

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

AMANDA LARSEN,

Claimant,

v.

WINCO HOLDINGS INC.,

Employer,

and

AMERICAN ZURICH INSURANCE  
COMPANY,

Surety,  
Defendants.

**IC 2014-020785**

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

**Filed 1/24/2020**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Idaho Falls on February 26, 2019. Claimant, Amanda Larsen, was present in person and represented by Guy R. Price, of Pocatello. Defendant Employer, Winco Holdings Inc. (Winco), and Defendant Surety, American Zurich Insurance Company, were represented by David P. Gardner, of Pocatello. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on December 18, 2019. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

**ISSUE**

The issues were narrowed at hearing. The sole issue presented is whether, and to what extent, Claimant is entitled to permanent disability based on all factors.

## **CONTENTIONS OF THE PARTIES**

All parties acknowledge Claimant suffered an industrial accident on May 18, 2014. Defendants accepted the claim and paid medical, time loss, and permanent impairment benefits. Claimant now asserts she is entitled to permanent disability benefits of 36%. Defendants assert that Claimant is only entitled to permanent disability of 17.8% inclusive of her permanent impairment benefits already paid.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The parties' joint exhibits 1 through 10, admitted at the hearing.
3. The post-hearing deposition of Delyn Porter, M.A., C.R.C., CIWCS, taken by Defendants on April 24, 2019.

Claimant's affidavit attached to Claimant's Opening Brief filed November 4, 2019, indicates her employment at Winco was terminated post-hearing for what she considers contrived reasons. This affidavit was submitted long after hearing and the close of the evidentiary record in this case and will not be considered. Defendants' objection thereto is sustained and their motion to strike Claimant's affidavit is hereby granted. All other outstanding objections are overruled and motions to strike are denied.

## **FINDINGS OF FACT**

1. Claimant was born in 1966. She was 53 years old and resided in Pocatello at the time of the hearing. She is right-handed.

2. **Background.** Claimant was born and raised in Idaho Falls where she graduated from high school in 1984. She attended Idaho State University for one year. She worked as a hotel front desk clerk and as a cashier at a plumbing business. In approximately 1990, Claimant completed a ten-month cosmetology training program and was certified as a nail technician. Thereafter she manicured nails for three or four years in a salon and then in her own shop until approximately 1995. Claimant then worked as a house painter and later as a part-time inventory clerk.

3. In 2001 Claimant commenced working for Winco. She worked for nine years in the deli department and then ceased her employment at Winco, expecting to move out of state. She did not move, and instead was hired at Moyle Petroleum where she worked as a convenience store cashier and assistant store manager from 2010 until 2012. She prepared to become the store manager.

4. In 2012, Claimant returned to work at Winco as a cashier. She transitioned to grocery floor work and became a floor supervisor and thereafter was promoted to lead clerk on the freight crew. She had no lifting restrictions and regularly lifted cases of canned goods in excess of 50 pounds. As freight crew lead clerk, she was a working supervisor responsible for serving the produce, bulk foods, deli, bakery, and grocery departments. Her goal was to become a Winco store manager.

5. **Industrial accident and treatment.** On May 18, 2014, Claimant was at work. She slipped on ice on the freezer floor and fell engaging an electric pallet jack that lurched forward yanking her left arm forward as she fell backward to the floor. She experienced immediate left shoulder burning but finished her shift and reported the incident. At the time of her accident, Claimant was working from 40 to 60 hours per week and earning approximately

\$12.15 per hour.<sup>1</sup> She received medical, dental, and vision insurance and participated in Winco's employee stock ownership plan (ESOP).

6. Claimant continued working her usual shifts but her shoulder pain increased prompting her to seek medical treatment from Nicole Manning, PA-C, on June 10, 2014. Conservative medical treatment, including physical therapy, provided no significant lasting benefit. A left shoulder MRI revealed a left rotator cuff tear. On October 20, 2014, Nathan Richardson, M.D., performed arthroscopic left rotator cuff repair. Claimant experienced ongoing neck pain. She received diagnostic cervical medial branch block and cervical epidural steroid injections for her persisting neck symptoms. After one injection, she developed a staph infection in her left shoulder resulting in the failure of a tendon anchor placed during her first surgery and requiring prompt hospitalization and an arthroscopic left shoulder lavage, debridement, and rotator cuff repair on December 18, 2014. Later Dr. Richardson considered a brachial plexus release; however, Claimant declined the procedure.

