

2-22-2013

# Fonseca v. Corral Agriculture, Inc. Agency's Record Dckt. 40578

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**LAW CLERK**

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

MARCO ANTONIO FONSECA,

Claimant/Appellant,

v.

CORRAL AGRICULTURE, INC, Employer,  
and STATE INSURANCE FUND, Surety,

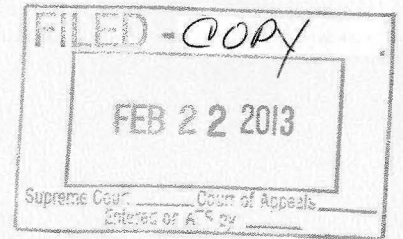
Defendants/Respondents.

**SUPREME COURT NO. 40578**

**AGENCY RECORD**

Attorney for Appellant:

Richard L. Hammond  
811 E. Chicago St.  
Caldwell, ID 83605



Attorney for Respondents:

David J. Lee (*in lieu of Max M. Sheils, Jr.*)  
Statehouse Mail  
PO Box 83720  
Boise, ID 83720-0044

COPY

410578

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

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v.

CORRAL AGRICULTURE, INC, Employer,  
and STATE INSURANCE FUND, Surety,

Defendants/Respondents.

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**AGENCY RECORD**

Attorney for Appellant:

Richard L. Hammond  
811 E. Chicago St.  
Caldwell, ID 83605

Attorney for Respondents:

David J. Lee (*in lieu of Max M. Sheils, Jr.*)  
Statehouse Mail  
PO Box 83720  
Boise, ID 83720-0044

COPY

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*Reporter's Transcript taken on January 10, 2012, and continued on March 2, 2012  
will be filed with the Supreme Court*

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2. District Court complaint, p. 32-34
3. State Insurance Fund Claims NotePad, p. 35-36
4. Corral Agricultural Services, Inc. payroll account, employee compensation history, and time sheet, p. 37-43
5. Imaging Center of Idaho medical records and bill, p. 44-50
6. Rehab Authority medical records and health insurance claim forms, p. 51-72
7. West Valley Medical Center records and charges, p. 73-96
8. Nampa Medical records and Imaging Center of Idaho records, p. 97-112
9. Correspondence from Rehab Authority and Imaging Center of Idaho MRI report, p. 113-117
10. Transcript of the Statement on the Record Regarding 30(b)(6) Deposition of Corral Agriculture, Inc., and Depositions of Roberto Corral, Jorge Coronado, and Luisa Corral, taken September 1, 2011
11. Transcript of Verbatim Report of Proceedings, taken December 15, 2011
12. Transcript of 30(b)(6) Deposition of Williamson Orchards, Inc., Testimony of Roger L. Williamson, taken September 1, 2011
13. Transcript of Deposition of Diane Evans, taken October 12, 2011
14. Transcript of Deposition of Joyce L. Ellefson, taken September 1, 2011
15. Transcript of Deposition of Jorge Coronado, taken December 15, 2011
16. Transcript of Deposition of Roberto Corral, Jr., taken December 15, 2011
17. Claimant's Notice of Service of Rule 10 Exhibits, Second Supplement, with Claimant's deposition drawing
- 17a. Secretary of State Reinstatement Annual Report Form
18. Correspondence to employees of Corral Agriculture, Inc., p. 1-45



19. Claimant's Notice of Service of Rule 10 Exhibits, Third Supplement, letters and translation from coworkers
20. Corral Agriculture Services, Inc., invoice and time sheets

Defendants' Exhibits:

1. Terry Reilly Medical Records, 2009-2011, p. 1-31
2. West Valley Medical Center Records, December 15, 2010, p. 32-39
3. Idaho Repository Case History Page, 2 pages

Additional Documents:

1. Claimant's Opening Brief, filed June 13, 2012
2. Post-Hearing Brief of Employer and Surety, Defendants, filed July 6, 2012
3. Claimant's Closing Brief, filed July 10, 2012

