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Frank v. Bunker Hill Co. Appellant's Brief Dckt. 34696

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IN THE SUPREME COURT OF THE STATE OF IDAHO

PAUL E. FRANK,

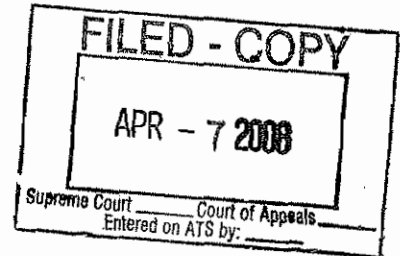
Claimant-Appellant

v.

THE BUNKER HILL COMPANY, Self-insured
Employer,

Defendant-Respondents.

NO. 34696



BRIEF OF APPELLANT

APPEAL FROM THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LAW OFFICE OF
John J. Rose, Jr., P.C.
708 West Cameron Avenue
Kellogg, Idaho 83837

No Opposing Counsel

Attorney for Appellant

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TABLE OF CASES AND AUTHORITIES

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CASES

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STATEMENT OF THE CASE

NATURE OF THE CASE

Paul E. Frank, appellant-claimant, is appealing from the Industrial Commission decision that denied him reimbursement for the cost of providing his own medical insurance for the care of his industrial injuries. Mr. Frank also appeals the denial of attorney's fees. As discussed herein, this case has an extensive history before the Idaho Supreme Court. The employer has disappeared and the employee has been left without benefits. The Industrial Commission and Secretary of State let the employer get away.

COURSE OF PROCEEDINGS

This case was before the Idaho Supreme Court in Frank v. Bunker Hill Co., 117 Idaho 790, 792 P.2d 815 (1988). The initial appeal was by Mr. Frank and from an order of the Industrial Commission that modified his award of total and permanent disability to an award of 55 percent total and permanent disability of the whole man. Justice Bistline described Mr. Frank's industrial accident and injuries as follows:

The reader of the first majority opinion, filed May 24, 1988, will find that the contents therein accurately report on the accident which befell Paul Frank, now almost ten years ago. He was on the job and traveling within the mine, underground, in a mine skip, which presumably was faulty equipment, because a cable parted, plummeting Paul Frank and his iron vehicle down into the mine a distance of over 170 feet. It is easy to visualize that no man could survive such a ride in such a contraption, but Paul Frank was more than an average man, and he did survive. 117 Idaho at 838, 792 P.2d. at 863

Justice Shepard, in authoring the first opinion for the Court, portrayed generally the extent of the terrible injuries which the runaway mine skip inflicted on Frank, which Justice Shepard confines to one short paragraph found on page two of the first opinion for the Court:

[A] bursting-type fracture of the T-10 vertebrae; fracture of the left femur midshaft; compound fracture of the right tibia and fibula; fracture of the left hemopelvis including

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the sacroiliac joint; nasal fracture; and a deep wound of the left buttock. Some of the injuries were treated the day of the accident, and later several surgeries were performed on some of the fractures, including a spinal fusion. 1988 Slip Op. at 2, Idaho at , P.2d at .

For some undisclosed reason, that opinion makes no mention of the "Harrington Rod Instrumentation." Yet the Industrial Commission had done so in its written decision:

Claimant was held in skeletal traction, and on November 24, 1980, Harrington instrumentation was performed on the vertebral fracture. This process involved the insertion of rods with hooks on either side of the spine, and a spinal fusion was performed.

The Commission did not further inform its readers on Harrington instrumentation. Dr. P.R. Harrington devised the method which bears his name in 1958. ... The Harrington method consists of insertion of the instrumentation plus fusion of various severely damaged vertebrae. The report of the study, published in 1978 by the Journal of Bone and Joint Surgery, Inc., was admitted in evidence as claimant's exhibit 11, and is attached hereto as Appendix A, and is the best illustration of the extreme severity of Frank's injuries and the radical techniques needed to put back together what was left of him.

Frank v. Bunker Hill, 117 Idaho at 838, 839, 792 P.2d. at 863, 864, Bistline dissenting opinion.

Justice McDevitt also dissented and stated:

I dissent from the majority opinion in this case because I believe that its facile deference to the Industrial Commission vitiates the function of appellate review. 117 Idaho at 838, 848, 792 P.2d. at 873

The Supreme Court held a rehearing and affirmed the initial decision on May 25, 1990.