7. After recovering from her shoulder surgeries, Claimant returned to work at Winco as a lead clerk. She was terminated by Winco over a timecard dispute, but appealed her termination to a Winco employee board and was reinstated. Due to the friction between Claimant and an assistant manager over the timecard dispute, Claimant elected not to return to her lead clerk position and instead accepted a position at the customer service counter requiring little reaching or lifting and only occasional cashiering.

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<sup>1</sup> The First Report of Injury lists Claimant's average weekly wage at \$486.00 which equates to \$12.15 per hour, assuming a 40-hour work week. The Complaint lists Claimant's average weekly wage at \$458.18 which equates to \$11.45 per hour, assuming a 40-hour work week.

8. In May 2018, Claimant underwent a total right knee arthroplasty due to non-industrial causes. After recovering she returned to work at Winco with an accommodation allowing her to sit rather than stand constantly at the customer service counter.

9. **Condition at the time of hearing.** At the time of hearing, Claimant continued to work full-time at Winco in the customer service position, a permanent modified duty position compatible with the work restrictions imposed by Dr. Richardson. Claimant acknowledged she was making more per hour than at the time of her accident. Claimant believed she had a good job and anticipated working at Winco until retirement. She testified that her left shoulder and neck were painful such that she could not tolerate the repetitive left arm motions of cashiering for more than one hour. In addition, her right shoulder was sometimes painful, which she attributed to overuse of her right shoulder in consequence of her left shoulder injury. She was treating with Ryan Park, M.D., for pain management. Claimant observed a 20 pound lifting restriction.

10. **Credibility.** Having observed Claimant at hearing, and compared her testimony with other evidence in the record, the Referee finds that Claimant is a credible witness. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility.

#### **DISCUSSION AND FURTHER FINDINGS**

11. 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). Facts, however,

need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

12. **Permanent disability.** The sole issue is the extent of Claimant's permanent disability. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant. In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

13. To evaluate Claimant's permanent disability several areas merit close examination including her permanent impairment, the permanent physical restrictions resulting from her permanent impairment, and potential employment opportunities—particularly as

identified by vocational rehabilitation experts. Stanger v. Idaho State University, 2018 WL 70188054 (Idaho Ind. Com. 2018).

14. Permanent impairment. “Permanent impairment” is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. “Evaluation (rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee’s personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. A determination of physical impairment is a question of fact and the Commission is the ultimate evaluator of impairment. Soto v. J.R. Simplot, 126 Idaho 536, 887 P.2d 1043 (1994).

15. In the present case, on July 29, 2015, Richard Wathne, M.D., examined Claimant and rated her permanent impairment at 14% of the left upper extremity which equates to 8% of the whole person due to her left shoulder revision rotator cuff repair and persistent neck pain with probable brachial plexus stretch injury, all attributable to her industrial accident. Defendants have accepted Dr. Wathne’s rating and paid Claimant benefits equal to 8% whole person permanent partial impairment.

16. Work restrictions. On June 10, 2015, Dr. Richardson released Claimant to return to modified duties and restricted her use of the left shoulder to rarely climbing or reaching above shoulder level; occasional lifting, pushing, or pulling up to 20 pounds; and occasional repetitive left arm activity.

17. On July 29, 2015, Dr. Wathne examined Claimant, found her medically stable, and restricted her to lifting no more than 50 pounds to waist level, 20 pounds above shoulder level, and no repetitive lifting with the left upper extremity such as throwing freight. He indicated Claimant should avoid maneuvering a handcart with more than 50 pounds. Dr. Wathne opined Claimant could perform the duties of a grocery lead clerk.

18. As Claimant's treating surgeon with multiple opportunities to assess Claimant's condition over time, the Commission finds Dr. Richardson's restrictions more persuasive.

19. Opportunities for gainful activity. Claimant's assertion that she would have become a Winco store manager but for her industrial accident is speculative and overlooks her May 2018 total right knee arthroplasty due to non-industrial causes. Claimant reported to Mr. Porter that she cannot stand for long periods of time due to her total knee arthroplasty. Winco provided Claimant accommodations, including the option of sitting at the customer service counter. Claimant testified that a manager must be capable of performing all of the job duties of every position in the store. Regardless of Claimant's industrial accident, it is unknown whether she would have been able to satisfy the qualifications for management including being able to tolerate the standing, bending, squatting, and kneeling that may have been required to perform all of the positions at Winco.