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HAMMOND LAW OFFICE

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SEND ORIGINAL TO: INDUSTRIAL COMMISSION, JUDICIAL DIVISION, P.O. BOX 83720, BOISE, IDAHO 83720-0041  
WORKERS' COMPENSATION COMPLAINT

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS Marco Antonio Fonseca [REDACTED] Nampa, ID 83651		CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER Hammond Law Office, PA Richard L. Hammond 811 E. Chicago Street Caldwell, ID 83605 Phone: 208-453-4857 Fax: 208-453-4861
EMPLOYER'S NAME AND ADDRESS (at time of injury) Corral Agriculture Inc. 6116 E. Lewis Lane Nampa, ID 83686 & 9211 Lakeshore Dr. Nampa, ID 83686		WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS Idaho State Insurance Fund PO Box 83720 Boise, ID 83720-0044 Fax: (208) 332-2171
CLAIMANT'S SOCIAL SECURITY NO. 999-99-9999	CLAIMANT'S BIRTHDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE September-2010
STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Canyon		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$8.50 per hr PURSUANT TO IDAHO CODE § 72-419

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INDUSTRIAL COMMISSION

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

Claimant was injured while doing field work.

NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE

Leg fractures as demonstrated in the medical records.

WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?

Unpaid PTD /TTD, Medical Treatment, PPD / PPI, Possible Total Permanent, Mileage Reimbursement, Retraining Benefits, etc.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 8-10-10 / 8-11-10 / 2-20-11	TO WHOM NOTICE WAS GIVEN Direct Supervisor Temporary Supervisor Roger Williamson
---	---

HOW NOTICE WAS GIVEN:                       ORAL       WRITTEN     OTHER, PLEASE SPECIFY

ISSUE OR ISSUES INVOLVED

Is claimant entitled to back owed and ongoing TTD PTD claimant entitled to payment of medical bills for injuries sustained in this accident; Is Claimant entitled to any additional medical treatment, the extent of claimant's permanent and partial impairment and or disability and attorney's fees.

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS?     YES     NO    IF SO, PLEASE STATE WHY.

NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002

SEND ORIGINAL TO: INDUSTRIAL COMMISSION, JUDICIAL DIVISION, P.O. BOX 83720, BOISE, IDAHO 83720-0041  
**WORKERS' COMPENSATION COMPLAINT**

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS Marco Antonio Fonseca [REDACTED] Nampa, ID 83651		CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER Hammond Law Office, PA Richard L. Hammond 811 E. Chicago Street Caldwell, ID 83605 Phone: 208-453-4857 Fax: 208-453-4861	
EMPLOYER'S NAME AND ADDRESS (at time of injury) Corral Agriculture Inc. 6116 E. Lewis Lane Nampa, ID 83686 & 9211 Lakeshore Dr. Nampa, ID 83686		WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS Idaho State Insurance Fund PO Box 83720 Boise, ID 83720-0044 Fax: (208) 332-2171	
CLAIMANT'S SOCIAL SECURITY NO. [REDACTED]	CLAIMANT'S BIRTHDATE [REDACTED]	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE September-2010	
STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Canyon		WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$8.50 per hr PURSUANT TO IDAHO CODE § 72-419	
DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED) Claimant was injured while doing field work.			
NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE Leg fractures as demonstrated in the medical records.			
WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME? Unpaid PTD /TTD, Medical Treatment, PPD / PPI, Possible Total Permanent, Mileage Reimbursement, Retraining Benefits, etc.			
DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER 8-10-10 / 8-11-10 / 2-20-11		TO WHOM NOTICE WAS GIVEN Direct Supervisor Temporary Supervisor Roger Williamson	
HOW NOTICE WAS GIVEN: <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY			
ISSUE OR ISSUES INVOLVED Is claimant entitled to back owed and ongoing TTD PTD claimant entitled to payment of medical bills for injuries sustained in this accident; Is Claimant entitled to any additional medical treatment, the extent of claimant's permanent and partial impairment and or disability and attorney's fees.			
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF SO, PLEASE STATE WHY.			