On May 21, 1991, Mr. Frank filed a new Application For Hearing requesting a finding of total disability because of his worsening condition. Mr. Frank has also requested a determination of the amount of offset against benefits because Gulf Resources had overpaid disability benefits in light of the reduction of total disability.

No hearing was ever held on the new Application For Hearing. No hearing was held

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because the Application For Hearing was initially dismissed by an order authored by Industrial Commissioner Betty H. Richardson and signed by Commissioner Kerns. Second appellate R Vol. I, p. 43-52. Commissioner Richardson worked for the law firm defending against Mr. Frank's claim, prior to becoming a Commissioner, and during the defense of Mr. Frank's case. Second appellate R Vol. I, p. 80. The dismissal of Mr. Frank's claims was effectively set aside in April 1993, after Mr. Frank made a motion to disqualify Commissioner Richardson and set aside the order of dismissal. On April 6, 1993, Commissioner Richardson disqualified herself. Second appellate R Vol. I, p. 80. The order dismissing Mr. Frank's claim was, therefore, of no effect.

On October 4, 1993, Mr. Frank requested a status conference. Second appellate R Vol. I, p. 82, 83. Before further proceedings were held, Gulf USA Corp. and Pintlar claimed no further proceedings could be held because Gulf and Pintlar were in bankruptcy and there was an automatic stay of the Industrial Commission proceedings. Pintlar is a subsidiary of Gulf Resources who purchased the Bunker Hill that Mr. Frank worked for. See letter of Charles L.A. Cox, attorney for Bunker Hill. Second appellate R Vol. I, p. 84. Mr. Cox was with the same law firm as William F. Boyd. Mr. Boyd was Bunker Hill's attorney at the initial Industrial Commission hearing and in the first appeal.

The Industrial Commission apparently agreed and the proceedings were stayed. With the exception of a substitution of counsel, there was no further action in the case until April, 2000, when the Industrial Commission issued a Notice Of Intent To Recommend Dismissal. Second appellate R Vol. I, p. 87.

On January 7, 1994, Bunker Hill had substituted Ryan Armbruster, of the law firm of Elam & Burke, "as its attorney of record in the above-entitled action in the place and stead of

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Charles L.A. Cox.” Second appellate R Vol. I, p. 85-86.

When the Industrial Commission issued a Notice Of Intent To Recommend Dismissal on April 21, 2000, Mr. Frank responded to the Notice Of Intent To Recommend Dismissal by filing an Affidavit Of Retention. Second appellate R Vol. 1, p. 89-92. Bunker Hill failed to respond and a retention order was entered on May 24, 2000. Second appellate R Vol. 1, p. 93.

On June 26, 2000, Elam & Burke moved to withdraw as legal counsel for Bunker Hill. On July 18, 2000, an Order Allowing Withdrawal Of Attorney of Record was entered, counsel for Bunker Hill was allowed to withdraw, and Bunker Hill was ordered to appear by new counsel within 21 days or the “Answer” to Mr. Frank’s new application for hearing may be stricken without further notice. Second appellate R Vol. 1, p. 101, 102.

Bunker Hill failed to appear as directed and the case continued until June 6, 2002, when the Industrial Commission issued another Notice Of Intent To Recommend Dismissal. Second appellate R Vol. 1, p. 108. Mr. Frank objected to dismissal and an Order And Notice Of Show Cause Hearing was entered on July 26, 2002. Second appellate R Vol.1, p. 126. A show cause hearing was held, the matter was retained, and Mr. Frank was allowed until January 20, 2003 to request default against Bunker Hill. Second appellate R Vol. 1, p. 139. No appearance was made by Bunker Hill at the show cause hearing.

On December 26, 2002, Mr. Frank filed for default. Second appellate R Vol. 1, p. 141-144. Notice was given to persons or entities who in some fashion previously had taken part in the proceeding. Therefore, notice was given to Gulf U.S.A. because that was the entity Elam & Burke, P.A, notified of their withdrawal. See affidavit of Ryan Armbruster from Elam & Burke, P.A. Second appellate R Vol. 1, p. 103-107.