20. Two vocational experts have evaluated Claimant's employability and disability. Their opinions are examined below.

21. *Kent Granat.* Mr. Granat, a vocational expert retained by Claimant, met with her on July 25, 2016, and produced a written report evaluating her disability. He reported that her pre-accident wage and benefits totaled \$22.89 per hour, including \$12.00 for wages, \$2.74 for medical insurance, and \$8.15 for the Winco ESOP. Winco stock is not publicly traded.

Claimant reported the total value of her Winco ESOP benefits at \$208,962 and explained ESOP benefits accrue according to the number of hours the employee works. Mr. Granat attempted to calculate the value of Claimant's ESOP participation per hour worked by dividing the total value of her ESOP benefits by her total hours worked at Winco.

22. Mr. Granat calculated Claimant's loss of labor market access due to her industrial accident in three ways. First, he opined that Claimant's restrictions precluded her from half of the pre-accident jobs she had performed thus constituting a 50% loss of access. Second, he utilized the Guide for Occupational Exploration (GOE) codes to identify 158 available types of occupations similar to Claimant's past work experience and opined 58 of these occupations exceeded her work restrictions, resulting in a 39% loss of access. Third, he evaluated statistics from SkillTrans utilizing the Dictionary of Occupational Titles and calculated a 35% loss of access. Mr. Granat averaged the three measures ( $[50\% + 39\% + 35\%] \div 3$ ) to arrive at 41.3%. Mr. Granat opined that the GOE and SkillTrans methodologies did not consider Claimant's restriction against repetitive left upper extremity reaching. He further reported that SkillTrans statistics indicate 10.6% of all jobs nationally require constant reaching. Mr. Granat then added 10.6% to the 41.3% average to conclude that Claimant had a 52% loss of labor market access.

23. Mr. Granat also evaluated Claimant's loss of earnings. He noted that Claimant continued working at Winco and was earning \$12.77 per hour at the time of his evaluation in 2016. He based his calculations on his assumption that she "is no longer working in her job at injury and receiving 25 hours of weekly overtime." Exhibit 8, p. 217. He calculated her loss of earnings at 20% due to her reduced ESOP benefits resulting from no longer working 25 hours overtime per week as a customer service clerk. He believed the resulting reduction in ESOP contributions totaled \$9,780 annually, which he equated to 20% of her wage earning capacity.

Exhibit 8, p. 217. Mr. Granat's report noted that Claimant continued to work at Winco and receive all other benefits she enjoyed pre-accident. His report did not specifically address Claimant's post-accident wage earning capacity in the open labor market.

24. Mr. Granat opined Claimant was capable of medium, light and sedentary work prior to her accident, but now is limited to light and sedentary work with restrictions of occasional repetitive left arm use. Averaging Claimant's labor market access loss and loss of earning capacity due to reduced work hours and resulting decrease in ESOP benefits, Mr. Granat concluded that Claimant sustained a permanent disability of 36% ( $[52\% + 20\%] \div 2$ ) due to her industrial accident.

25. *Delyn Porter.* Delyn Porter, a vocational expert retained by Defendants, interviewed Claimant on January 30, 2019, reviewed her medical and employment records, and prepared a report dated February 8, 2019, assessing her employability.

26. Mr. Porter reported Dr. Richardson's and Dr. Wathne's restrictions. Mr. Porter noted that Claimant had worked as a customer service clerk, lead clerk, stock clerk, assistant retail store manager, deli worker, inventory clerk, retail sales clerk, house painter, nail technician, bartender, front desk clerk, and restaurant hostess. Based on Claimant's vocational profile, Mr. Porter reviewed the Pocatello Metropolitan Statistical Area report published by the Idaho Department of Labor and opined Claimant had access to 4,820 jobs in her labor market prior to her industrial accident. Applying Dr. Wathne's restrictions, Mr. Porter opined that Claimant suffered a labor market access loss of 24.6% of actual jobs in her labor market due to her industrial accident. Applying Dr. Richardson's restrictions, Mr. Porter opined that Claimant suffered a labor market access loss of 35.5% of actual jobs in her labor market due to her industrial accident.