**NOTICE: COMPLAINTS AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND MUST BE IN ACCORDANCE WITH IDAHO CODE § 72-334 AND FILED ON FORM I.C. 1002**

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

Primary Treating Physician:      Other Treating Physicians:

West Valley Medical Center 1717 Arlington Ave Caldwell, ID 83605 Tel: (208) 459-4641 Fax: (208) 455-3831	Rehab Authority Nampa, ID 83786 Phone: (208) 467-7889 Fax: (208) 467-7800	Terry Reilly Health Services 211 16 <sup>th</sup> Avenue N. Nampa, ID 83653 Phone: (208) 467-4431 Fax: (208) 467-7684	
--	--	---	--

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?    TBD.

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? \$0.00    WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY?    TBD

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.       YES       NO

DATE    5-03-2011      SIGNATURE OF CLAIMANT OR ATTORNEY  
*[Handwritten Signature]*

PLEASE ANSWER THE SET OF QUESTIONS IMMEDIATELY BELOW  
ONLY IF CLAIM IS MADE FOR DEATH BENEFITS

NAME AND SOCIAL SECURITY NUMBER OF PARTY FILING COMPLAINT N/A	DATE OF DEATH N/A	RELATION TO DECEASED CLAIMANT N/A
WAS FILING PARTY DEPENDENT ON DECEASED? <input type="checkbox"/> YES <input type="checkbox"/> NO      N/A	DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO      N/A	

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of May, 2011, I caused to be served a true and correct copy of the foregoing Complaint and Claimant's Discovery Request to Defendants upon:

EMPLOYER'S NAME AND ADDRESS  
Corral Agriculture Inc.  
6116 E. Lewis Lane  
Nampa , ID 83686  
&  
9211 Lakeshore Dr.  
Nampa, ID 83686

SURETY'S NAME AND ADDRESS  
Idaho State Insurance Fund  
PO Box 83720  
Boise, ID 83720-0044  
Fax: (208) 334-3711

Via regular US Mail

via fax and regular US Mail

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature

**NOTICE: An Employer or Insurance Company served with a Complaint must file an Answer on Form I.C. 1003 with the Industrial Commission within 21 days of the date of service as specified on the certificate of mailing to avoid default. If no answer is filed, a Default Award may be entered!**

Further information may be obtained from: Industrial Commission, Judicial Division, P.O. Box 83720, Boise, Idaho 83720-0041 (208) 334-6000.

Patient Name: Marco Antonio Fonseca  
Birth Date: [REDACTED]  
Address: [REDACTED]  
Case Number: 208-703-9461  
ISIF 201013928

*(Provider Use Only)*

Medical Record Number: \_\_\_\_\_  
 Pick up Copies    Fax Copies # \_\_\_\_\_  
 Mail Copies \_\_\_\_\_  
ID Confirmed by: \_\_\_\_\_

**AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION**

I hereby authorize \_\_\_\_\_ to disclose health information as specified:  
*Provider Name – must be specific for each provider*

To: Idaho State Insurance Fund  
PO Box 83720  
Boise, ID 83720-0044  
Fax: (208) 332-2171

Purpose or need for data: Workman's Compensation Claim

Information to be disclosed:      Date(s) of Hospitalization/Care: Jan 2010 to Present

- Discharge Summary
- History & Physical Exam
- Consultation Reports
- Operative Reports
- Lab
- Pathology
- Radiology Reports
- Entire Record
- Other: Specify \_\_\_\_\_

I understand that the disclosure may include information relating to (check if applicable):

- AIDS or HIV
- Psychiatric or Mental Health Information
- Drug/Alcohol Abuse Information

I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to redisclosure by the recipient and no longer be protected by the federal regulations. I understand that this authorization may be revoked in writing at any time by notifying the privacy officer, except that revoking the authorization won't apply to information already released in response to this authorization. I understand that the provider will not condition treatment, payment, enrollment, or eligibility for benefits on my signing this authorization. **Unless otherwise revoked, this authorization will expire upon resolution of worker's compensation claim.** Provider, its employees, officers, copy service contractor, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized by me on this form and as outlined in the Notice of Privacy. My signature below authorizes release of all information specified in this authorization. Any questions that I have regarding disclosure may be directed to the privacy officer of the Provider specified above.