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Notice of intent to take default was also given to "Bunker Limited Partnership." They were provided notice because for some unexplained reason the Industrial Commission included Bunker Limited Partnership in its service of the Notice Of Intent To Recommend Dismissal entered June 6, 2002. Second appellate R Vol. 1, p. 109. Until this mention of Bunker Limited Partnership, the record is devoid of any mention of their participation in the proceeding. Mr. Frank gave notice of intent to take default to those entities previously notified of action in the case by their attorneys or by the Industrial Commission.

On January 16, 2003, Givens Pursley LLP filed a Motion To Request Status Conference on behalf of Gulf USA Corporation. Second appellate R. Vol. I, p. 150, 151. On January 21, 2003, Givens Pursley LLP filed an Amended Motion To Request Status Conference on behalf of Gulf USA Corporation and Pintlar Corporation to the extent it is a successor in interest of the Bunker Hill Company (Pintlar). Second appellate R Vol. 1, p. 170-172. Except for this Court's Order Amending Title, entered July 16, 2004, the parties and title in the action have remained the same.

In an "Amended Motion To Request Conference," Given Pursley, LLP stated:

In short, it seems that there is some confusion as to who is a proper defendant in this matter and what issues are unresolved. For this reason, and the reasons set forth above, Gulf and Pintlar request a conference at which the Claimant can specify (1) the basis for Pintlar's remaining liability, if any, in this case, (2) the basis for asserting that Gulf is liable to him in this matter, and (3) what issues of fact and law claimant believes remain to be determined by the Commission." Second appellate R Vol. I, p. 171,172.

On March 31, 2003, the Industrial Commission conducted a telephone conference.

Douglas A. Donohue, Referee, conducted the hearing for the Commission. As a result of the hearing it was ordered that the parties prepare a statement defining legal/procedural issues in this

matter. Second appellate R Vol. I, p. 180. Not stated in the order, but necessarily assumed by the referee's order, Paul Frank's application for default was denied.

In response to the referee's order for a statement of legal and procedural issues Gulf and Pintlar responded by stating a substantive defense that Mr. Frank was precluded from reopening pursuant to I.C. 72-719 and asked for a definition of what were Gulf and Pintlar's responsibility. Second appellate R Vol. II., p. 187, 188. The Bunker Hill Company appeared by attorney Bradley J. Stoddard and responded by stating a substantive defense that Mr. Frank was precluded from reopening pursuant to I.C. 72-719. R Vol. I, p. 184.

Mr. Frank responded to the request for definition of legal/procedural issues and framed the issues as his entitlement to total disability because of worsening condition, the nature and extent of liability to Mr. Frank for past and future medical services and insurance costs incurred by him for care of his industrial injury, and whether he was entitled to reinstatement to permanent disability because the Industrial Commission decision was not a final award of permanent disability benefits. Second appellate R Vol. II, p. 242, 243.

On July 30, 2003, Mr. Frank moved to proceed against Bunker Hill's bond to recover the cost of medical services. Second appellate R Vol. II, p. 250, 251. The motion was made because The Bunker Hill Company had failed to service Mr. Frank's claim since prior to December 17, 1993 when Gulf USA Corp. and Pintlar ordered Mr. Frank to cease and desist from the prosecution of his claim. Mr. Frank further sought to proceed against the bond because I. C. 72-308 provides that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries received.

The Industrial Commission responded by Referee Donohue's Findings Of Fact,

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Conclusions Of Law And Recommendation which were adopted by the Commission with a special concurring opinion by Commissioner Kyle. Second appellate R Vol. II, p. 293-306. The Referee concluded that I.C. 72-719, a workers compensation statute of limitations, prevented Mr. Frank from proceeding.

On January 2, 2004, Mr. Frank requested reconsideration because the Commission decision appeared to be a complete dismissal of Mr. Frank's claims and Mr. Frank had unpaid medical insurance expenses for the care of his industrial injury. Second appellate R Vol. II, p. 308-310. Mr. Frank asserted, I. C. 72-432 requires payment of medical expenses for a reasonable time after an industrial injury.

