

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MIKE BENBOW,

Respondent/Claimant,

v.

BENDER FAMILY FARMS, LLC,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Petitioners/Defendants.

IC 2023-004872

**ORDER GRANTING PETITION
FOR DECLARATORY RULING**

**FILED SEPTEMBER 15, 2025
IDAHO INDUSTRIAL
COMMISSION**

This matter is before the Idaho Industrial Commission (“Commission”) upon Petitioners’ *JRP Rule 15 Petition to Recover Subrogation Right* (Petition), filed on July 17, 2025. The Petition was accompanied by a *Memorandum in Support of the JRP 15 Petition* (Memorandum) as well as a *Declaration in Support of the JRP 15 Petition* (Declaration) of Matthew O. Pappas with attached Exhibits A through G. Claimant has not responded.

Petitioners are: (1) the Bender Family Farms, LLC (Employer); and (2) the Idaho State Insurance Fund (Surety) in Commission case no. 2023-004872. Petitioners are represented by Matthew O. Pappas. In Claimant’s action against a third-party tortfeasor, Claimant/Respondent is represented by Dennis Wilkinson.

For the reasons discussed below we find that: (1) the Commission has jurisdiction over the issues presented in the petition; (2) Petitioners are entitled to recover their full subrogation interest

in the amount of payments made totaling \$199,578.58, minus the proportionate share of the costs and attorney's fees per Idaho Code § 72-223(4).

ISSUES

1. Whether the Commission has jurisdiction over the issues presented in Petition.
2. Whether Petitioners are entitled to recover their subrogation interest based on payments made totaling \$199,578.58— from Respondent's settlement with the third-party tortfeasor.

ARGUMENTS OF THE PETITIONER

Petitioners seek a declaratory ruling on Idaho Code § 72-223 regarding their subrogated interest in Claimant's third-party recovery. They seek a ruling to the effect that Idaho Code § 72-223 creates an automatic statutory right of subrogation. Petitioners accepted the worker's compensation claim and paid Claimant worker's compensation benefits. Petitioners contend they preserved their right by notifying Claimant of their interest, and now seek reimbursement of the \$199,578.58 in worker's compensation benefits paid, subject to an offset against that amount for Petitioners' proportionate share of attorney's fees and costs pursuant to Idaho Code § 72-223(4). Petitioner represented that Claimant has received at least \$100,000 from the third-party settlement, and has refused to reimburse Petitioner.

In addition to reimbursement of Petitioners' interest in the third party recovery, Petitioners request other relief as the Commission deems just and proper under the circumstances.

FACTS

Based on the uncontested facts of the Petitioners, the Commission finds as follows:

1. On October 6, 2022, – while riding in the passenger seat of a car driven by the owner of Bender Family Farms – Claimant was involved in a motor vehicle accident. Declaration Ex. A, p. 5. The driver of the other vehicle involved in the accident was Corina Kremer. *Id.* Ex. F

p 212. The accident occurred at the intersection of 1200 W and Taber Rd in Blackfoot, Idaho. Ex. A p. 5.

2. Claimant was injured in the motor vehicle accident and required medical treatment which included two neck surgeries. Ex. A p. 5 - 206.

3. Employer prepared the First Report of Injury (Form 1) on February 15, 2023. Ex. A p. 5. Employer accepted the claim.

4. Claimant retained Dennis Wilkinson (Wilkinson) to represent him in his personal injury claim. *Id.* Ex. F p. 212 and 215.

5. On May 8, 2024, Petitioners' attorney, Michael O. Pappas (Pappas), sent correspondence to Wilkinson notifying him of the State Insurance Fund's involvement and subrogation interest and referencing Idaho Code § 72-223, and an updated payment history. *Id.* Ex. B p. 207-208; Declaration p. 2, ¶5.

6. On June 21, 2024, Pappas sent a second correspondence to Wilkinson asking him to respond to the May 8, 2024, letter. Pappas wanted to "... go over to what extent there are any funds available to satisfy the State Insurance Fund's subrogation lien...." and to address "... the eventual resolution of the workers' compensation case." *Id.* Ex. C p.209.

7. On September 26, 2024, Claimant filed a negligence-theory complaint and a demand for jury trial against Corina Kremer in the District Court of the Seventh Judicial District of the State of Idaho, in Bingham County. *Id.* Ex. F p. 212 and 215.

8. On March 27, 2025, Wilkinson responded to Pappas with a short email, stating a policy-limit check in the amount of \$100,000 had been received. He acknowledged Petitioners' subrogation interest, as well as that of Blue Cross in the amount of \$60,712.24. He believed Petitioners' interest was \$21,568.69 and asked to set a time to discuss settlement. *Id.* Ex. D p. 210.