27. Mr. Porter opined that Claimant suffered no loss of earning capacity. He noted that Claimant reported she was earning \$17.00 per hour at the time of his vocational evaluation, and only approximately \$12.15 per hour at the time of her industrial accident. He also reported that Claimant's Social Security earnings statement did not support the assertion that she worked 65 hours per week for the 11 months preceding her industrial accident. Rather, her current annual earnings approximated \$28,730 which equated to approximately \$13.81 per hour assuming a 40-hour work week and exceeded any of her past annual earnings reported to the Social Security Administration. Mr. Porter noted that Claimant continued to participate in the Winco ESOP as she had prior to her industrial accident. He considered speculative her assertion that but for her industrial accident she would have entered the Winco management program and become a Winco store manager working 50 hours per week with resultant higher ESOP benefits. Opining that Claimant could obtain other retail management or customer service positions similar to her present position and with comparable earnings and benefits, Mr. Porter concluded that Claimant had sustained no wage earning capacity loss. However he acknowledged that if Claimant ceased employment at Winco "there could potentially be a 20 percent loss there." Porter Deposition, p. 32, ll. 1-2.

28. Averaging Claimant's labor market access loss and earning capacity loss, Mr. Porter concluded that applying Dr. Wathne's work restrictions Claimant sustained a permanent disability inclusive of impairment of 12.3% ( $[25\% + 0\%] \div 2$ ) due to her industrial accident. Averaging Claimant's labor market access loss and loss of earnings, Mr. Porter concluded that applying Dr. Richardson's work restrictions Claimant sustained a permanent disability inclusive of impairment of 17.8% ( $[35\% + 0\%] \div 2$ ) due to her industrial accident.

29. *Evaluating the vocational opinions.* Mr. Granat's vocational evaluation was performed approximately two years prior to the time of hearing and insofar as the record reveals was not reviewed or updated to consider her increased Winco wages or her subsequent conditions. The proper date for disability analysis is generally the date of the hearing. Brown v. Home Depot, 152 Idaho 605, 272 P.3d 577 (2012).

30. Mr. Granat's three-part analysis of Claimant's loss of labor market access specifically including his calculation of 50% market access loss because Claimant's work restrictions allegedly preclude her from returning to half of her actual pre-injury jobs is unprecedented in the Commission's experience. Furthermore, it is calculated from an incomplete listing of Claimant's actual pre-injury jobs. Nor does Mr. Granat provide any persuasive justification for effectively adding 10.6% to his 50% market access loss estimate thereby ostensibly further inflating his averaged market access loss estimate.

31. Mr. Porter's loss of labor market access analysis is more persuasive as it is based on actual jobs which Claimant could have accessed given her vocational profile, not just the percentage of some of the jobs she actually held pre-accident which were precluded by the restrictions arising from her industrial accident. Mr. Porter's 35.5% loss of labor market access estimate (applying Dr. Richardson's restrictions) is comparable to Mr. Granat's 35% SkillTrans estimate and 39% GOE estimate.

32. Mr. Granat's opinion of Claimant's earning capacity loss is not based upon an open labor market and is further weakened by his calculation of Claimant's pre-accident average work hours. At hearing, Claimant testified that prior to her accident she worked between 40 and 60 hours per week as lead clerk, thus accruing up to 20 hours per week of overtime. Transcript, p. 27. Mr. Granat reported and relied upon the assertion that Claimant worked 65

hours per week in his calculations. However, the record does not support the assertion that Claimant worked 25 hours of overtime per week.

33. Mr. Porter correctly observed that Claimant's Social Security annual earnings statement showed \$21,842 for 2013, equating to only \$10.50 per hour based on a 40 hour work week. Claimant suffered her industrial accident on May 18, 2014 and worked until she sought medical attention and was initially taken off work by Nicole Manning, PA-C, on June 10, 2014. Per her Social Security annual earnings statement, Claimant's 2014 earnings totaled \$13,584. Even assuming all of these earnings preceded June 10, 2014, her earnings would equate to \$590.61 per week for 23 weeks or approximately \$14.77 per hour. However, as noted previously, the Form 1 indicates Claimant was earning approximately \$12.15 per hour at the time of her accident. Assuming 40 hours per week for 23 weeks at \$12.15 per hour would total \$11,178.00. Assuming overtime at \$18.23 per hour ( $\$12.15 \times 1.5$ ), the difference between \$13,584 and \$11,178 is \$2,406, equating to 132 hours of overtime ( $\$2,406 \div \$18.23$ ) accumulated over 23 weeks, or averaging no more than 5.7 hours of overtime per week. Mr. Granat's projection of Claimant's reduced ESOP benefits post-accident based upon his estimate of 25 hours of overtime per week pre-accident is significantly overstated and unpersuasive.