\_\_\_\_\_  
*Signature of Patient*      *Date*

Attorney      5-3-11  
*Signature of Legal Representative & Relationship to Patient/Authority to Act*      *Date*

\_\_\_\_\_  
*Signature of Witness*      *Title*      *Date*

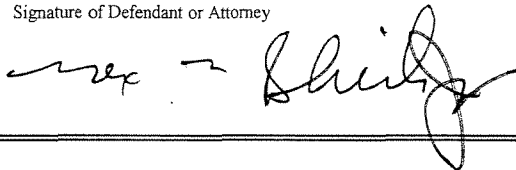


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11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

The defendants affirmatively allege the claimant's condition is, in whole or in part, due to injuries, infirmities, or conditions unrelated to the industrial accident which is the subject matter of this claim. Defendants reserve the right to amend this answer to allege all appropriate additional affirmative defenses as additional information becomes known.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. <b>No</b>			
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE. <b>No.</b>			
Amount of Compensation Paid to Date			Dated May 10, 2011
PPD	TTD	Medical	Signature of Defendant or Attorney 
\$0.00	\$0.00	\$0.00	

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2011, I caused to be served a true and correct copy of the foregoing Answer upon:

CLAIMANT'S NAME AND ADDRESS:

Marco Antonio Fonseca  
c/o Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

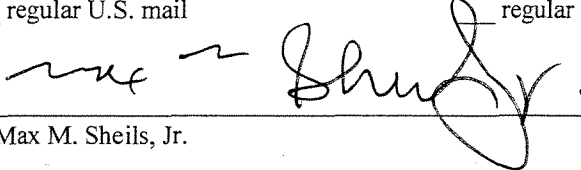
EMPLOYER AND SURETY'S  
NAME AND ADDRESS  
(if applicable):

INDUSTRIAL SPECIAL INDEMNITY FUND  
NAME AND ADDRESS:

via: \_\_\_ personal service  
of process  
xxx regular U.S. mail

via: \_\_\_ personal service  
of process  
\_\_\_ regular U.S. mail

via: \_\_\_ personal service  
of process  
\_\_\_ regular U.S. mail

  
\_\_\_\_\_  
Max M. Sheils, Jr.

SEND ORIGINAL TO: INDUSTRIAL COMMISSION, JUDICIAL DIVISION, 317 MAIN STREET, BOISE, IDAHO 83720-6000

## AMENDED ANSWER TO COMPLAINT I.C. NO. 2010-031750

CLAIMANT'S NAME AND ADDRESS: <b>Marco Antonio Fonseca</b> 1224 10 <sup>th</sup> Avenue Nampa, ID 83651	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS: <b>Richard L. Hammond</b> Hammond Law Office, PA 811 E. Chicago St. Caldwell, ID 83605
EMPLOYER'S NAME AND ADDRESS: <b>Corral Agriculture, Inc.</b> PO Box 3234 Nampa, ID 83686	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS: <b>State Insurance Fund</b> PO Box 83720 Boise, ID 83720-0044
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS): <b>Max M. Sheils, Jr.</b> <b>ELLIS BROWN &amp; SHEILS</b> P. O. Box 388 Boise, Idaho 83701	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS):  

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2011 MAY 17 PM 3:21

xxx The above-named employer or employer/surety responds to Claimant's Complaint by stating:

\_\_\_ The Industrial Special Indemnity Fund responds to the Complaint against the ISIF by stating:

IT IS: (Check One)		
Admitted	Denied	
	X	1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.
X		2. That the employer/employee relationship existed.
X		3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
	X	4. That the condition for which benefits are claimed was caused partly or entirely by an accident arising out of and in the course of Claimant's employment.
NOT ALLEGED	NOT ALLEGED	5. That, if an occupational disease is alleged, manifestation of such disease is or was due to the nature of the employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment.
	X	6. That notice of the accident causing the injury, or notice of the occupational disease, was given to the employer as soon as practical but not later than 60 days after such accident or 60 days of the manifestation of such occupational disease.
NOT ALLEGED	NOT ALLEGED	7. That, if an occupational disease is alleged, notice of such was given to the employer within five months after the employment had ceased in which it is claimed the disease was contracted.
	X	8. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: <b>\$TBD</b>
X		9. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.
10. What benefits, if any, do you concede are due Claimant? <b>Nothing</b>		