On March 24, 2004, the Industrial Commission ruled and denied reconsideration. Second appellate R Vol. II, p. 324-325. An appeal from the dismissal followed and in Frank v. Bunker Hill, 142 Idaho 126, 124 P.3d 1002 (2005) the Supreme Court ruled and remanded the matter to the Industrial Commission. The Court ruled Bunker Hill was responsible to Mr. Frank for the care of his industrial injuries for the remainder of his life. The Court remanded the matter for a determination of the amount Mr. Frank was entitled to reimbursement because he had provided for the medical care of his industrial injuries. The Industrial Commission was also required to make a determination if Mr. Frank owed Gulf Resources reimbursement for an overpayment of temporary total benefits when compared to his final rating of 55% total disability. The Supreme Court found Mr. Frank was precluded from reopening and gaining additional compensation because of his worsening condition.

The Industrial Commission conducted a hearing on remand. Mr. Frank presented expenses to offset the amount Gulf Resources claimed it was owed. Mr. Frank requested

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reimbursement for the cost of providing medical insurance for the care of his industrial injuries.

The Commission found an amount due Mr. Frank because of actual medical expenditures. The Commission denied Mr. Frank's request for reimbursement for the cost of his medical insurance and award of attorney's fees. Order On Remand Re: Additional Medical Benefits, current R p. 80-83. This appeal is from the Order On Remand Re: Additional Medical Benefits.

STATEMENT OF FACTS

Mr. Frank testified at the hearing on remand and reviewed what he had undergone since 1991. He testified he had a bone spur removed from his neck, that the Harrington Rods were removed, that arthritis was building in his spine. Tr. p. 14-16. Mr. Frank testified that he was on an extensive pain medication regime because of the industrial accident. Tr. pp. 23, l. 23 through p. 28. Mr. Frank testified that his medical costs have been paid by his retirement plan, his Blue Cross Plan, and out of his pocket. Tr. p. 29, l. 23 through p. 30, l. 1-25. Mr. Frank testified that his physical condition continues to worsen and explained the worsening. Tr. pp. 13, l. 17-25, through p. 21, l. 1-19. Mr. Frank also testified that he has provided for the cost of medical insurance to help cover the cost of medical expenses. Tr. p.33, l. 21-25, p. 34, l. 1 - 9.

Mr. Frank submitted affidavits to verify the need of his medical treatment, the need to self insure himself, and the cost of insuring himself. The affidavits are attached hereto as appendixes.

ISSUES PRESENTED ON APPEAL

1. DID THE INDUSTRIAL COMMISSION COMMIT ERROR IN FAILING TO AWARD MR. FRANK REIMBURSEMENT FOR HIS COST OF INSURANCE TO PROVIDE FOR THE MEDICAL CARE OF HIS INJURIES?
2. DID THE INDUSTRIAL COMMISSION COMMIT ERROR IN DENYING MR. FRANK'S REQUEST FOR ATTORNEY'S FEES?
8. APPELLANT'S BRIEF

ARGUMENT

THE INDUSTRIAL COMMISSION COMMITTED ERROR IN FAILING TO AWARD MR. FRANK REIMBURSEMENT FOR THE COST OF PAST AND FUTURE MEDICAL INSURANCE REQUIRED FOR THE CARE OF HIS INDUSTRIAL INJURY

The main issue to be decided in this appeal is whether Mr. Frank is entitled to reimbursement for the cost of medical insurance that has been required to pay for the cost of caring for his industrial injury. The Industrial Commission ruled that Mr. Frank can not recover the cost of insurance because I.C. 72-432 only provides for the recovery of the cost of medical care.

Mr. Frank is entitled to benefits for the cost of reasonable medical care for his industrial injury. I.C. 72-432 provides for the medical services and supplies an injured worker is entitled to. It provides in part:

(1) The employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

(2) The employer shall also furnish necessary replacements or repairs of appliances and prostheses, unless the need therefor is due to lack of proper care by the employee. If the appliance or prosthesis is damaged or destroyed in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair, but not for any subsequent replacement or repair not directly resulting from the accident.

At all times it has been recognized that Mr. Frank would require continuing care for his medical condition. The Industrial Commission decision deprives Mr. Frank of those benefits and the decision should be reversed. Mr. Frank would not have been able to provide for his own care without insurance. Therefore, Mr. Frank has insured himself to replace the lost benefits from

Bunker Hill, Gulf Resources, and the actions of the State agencies in releasing the surety for the employer. Mr. Frank has done no differently than most every employer is required to do - insure for the care of injured workers.