34. Mr. Porter opined that Claimant in continuing to work for the same employer had no loss of earning capacity. However, he also testified:

Q. (by Mr. Gardner) Okay. But do you have to take into consideration if she loses that job and has to go out into the open market, what—you know, would there be some loss there?

A. And there could potentially be a 20 percent loss there.

Q. Okay. And have you factored that into your equation?

A. No.

Q. So I guess if she did lose her job at Winco or decided to leave, there could be maybe a 20 percent wage loss?

A. Correct.

Q. All right. And that obviously would have some effect on your overall determination of disability?

A. Yes.

Porter Deposition, p. 31, l. 22 through p. 32, l. 13.

35. When further questioned about this topic during cross-examination Mr. Porter reaffirmed his estimate that if Claimant left her current employer:

A. –and she was to seek other employment in the Pocatello area, she may experience up to a 20 percent wage loss from where she’s at right now.

Q. (by Mr. Price) But you didn’t factor that in to your analysis of wage loss?

A. No. Based upon her current employment, she’s actually making more now than she did at the time of her injury.

Q. Is that the legal standard as you understand it?

A. It’s the standard that we’ve used for it.

Q. If she still has her job then you use that?

A. It’s one way of identifying that. The other way would be to look at the wages that other individuals are paid that perform similar work in the same labor market area. And I would expect that you’d see about a 20 percent loss there from where she’s at.

36. Porter Deposition, p. 54, ll. 4-23. Mr. Porter went on to testify: “I would estimate that individuals performing similar work that she could pursue in the Pocatello labor market, I would anticipate probably—I would agree with Mr. Granite [sic], you’re probably looking at about a 20 percent wage loss there.” Porter Deposition, p. 56, ll. 1-5. It is apparent from Mr. Porter’s testimony that he espoused “up to” and “about a 20 percent” wage earning loss in the

open labor market, but did not adopt Mr. Granat's method of arriving at this percentage by estimating a reduction in Claimant's Winco ESOP benefits due to reduced overtime hours. Mr. Porter did not provide any specific data to support his "potential" 20% wage loss estimate.

37. Mr. Granat's conclusions that Claimant sustained 52% loss of labor market access and 20% loss of earning capacity due to reduced overtime are not well supported by the record. Ultimately, Mr. Porter opined Claimant suffered a 35.5% loss of labor market access and up to a 20% loss of earning capacity in the open labor market. Mr. Porter's percentages find greater support in the record but must be considered in light of Claimant's actual employment and demonstrated earnings at the time of hearing. Her time of hearing earnings exceeded her time of accident earnings.

38. Idaho Code § 72-430 requires evaluation of the "diminished ability of the afflicted employee to compete in an open labor market within a reasonable geographic area." This evaluation considers impairment and nonmedical factors. Idaho Code § 72-425. The Commission is the ultimate evaluator of disability. Deon v. H&J Inc., 2013 WL 3133646, at 12 (Idaho Ind. Com. May 3, 2013)

39. Based on Claimant's left shoulder impairment of 8% of the whole person due to her industrial accident, her permanent physical limitations including her restrictions of lifting, pushing, or pulling up to 20 pounds; occasional repetitive left arm activity; rare left arm reaching above shoulder level; and considering her non-medical factors including her age of 48 at the time of the accident and 53 at the time of hearing, employment and earnings at the time of hearing, transferable skills from her prior work as a customer service clerk, lead clerk, stock clerk, assistant retail store manager, deli worker, inventory clerk, retail sales clerk, house painter, nail technician, bartender, front desk clerk and restaurant hostess, Claimant's ability to engage in

regular gainful activity in the open labor market in her geographic area has been reduced. While Mr. Porter's evaluation of Claimant's disability is more credible, he failed to fully account for Claimant's likely future wage loss should Claimant be forced to compete for work in her residual labor market at some point in the future. The Commission concludes that Claimant has suffered a permanent disability of 25%, inclusive of her 8% whole person permanent impairment, due to her industrial accident.

**CONCLUSION OF LAW AND ORDER**

1. Claimant has proven she suffered a permanent disability of 25%, inclusive of her 8% whole person permanent impairment, due to her industrial accident.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this \_\_\_24th\_\_\_ day of January, 2020.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas P. Baskin, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Aaron White, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of January, 2020, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

GUY PRICE  
PO BOX 4971  
POCATELLO ID 83205-4971

DAVID P GARDNER  
412 WEST CENTER STREET SUITE 2000  
POCATELLO ID 83204

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_