

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

ROLAND RIVERA,

Petitioner,

v.

EXPRESS SERVICES INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Surety,

and

CANYON COUNTY INDIGENT FUND,

Respondents.

**IC 2017-005082**

**ORDER DECLINING PETITION FOR  
DECLARATORY RULING**

**File May 7, 2020**

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Around October 2019, Petitioner and Respondent Employer/Surety submitted a proposed lump sum settlement agreement for the Commission's consideration. Based on the parties' documentation, there was an unresolved claim by the Canyon County Indigent Fund against the settlement proceeds. Pursuant to Williams v. Blue Cross of Idaho, 151 Idaho 515, 260 P.3d 1186 (2011), Commission staff initiated additional investigation to satisfy concerns about the claim from Canyon County and whether the proposed settlement was in "the best interests of the parties" under Idaho Code § 72-404.<sup>1</sup>

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<sup>1</sup> Idaho Code § 72-802 prohibits a workers' compensation claimant from assigning workers' compensation proceeds to a third party, and also prohibits a creditor, other than one seeking to recover child support, from asserting a claim against workers' compensation proceeds paid to a claimant. Special treatment is given to health insurers who provide treatment in a disputed case pursuant to a (non-industrial) policy which creates in such insurer a right of subrogation against the proceeds of a workers' compensation award. See Williams v. Blue Cross of Idaho, 151 Idaho 515, 260 P.3d 1186 (2011). However, for a run of the mill creditor, whether it be a physician or a landlord, Idaho Code § 72-802 makes it clear that an award of the Commission is exempt from such claims.

On October 21, 2019, the Commission had a telephone conference with Petitioner and Respondent Employer/Surety to address concerns about the settlement and Idaho Code § 72-404. The Commission requires parties to a proposed settlement to advise us if the settlement resolves disputed unpaid medical bills. If it does, then we require the claimant to tell us how he or she proposes to resolve those bills, or we will not approve the settlement. These matters or unpaid bills, disputed bills, or potential subrogation claims should be resolved at the time of settlement, as it is not in the best interest of an injured worker to avoid these responsibilities, only to face the prospect of a civil collection action somewhere down the road. The Commission's scrutiny of these outside claims is disciplined by the boundaries of Idaho Code § 72-802 and Williams v. Blue Cross of Idaho, supra, to protect workers' compensation proceeds from the claims of ordinary creditors.

At the telephone conference, Petitioner insisted that the proposed lump sum settlement agreement did not contain any consideration for disputed medicals that the Canyon County Indigency Fund could attach a lien, because they did not provide any medical care related to Petitioner's industrial accident (shoulder surgery), but to subsequent and unrelated complications from pneumonia. Further, Idaho Code § 72-802 prohibits such unrelated claims, and there is no precedent for an indigency fund to attach workers' compensation proceeds for unrelated bills. The Commission discerned that there was a potential legal issue appropriate for a declaratory ruling, and that the Canyon County Indigency Fund should be invited to participate, if the parties so desired.

On November 25, 2019, Petitioner filed a request for declaratory ruling with supporting brief. Petitioner sought a declaratory ruling on whether Idaho Code §72-802 prohibits the Canyon County Indigent Fund from collecting a lien on his pending workers' compensation settlement,

because they did not pay for any medical treatment related to his workers' compensation claim. Petitioner argues that there is a conflict between Idaho Code §31-3510 and §72-802, that should be resolved in Petitioner's favor.

Respondent Canyon County Indigent Fund did not file a response. Commission staff made several unsuccessful attempts to include Respondent Canyon County Indigent Fund in a telephone conference with the other parties and ensure them an opportunity to participate. On January 10, 2020, the County indicated via letter from Canyon County Prosecutor Brad Goodsell, that they would not be participating in any proceedings before the Commission.

The Commission set a briefing schedule for the parties. Meanwhile, Respondent Employer/Surety, continued their lump sum settlement negotiations with Petitioner, and presented the Commission with additional information. Petitioner and Respondent Employer/Surety again requested that the Commission approve the pending lump sum settlement agreement. Counsel for Petitioner indicated by email that Petitioner had an "unequivocal desire to just go ahead and pay the lien, give him his portion, and let him get on with his life." Email to Commission staff, March 9, 2020. Petitioner maintained its stance that the Canyon County Indigency Fund was not entitled to the proceeds of the lump sum settlement, as they were unrelated to the County's expenditures. The County declined to participate in this process and did not provide any proof that they paid for any medical care that was related to the workers' compensation settlement. Given the parties' interest in resolving their differences and the Petitioner's willingness to resolve the matter, the Commission approved the lump sum settlement.

On March 30, 2020, Employer/Surety notified the Commission that they would not be submitting a responsive brief in the declaratory ruling case, because the Commission approved their lump sum settlement with Claimant on March 11, 2020.

JRP 15, Declaratory Rulings, provides a mechanism by which an interested party may apply to the Industrial Commission for rulings “on the construction, validity, or applicability of any workers’ compensation statute, rule, regulation or order.” (See, JRP 15(A)). The petitioner must demonstrate that an “actual controversy” exists over the construction, validity, or applicability of the rule or statute in question. (See, JRP 15(C)). The Commission is free to decline to make a ruling on a petition when it appears that there is no actual controversy or there exists some other good cause why a declaratory ruling should not be made. (See, JRP 15(F)(4)).

Here, the Commission approved the lump sum settlement between Respondent Employer/Surety and Petitioner. Petitioner assured Commission staff that Petitioner wishes to resolve the matter and will act to appropriately satisfy the claim from the Canyon County Indigency Fund. Petitioner has consistently maintained that Canyon County has not expended any funds related to the workers’ compensation claim, and for which Respondent Employer/Surety have given consideration. Based on this assurance, the Commission found the pending lump sum settlement in the best interests of the parties, and approved the matter. It is understandable that Petitioner would wish to avoid the uncertainties of this litigation and reach a compromise position on the outstanding claim. As such, the Commission declines to rule on the extant petition because we believe it fails to articulate an actual controversy over the construction or validity of the applicable statute, in this case the conflict between Idaho Code §31-3510 and §72-802.

### **ORDER**

For these reasons, we decline to entertain Petitioner’s request for declaratory ruling.

DATED this 7<sup>th</sup> day of May, 2020.

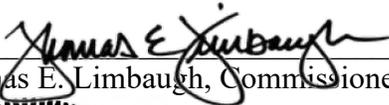
INDUSTRIAL COMMISSION



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Thomas P. Baskin, Chairman

  
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Aaron White, Commissioner

  
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Thomas E. Limbaugh, Commissioner

ATTEST:

  
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Commission Secretary



### CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of May, 2020, a true and correct copy of the **ORDER DECLINING PETITION FOR DECLARATORY RULING** was served by email or regular United States Mail, as indicated below, upon each of the following:

ANTHONY SHIVELY  
anthony.shively@litsterfrost.com

LORA BREEN  
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CANYON COUNTY INDIGENCY FUND  
BRAD GOODSSELL AND YVONNE BAKER  
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Emma O. Landers