Mr. Frank has had to become his own self insurer. Gulf Resources (Pintlar) refused to pay medical expenses following bankruptcy, see exhibit five. Mr. Frank is requesting reimbursement for his cost of self insurance beginning September 1993. Mr. Frank testified he paid \$44,225 for his insurance for the period of September 1993 through April 2007. Tr. p. 34, l. 7 - 9.

Mr. Frank should be entitled to the projected cost of medical and prescription insurance for life. The affidavit of Terry Spohr, P.A., establishes that for the remainder of his life, Mr. Frank will require continuing medical care and medication for the care of his industrial injury. Current R. pp. 42 - 60.

The affidavit of Robert P. Nonini establishes the projected cost of future medical and prescription insurance for Mr. Frank. Mr. Nonini has segregated the cost for insurance for the period of time prior to age 65 and after. The present value of the cost of insurance until age 65 is \$105,062.81. Affidavit of Robert P. Nonini, Current R. pp. 68 - 79 at p. 10.

The following table reflects the requested amount of judgment against Bunker Hill.

Excess amounts owed Frank through August 1993 per Ind. Comm.	\$ 4,779.41
Insurance cost September 1993 through April 2007	\$ 44,254.00
Ins. cost May 2007 through age 65 (nonsmoker)	\$105,062.81
Ins. deductible through age 65	\$ 4,000.00
Ins. age 65 for 15 yrs at current cost per Nonini affidavit.	\$ 29,111.76
Uncovered prescription medication per yr. age 65-80 - \$2,500 per yr. x 15 yrs.	<u>\$ 37,500.00</u>
Total before interest	<u>\$224,707.98</u>

The Industrial Commission ruled that Mr. Frank was entitled to interest pursuant to I.C. 72-734. Mr. Frank requests that attorneys fees be added to the judgment.

THE INDUSTRIAL COMMISSION COMMITTED ERROR IN FAILING TO GRANT MR. FRANK'S MOTION FOR ATTORNEY'S FEES

On December 17, 1993, Gulf Resources and Pintlar brought the proceedings to a halt by claiming they were the successors to Bunker Hill Company. In essence, Bunker Hill abandoned defense of the action after December 17, 1993, when Gulf/Pintlar brought the proceedings to a halt. Not until January 16, 2004, when Givens Pursley, LLP requested a status conference because of Paul Frank's application for default, did Gulf, Pintlar, or Bunker Hill give any heed to this action.

The Bunker Hill Company maintained a continuous succession of lawyers until 2000. Bill Boyd started the case and Charles Cox of the same law firm continued representation until Elam & Burke, P.A. substituted as counsel for the named defendant on January 7, 1994. Second appellate R Vol. I, p. 85. Elam & Burke were attorneys of record when the Industrial Commission retained the case on May 24, 2000 and they failed to object to retention. Elam & Burke moved to withdraw from representation of "The Bunker Hill Company" on June 26, 2000 and was allowed to withdraw on July 18, 2000. Second appellate R Vol. I, p. 101. Bunker Hill was the named defendant, yet Elam and Burke provided notice of the withdrawal to Gulf U.S.A. Corporation. See affidavit of Ryan Armbruster, Second appellate R Vol. I, p. 103 - 107.

Now it appears that the Gulf/Pintlar bankruptcy reorganization plan was finalized on July 29, 1995, and that Gulf/Pintlar failed to disclose the finalization on May 24, 2000 when an order retaining the case was entered. Gulf/Pintlar failed to disclose the conclusion of the bankruptcy

when their legal counsel withdrew on June 26, 2000. Gulf and Pintlar essentially abandoned defense of the case with the filing of bankruptcy.

The completion of the bankruptcy case was not revealed until May 9, 2003 when Jessica M. Borup, of Givens Pursley LLP, filed an affidavit containing an exhibit purporting to finalize the bankruptcy on June 29, 1995. Second appellate R. Vol. II, p. 192, 202 and 227.

On December 17, 1993, Bunker Hill's attorney, Charles Cox, wrote to Paul Frank's attorney, and stated an involuntary petition in bankruptcy was filed against Gulf U.S.A. (Gulf) and Pintlar Corporation (Pintlar). He further stated the petition acts as an automatic stay of this proceeding, a stay on payment of obligations which arose prior to the petition, and that violating the stay could result in "substantial sanctions including civil contempt." The document was filed with the Industrial Commission. Second appellate R Vol. 1, p. 84.