9. On April 1, 2025, Pappas' associate, Brock Arnold (Arnold), emailed Wilkinson to reiterate that Petitioners' entire subrogation right was reflected in three pages of a Paid Cost Summary. Arnold also stated that the funds from the settlement with the tortfeasor should be held in trust until all involved parties resolve the matter. *Id.* Ex. E p. 211.

10. As of July 17, 2025, Petitioners paid worker's compensation benefits to Claimant in the amount of \$199,578.58. This includes \$178,900.89 in medical benefits, and \$21,568.69 in indemnity benefits. Memorandum, p. 5 and 10; Declaration, p. 4; Ex. G p. 216 - 218.

DISCUSSION AND FURTHER FINDINGS

Standard for Declaratory Ruling

11. Pursuant to the Commission's *Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law*, effective July 9, 2025, ("JRP") Rule 15, 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." JRP 15(C). The following requirements 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.

JRP 15(C). 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.*, IC 2019-024650 (Idaho Ind. Comm. October 7, 2022).

12. **Statute and Issue.** Here, Petitioners seek a declaratory ruling and identified the relevant statute as Idaho Code §72-223. The issue is whether an Idaho Code § 72-223 creates an automatic right of subrogation for workers’ compensation insurers who pay benefits for injuries caused by third parties. Memorandum, p. 8-9. Petitioners’ legal argument turns mainly on Idaho Code §§ 72-223(3) and (4) and precedent on a surety’s right to subrogation, including *Schneider v. Farmers Merchant, Inc.*, 106 Idaho 241, 243, 678 P.2d 33 (1983).

13. **Actual Controversy.** Because Claimant received a third-party settlement but declined to honor Petitioners’ Idaho Code § 72-223 subrogated portion, there is an actual controversy over the construction and applicability of Idaho Code § 72-223.

14. **Petitioners’ Interest.** Petitioners’ interest amounts to \$199,578.58 in worker’s compensation benefits paid to Claimant.

15. Therefore, we conclude this Petition raises a proper subject for a declaratory ruling.

Jurisdiction

16. Idaho Code § 72-707 vests the Commission with exclusive jurisdiction over “[a]ll questions arising under” the worker’s compensation law. *See: Idaho State Ins. Fund By and Through Forney v. Turner*, 130 Idaho 190, 191, 938 P.2d 1228, 1229 (1997); *see also Van Tine v. Idaho State Ins. Fund*, 126 Idaho 688, 690, 889 P.2d 717, 719 (1994). In this case, the question of a worker’s compensation surety’s subrogation interest under Idaho Code § 72-223 arises under Idaho Worker’s Compensation Laws and falls within the exclusive jurisdiction of the Industrial Commission.

Statutory Right of Subrogation

17. Idaho Worker's Compensation Law provides the exclusive remedy for an employee's injuries sustained as a result of a work accident. Idaho Code § 72-223 specifies that an injured worker's right to receive worker's compensation benefits may exist concurrently with a negligence cause of action against a third-party tortfeasor who is responsible for the worker's injuries. *See* Idaho Code § 72-223(1). The sole exemption to this exclusive liability of the employer may be found in Idaho Code § 72-209, where “. . . the injury or death is proximately caused by the willful of unprovoked physical aggression of the employer. . . . “

18. Under Idaho Code § 72-223, the employer/surety has a right of subrogation for worker's compensation benefits paid or obligated to the injured worker from a third-party recovery. The statute states, in pertinent part:

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

(4) Unless otherwise agreed, upon any recovery by the employee against the third party, 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 unless one (1) or more of the following circumstances exist:

(a) If prior to the date of a written retention agreement between the employee and an attorney, the employer has reached an agreement with the third party, in writing, agreeing to pay in full the employer's subrogated interest;

(b) If the employee alleges or asserts a position in the third party claim adverse to the employer, then the commission shall have jurisdiction to determine a reasonable fee, if any, for services rendered to the employer;

(c) If there is a joint effort between the employee and employer to pursue a recovery from the third party, then the commission shall have jurisdiction to determine a reasonable fee, if any, and apportion the costs and attorney's fees between the employee and employer.

(5) If the amount recovered from the third party exceeds the amount of the subrogated portion payable to the employer for past compensation benefits paid, then to the extent the employer has a future subrogated interest in that portion of the third party recovery paid to the employee, the employer shall receive a credit against its future liability for compensation benefits. Such credit shall apply as future compensation benefits become payable, and the employer shall reimburse the employee for the proportionate share of attorney's fees and costs paid by the employee in obtaining that portion of the third party recovery corresponding to the credit claimed. The employer shall not be required to pay such attorney's fees and costs related to the future credit prior to the time the credit is claimed. However, the employer and employee may agree to different terms if approved by the industrial commission.

