¶ 3, *Curtis* ¶ 7-8, Exhibit 11.

5. The settlement monies have been sitting unusable in a trust account waiting for resolution of the subrogation claim. *Adams* ¶ 8.

6. Dwyer now contends that Respondents bear contributory negligence for the accident, and are therefore barred from subrogation. If correct, a declaratory ruling would permit the settlement monies to be distributed and used.

7. Dr. Mark Weight provided an expert opinion that Respondents should not have permitted Kyle to test drive the motorcycle that day and shared at least minimal concurrent fault. *Affidavit of Doctor Mark Weight in Support of Claimant's Petition for Declaratory Ruling ("Weight")* ¶ 4, 13. Dr. Weight is a practicing orthopedic surgeon who has ridden motorcycles for

decades and is familiar with the motorcycle Kyle was testing. *Weight* ¶ 2-3, 12. The motorcycle was a 2022 Harley Davidson PanAm1250, weighing over 500lbs and possessing a quick shifter left hand clutch operation. *Weight* ¶ 12. About three months prior to the subject accident, Kyle had been in another motorcycle accident on April 6, 2023, which fractured a bone in his left hand and caused other conditions. *Weight* ¶ 6, 8-9. Just the day before the subject accident, Kyle was still being treated for the fracture, cellulitis and osteomyelitis. *Weight* ¶ 8-9. He had wrist pain related to movement, reduced hand mobility, and was scheduled for an MRI in one week. *Id.* His physician ordered light duty with a 20-lb lifting restriction. *Weight* ¶ 9; *Curtis* Exhibit 2. Dr. *Weight* stated it was debatable whether any of this affected Kyle's control of the motorcycle or ability to avoid the accident, but Kyle "certainly was unable to control the heavy motorcycle the way someone with a fully healthy left hand could have." *Weight* ¶ 13.

8. Dwyer has proffered that no witnesses were present for the subject accident.

DISCUSSION

I. Standards for Declaratory Ruling

9. For a party to obtain a declaratory ruling before the Commission, the following requirements are mandatory and must be met:

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.

Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, effective

September 6, 2023, (“JRP”) 15(C).

10. Here, Dwyer’s petition satisfies the four requirements of JRP 15(C) to obtain a declaratory ruling. The petition expressly seeks a declaratory ruling, is supported by a written memorandum, and identifies I.C. § 72-223(3) as the statute at issue, as well as the rule in *Maravilla v. J.R. Simplot Co.*, 161 Idaho 455, 387 P.3d 123 (2016). The issue and actual controversy ask whether Respondents are barred from subrogation under those rules, qualifying as a controversy over the “applicability of the statute [or] rule.” JRP 15(C)(2). Dwyer is directly affected by the related questions, which determine whether she receives any portion of the tort settlement funds. The petition expressly identifies I.C. § 72-223(4) as an alternate issue.

11. Even if a valid petition for declaratory ruling has been filed, the Commission may nevertheless decline to rule if one of the six circumstances listed in JRP 15(F)(4) is present. Pertinent here, such circumstances include when “[t]he petitioner does not provide sufficient facts or other information on which the Commission may base a ruling” or “[t]he issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal.” JRP (F)(4)(d), (e). In the recently decided *Durfee v. Smith*, IIC 2021-019789 (December 23, 2024), the Commission declined to issue a declaratory ruling deciding whether an employer had a right to subrogation where the employee asserted subrogation was barred by contributory negligence, among other issues. The Commission reasoned the issue presented factual concerns better resolved as part of the full worker’s compensation claim. Additionally, the employee had a pending worker’s compensation claim duplicating the issues.

12. Here, the issue of Respondents’ negligence is ill-suited for a declaratory ruling. Although the issues arise under Idaho Code and *Maravilla*, it is well established that any contributory negligence bars subrogation. The only question is whether Respondents did in fact commit contributory negligence. This factual question depends on whether permitting Kyle to

operate a motor vehicle while under medical restrictions constituted negligence. On this point, Dwyer's briefing does not lay out the elements of negligence, particularly any duty allegedly breached – for instance negligent entrustment. *See Taft v. Jumbo Foods, Inc.*, 155 Idaho 511, 518, 314 P.3d 193, 200 (2013), *Ransom v. City of Garden City*, 113 Idaho 202, 208, 743 P.2d 70, 76 (1987). Dwyer also has not introduced facts that show how Respondents possessed Kyle's medical restrictions, Respondents' familiarity with the prior accident, or even whether Kyle was working for Respondents at the time of his prior injury. The Commission similarly has no evidence from which to analyze causation. No witnesses exist. Nor has the Commission been provided with a copy of a police report or any forensic expert evaluation of the accident. Dwyer's medical expert was unable to opine as to whether Claimant's hand condition contributed to the accident, and the only evidence the Commission possesses on the nature of the accident is the proffer in counsel's briefing.

13. In sum, Dwyer's petition is better resolved as a worker's compensation case where evidence can be heard and a more comprehensive record developed. Nevertheless, unlike *Durfee*, there is no overlapping worker's compensation claim already being handled by a referee to absorb this case. Additionally, Dwyer's current petition is an attempt to proceed in view of a non-responsive surety. Respondents' delays and lack of response to emails, letters, and now a petition for declaratory ruling, is highly concerning. Also, little comparable precedent exists in the worker's compensation field to instruct this type of case.

14. Therefore, the Commission declines to issue a declaratory ruling. However, the Commission directs that this matter may be refiled as a worker's compensation complaint to be heard directly before the Commission under I.C. §§ 72-712 and 714. An expedited hearing may be requested. If the worker's compensation complaint receives no response, Dwyer should be prepared to proceed with default under JRP 6.

II. Issues Pertaining to Negligence Are Moot and Will Not Be Adjudicated Here

15. As the petition is best adjudicated by other administrative litigation, the Commission does not reach the issues related to Respondents' negligence. They are deemed moot and will not be adjudicated here.

III. The Commission Lacks Necessary Information to Grant an Alternative Analysis Reducing the Total Amount of Subrogation

16. Dwyer's counsel has requested that if a declaratory ruling is not granted denying Respondents' subrogation claim, a holding be issued that any subrogation cannot exceed 2/3 the value of the tort settlement under I.C. § 72-223(4).

17. If an employer is entitled to subrogation, "the employer shall pay or have deducted from its subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the employee in obtaining such recovery."¹ I.C. § 72-223(4).

18. While attorney fees are commonly based on a 33% contingency fee, this statute does not grant any per se deduction for standard attorney fees. Rather, Respondents' subrogation would be reduced only by a proportionate share of the actual costs and attorney fees incurred. Counsel did not provide a copy of the attorney fee contract or an affidavit summarizing what attorney fees Dwyer is liable for. Therefore, the Commission lacks the information necessary to calculate the deduction authorized by I.C. § 72-223(4).

ORDER

Based on the foregoing the Commission rules as follows:

1. The Commission declines to issue a declaratory ruling as the issues are best resolved in another forum pursuant to JRP 15(F)(4).
2. The Petitioner may refile this issue as a worker's compensation complaint to be

¹ The statutory exceptions that could affect how any deduction for attorney fees is calculated do not appear to be implicated here.

heard directly before the Commission and request an expedited hearing.

3. All other issues are moot.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 17th day of January, 2025.



INDUSTRIAL COMMISSION

Clarie Sharp
Clarie Sharp, Chair

Aaron White
Aaron White, Commissioner

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

ATTEST:

Kameron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 21st day of January, 2025 a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by regular United States mail or email upon each of the following:

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