The bankruptcy of a party responsible for workers compensation benefits does not relieve the employer's surety from its obligation to Mr. Frank. I. C. 72-308 provides as follows:

Every such policy, contract or bond shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the surety from the payment of compensation for injuries received or occupational diseases contracted or death sustained by an employee during the life of such policy or contract.

To this day the employer/self-insured defendant is the Bunker Hill Company. No substitution of responsible party has ever been made. The name Pintlar has been tossed around with little explanation. Justice Bistline wondered:

Unmentioned in the Court's opinion of May 24, 1988, was that by February of 1984 Bunker Hill Company was off the scene. Paul Frank's opponent in seeking just compensation was not his long-time employer, but its successor-in-interest, Pintlar Corporation. [Frank v. Bunker Hill, 117 Idaho at p. 856 n. 2.]

When Mr. Frank filed his application for hearing the named defendant was "The Bunker

Hill Company.” On June 4, 1991 “The Bunker Hill Company” answered as the employer and plead they were a self-insured entity. Initial R Vol. I, p. 4. Bunker Hill had been self-insured from the inception of the case. I.C. 72-301 provides for an employer to be self-insured for workers compensation purposes. It provides in part:

(2) An employer may become self-insured by obtaining the approval of the industrial commission, and by depositing and maintaining with the commission security satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law. Such security may consist of a surety bond or guaranty contract with any company authorized to transact surety insurance in Idaho. ...

If the Industrial Commission had correctly managed the self-insured status of The Bunker Hill Company, there would be a qualified bond on file. As Referee Donohue stated, the Commission doesn't know who to turn to, at least a judgment should be entered to try and facilitate a recovery by Mr. Frank.

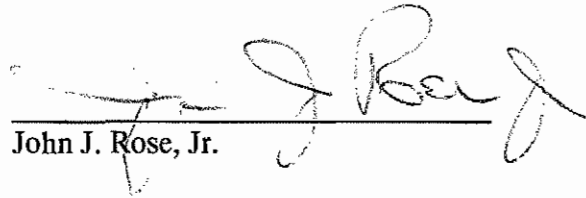
I.C. 72-804 provides for instances where the Industrial Commission or Court may award attorneys fees. Fees may be awarded where the employer or his surety contests a claim for compensation without reasonable cause, fails to pay required compensation after written claim and within a reasonable time, or without reasonable grounds discontinues benefits.

In this case the failure to inform the Commission of the conclusion of the bankruptcy proceedings for approximately eight years is tantamount to contest without reasonable cause. Bunker Hill was aware of Mr. Frank's continuing need for medical care, and the failure to notify the Commission of the conclusion of the bankruptcy is tantamount to failure to pay required compensation within a reasonable time. It is also submitted, the conduct of Bunker Hill constitutes an unreasonable discontinuance of benefits.

CONCLUSION

It is respectfully submitted that this Court should enter a judgment against Bunker Hill for the cost of Mr. Frank's past and future insurance costs. Mr. Frank should be awarded his attorney's fees from December 1993 to the present because they were necessitated by the action of Bunker Hill, Gulf Resources and Pintlar.

Dated this ___ day of April 2008.



John J. Rose, Jr.

APPENDIX A

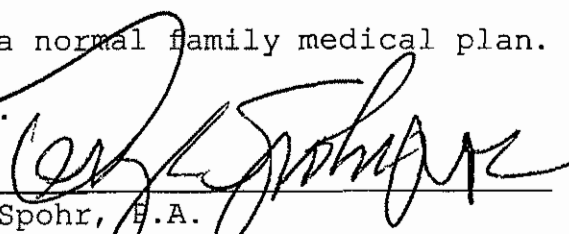
industrial accident. The injuries interfere with every aspect of Mr. Frank's life. Mr. Frank takes the maximum dosage of medications to deal with his pain.

I have reviewed the Summary of Medical Expenses for Mr. Frank for the period of October 1985 through September 1993. I believe those expenses were required to provide for the care of Mr. Frank's industrial injury. I also reviewed the records of Kohal Pharmacy and Gary's Pharmacy and believe those medications are required for the care of Mr. Frank's industrial injury. Said documents are attached hereto.