Idaho Code § 72-223.

19. The Idaho Supreme Court has explained the premise underlying Idaho Code § 72-223(3) supports an equitable distribution of liability and prevents a double-recovery from an injured worker:

The focus of this Court in apportionment is two-fold: (1) to achieve an equitable distribution of liability for the employee's injuries as between the employer and the third party, based on the facts of each case, and (2) to prevent the overcompensation of an employee, *i.e.*, to prevent the employee from retaining both the workmen's compensation benefits and the full tort recovery.

Schneider v. Farmers Merchant, Inc., 106 Idaho 241, 243, 678 P.2d 33,35 (1983). In pertinent part, the Court has expressly stated “[i]n those situations where the employer is not negligent, the employer is entitled to subrogate to the employee’s recovery against a third party, and thus obtain a reimbursement of the workmen’s compensation benefits he paid.” *Id.* at 244.

In keeping with the Court in Schneider, we conclude Idaho Code § 72-223 creates an automatic mandatory right of subrogation under the facts of this case. Under subsection (3) the employer/surety who has paid or become liable for work comp “...shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer’s compensation liability.” Under subsection (4), that right is referenced in language that states “. . .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. . . . “

20. Here, Petitioners have a subrogation interest in the proceeds of Claimant's third-party settlement. Claimant was injured at work while riding in a car driven by Employer that collided with Kremer's. Surety accepted Claimant's workers' compensation claim and paid Claimant benefits accordingly. FOF 3. There are no facts indicating contributory negligence on Employer's behalf. Claimant received \$100,000 from the third-party settlement. FOF 7 and 8. Prior to the third-party settlement, Petitioners preserved their subrogated interest when they informed Claimant on multiple occasions (May and June of 2024) of their subrogation interest under Idaho Code § 72-223. FOF 5 and 6. Payment history was included in Petitioner's correspondence. FOF 9. After the tort claim was filed against Kremer, Wilkinson responded regarding the \$100,000 policy-limit recovery, the Petitioners' "subro," and a future meeting to discuss settlement. FOF 8. Under these facts, Petitioners do indeed have an Idaho Code § 72-223 statutory interest in Claimant's settlement with Kremer, which was preserved and acknowledged by Claimant's attorney.

21. The Form 1 and medical documentation (Ex A), along with the Paid Cost Summary (Ex. G) show Petitioner's payment to/for Claimant in the amount of \$199,578.58 has been made. This payment gives rise under Idaho Code § 72-223 to a subrogated interest and Petitioners' right to seek reimbursement from Claimant in that amount, less its proportionate share of attorney's fees and costs. The Commission is persuaded Employer/Surety's Idaho Code § 72-223 subrogation interest and reimbursement right exist in this case. Claimant is obligated to reimburse Employer/Surety \$199,578.58, less a proportionate share of attorney's fees and costs.

Sanctions

22. Petitioners also seek “such other relief” as the Commission deems appropriate. Memorandum, p. 10. Under JRP 16, the Commission retains power to sanction parties for violation of its rules or procedure. The Commission does not look favorably upon Claimant’s delayed response to Petitioners, or upon the Claimant’s failure to appear in these proceedings. Two subsections of Idaho Code § 72-223 explicitly reserve room for the parties to reach agreements different than the statute’s design. *See*: Idaho Code §§ 72-223 (4) and (5). Finding in Petitioner’s favor on the primary issue is sufficient for the circumstances, we decline to award sanctions against Respondent.

CONCLUSIONS OF LAW AND ORDER

For the foregoing reasons, the Commission concludes as follows:

1. The Commission has jurisdiction over the issues presented in Petitioners’ Petition.
2. Under Idaho Code §§ 72-223(3), (4) and (5), Petitioners are entitled to recover their full subrogation interest amount from Claimant’s settlement with the third-party tortfeasor. Petitioners’ subrogation interest and reimbursement right totals \$199,578.58, minus a proportionate share of attorney’s fees and costs.
3. The Commission declines to award sanctions against Respondent.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __15th__ day of __September__, 2025.



INDUSTRIAL COMMISSION

Claire Sharp

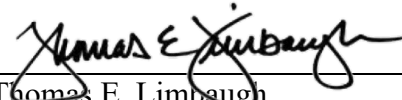
Claire Sharp, Chair



Aaron White, Commissioner

Attest:


Commission Secretary


Thomas E. Limbaugh,
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2025, a true and correct copy of the foregoing **ORDER GRANTING PETITION FOR DECLARATORY RULING** served by electronic mail and regular United States mail upon each of the following:

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