Mr. Frank's medical condition requires continuing care and will require care for the remainder of his life. The care will include regular consultations with medical care providers, regular medication, regular cortisone injections, regular diagnostic testing, and possible surgery.

In my opinion Mr. Frank should be specifically insured for providing for the care of his industrial injury. The care required is beyond what would be provided by a normal family medical plan.

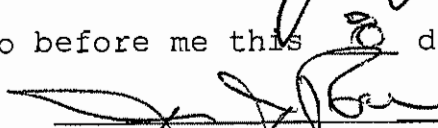
DATED this 8th day of May 2007.



Terry Spohr, E.A.

Subscribed and sworn to before me this 8 day of May 2007.

+++++
JOHN J. ROSE, JR.
NOTARY PUBLIC
STATE OF IDAHO
+++++



Notary Public in and for the
State of Idaho, residing at:
Willamette
Commission expires 5/22/2012

2. AFFIDAVIT OF TERRY SPOHR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following this 17 day of May 2007.

Clerk of the Commission
Idaho Industrial Commission
PO Box 83720
Boise, Idaho 83720-0041

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE

A handwritten signature in black ink, appearing to read "Terry Spohr", is written over a horizontal line.

APPENDIX B

fracture; and a deep wound of the left buttock. Some of the injuries were treated the day of the industrial accident, and later several surgeries were performed on some of the fractures, including a spinal fusion. Mr. Frank was held in skeletal traction, and Harrington instrumentation was performed on the vertebral fracture. I understand the Harrington instrumentation was removed.

3. I have further been informed that Mr. Frank's physical condition continues to deteriorate at an accelerated rate because of his industrial injury. Mr. Frank suffers severe back, neck, and mussel pain as a result of his industrial accident. The injuries interfere with every aspect of Mr. Frank's life. Mr. Frank takes the maximum dosage of medications to deal with his pain. I also reviewed records of Kohal Pharmacy and Gary's Pharmacy and have been informed those medications are required for the care of Mr. Frank's industrial injury. Said documents are attached hereto.

4. I have been informed that Mr. Frank defrays the cost of his medical benefits with a Bunker Hill retirement medical benefit that covers approximately 80% of medical and prescription costs and the remainder is by private medical insurance purchased by Mr. Frank, and personally by Mr. Frank. The Bunker Hill retirement plan is a limited fund plan through the U.S. Bankruptcy Court.

5. I have been informed Mr. Frank's medical condition requires continuing care and will require care for the remainder of his

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life. The care will include regular consultations with medical care providers, regular medication, regular cortisone injections, regular diagnostic testing, and possible surgery.

6. In my opinion Mr. Frank should be specifically insured for providing for the care of his industrial injury. The care required is beyond what would be provided by a normal family medical plan.

7. My opinion is that Mr. Frank should have \$1,000.00 deductible, preferred provider plan such as offered by Blue Cross of Idaho. The current cost of such a plan is \$1,753.00 per month. The maximum prescription benefit available under such a plan is limited to 50% of the cost with a cap \$1,200.00 per year that will be paid by insurance.

8. It is reasonable to expect an increase of premiums in the amount of 15% per year.

9. Mr. Frank's unadjusted reasonable life expectancy is 19.41 years at the current time.

10. In my opinion \$105,062.81 is the present value of the cost to insure Mr. Frank for medical care and the prescription cost until age 65. At age 65 Mr. Frank would be required to obtain a supplemental Medicare Plan J. The current cost of such a plan is \$130.54 and does not include prescription costs. Attached hereto is a current rate schedule for a medicare supplement plans. In my opinion Mr. Frank should be insured under Plan J. Rate increases for this Plan J insurance is this expected to go up 5% to 7% per

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year.

11. At age 65 Mr. Frank would be required to obtain a Medicare Part D supplemental prescription plan from among 55 stand alone prescription plans in north Idaho. The cost of such plan would be determined at age 65 and Mr. Frank would be required to pay prescription costs between \$2,500.00 and \$5,000.00.

DATED this 15th day of June 2007

Robert P. Nonini
Robert P. Nonini

Subscribed and sworn to before me this 15th day of June 2007.

Stephanie Shafer
Notary Public in and for the
State of Idaho, residing at:
Coeur d'Alene
Commission expires 12-17-07



4. AFFIDAVIT OF ROBERT P. NONINI

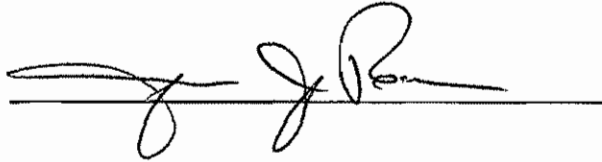
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CERTIFICATE OF SERVICE

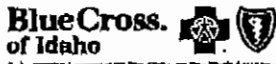
I hereby certify that a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following this 16 day of June 2007.

Idaho Industrial Commission

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE

A handwritten signature in black ink, appearing to read "Robert P. Nonini", is written over a horizontal line.

5. AFFIDAVIT OF ROBERT P. NONINI



Members | Providers | Brokers | Employers

Home | Plans & Benefits | Services | Medicare Supplement

- Home
- Why Choose Classic Blue
- Which Plan is Right for Me
- Outline of Coverage
- Contact Us
- RAC
- Apply Now
- Classic Blue Dental

Rates are per person, per month.
Effective January 1, 2007 through December 31, 2007.

Age	Classic Blue Plan A Non-Tobacco User	Classic Blue Plan A Tobacco User	Classic Blue Plan C Non-Tobacco User	Classic Blue Plan C Tobacco User	Classic Blue Plan F Non-Tobacco User	Classic Blue Plan F Tobacco User	Classic Blue Plan J Non-Tobacco User	Classic Blue Plan J Tobacco User
Under 65	\$112.14	\$129.02	\$205.27	\$236.20	\$210.22	\$241.94	\$187.10	\$215.33
65	\$77.95	\$89.78	\$142.73	\$184.44	\$148.87	\$188.60	\$130.54	\$150.06
66	\$79.52	\$91.56	\$145.85	\$187.92	\$149.71	\$172.92	\$133.24	\$153.38
67	\$81.32	\$93.59	\$148.03	\$171.52	\$152.86	\$175.91	\$136.05	\$156.57
68	\$83.01	\$95.60	\$152.07	\$175.01	\$156.12	\$179.81	\$138.95	\$159.77
69	\$84.59	\$97.41	\$155.10	\$178.61	\$159.15	\$183.34	\$141.85	\$163.17
70	\$82.67	\$99.32	\$158.13	\$182.10	\$162.42	\$186.84	\$144.55	\$166.36
71	\$87.85	\$101.12	\$161.18	\$185.36	\$165.34	\$190.42	\$147.15	\$169.48
72	\$89.65	\$103.15	\$164.33	\$188.96	\$168.60	\$194.14	\$150.06	\$172.79
73	\$91.22	\$105.06	\$167.25	\$192.44	\$171.75	\$197.62	\$152.88	\$175.59
74	\$92.80	\$106.88	\$170.29	\$195.93	\$174.88	\$201.11	\$155.47	\$179.00
75	\$94.60	\$108.88	\$173.21	\$199.31	\$177.71	\$204.59	\$158.17	\$182.09
76	\$96.26	\$110.80	\$176.47	\$203.02	\$181.09	\$208.42	\$161.17	\$185.50
77	\$98.08	\$112.82	\$179.51	\$208.50	\$184.13	\$212.02	\$163.88	\$188.70
78	\$99.88	\$114.86	\$182.88	\$210.55	\$187.72	\$215.98	\$167.08	\$192.21
79	\$101.88	\$117.08	\$186.15	\$214.28	\$191.10	\$219.78	\$170.08	\$195.61
80	\$103.37	\$119.01	\$189.63	\$218.20	\$194.47	\$223.72	\$173.09	\$199.11
81	\$105.28	\$121.20	\$193.12	\$222.14	\$197.98	\$227.77	\$175.19	\$202.72
82	\$107.42	\$123.61	\$196.72	\$226.41	\$201.67	\$232.15	\$178.49	\$206.62
83	\$109.33	\$125.87	\$200.43	\$230.68	\$205.38	\$236.91	\$182.80	\$210.33
84	\$111.38	\$128.12	\$204.03	\$234.85	\$209.21	\$240.70	\$186.20	\$214.23
85+	\$112.14	\$129.02	\$205.27	\$236.20	\$210.22	\$241.94	\$187.10	\$215.33
Dental Option	\$14.95 per person, per month (effective January 2007)							

Scenario Plan Details



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