COMPLETE OTHER SIDE

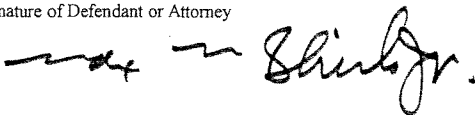


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11. State with specificity what matters are in dispute and your reason for denying liability, together with any affirmative defenses.

The defendants affirmatively allege the claimant's condition is, in whole or in part, due to injuries, infirmities, or conditions unrelated to the industrial accident which is the subject matter of this claim. Defendants reserve the right to amend this answer to allege all appropriate additional affirmative defenses as additional information becomes known.

Under the Commission rules, you have twenty-one (21) days from the date of service of the Complaint to answer the Complaint. A copy of your Answer must be mailed to the Commission and a copy must be served on all parties or their attorneys by regular U.S. mail or by personal service of process. Unless you deny liability, you should pay immediately the compensation required by law, and not cause the claimant, as well as yourself, the expense of a hearing. All compensation which is concededly due and accrued should be paid. Payments due should not be withheld because a Complaint has been filed. Rule III(D), Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Indemnity Fund must be filed on Form I.C. 1002.

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE. <b>No</b>				
DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE. <b>No.</b>				
Amount of Compensation Paid to Date			Dated May 17, 2011	Signature of Defendant or Attorney 
PPD	TTD	Medical		
\$0.00	\$0.00	\$0.00		

PLEASE COMPLETE

### CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2011, I caused to be served a true and correct copy of the foregoing Answer upon:

CLAIMANT'S NAME AND ADDRESS:

EMPLOYER AND SURETY'S  
NAME AND ADDRESS  
(if applicable):

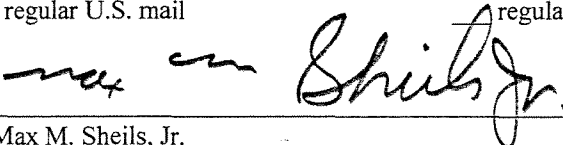
INDUSTRIAL SPECIAL INDEMNITY FUND  
NAME AND ADDRESS:

Marco Antonio Fonseca  
c/o Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

via: \_\_\_ personal service  
of process  
xxx regular U.S. mail

via: \_\_\_ personal service  
of process  
\_\_\_ regular U.S. mail

via: \_\_\_ personal service  
of process  
\_\_\_ regular U.S. mail

  
Max M. Sheils, Jr.





5. Exhibit B is a true and correct copy of such Notice served upon Corral Agriculture, Inc on or about the 1<sup>st</sup> of August; Counsel further served substantially similar separate Notices upon Roberto Corral, Jorge Coronado, and Luisa Corral on or about the 1<sup>st</sup> of August 2011.
6. No objection was lodged prior to or at the time set for the deposition of the above parties.
7. Defendant Employer Corral Agriculture, Inc, Roberto Corral, Jorge Coronado and Luisa Corral failed to appear and failed to forward any records at or before the deposition scheduled for the 1<sup>st</sup> of September 2011.
8. Defendants informed Counsel herein that Defendant Corral Agriculture, Inc. is no longer in operation and has been less than cooperative.
9. Exhibit C is a true and correct copy of the Idaho Repository reflecting that Idaho State Insurance Fund has recently filed suit against the Defendant employer and Roberto Corral, Sr. the President of Corral Agriculture.
10. Upon information and belief, any additional delay or additional costs would take up unnecessary resources of the Industrial Commission, Claimant and Defendants herein.

Therefore, Claimant humbly asks, pursuant to the Idaho Judicial Rules of Practice and Procedure 16, that sanctions be entered and that Defendants' pleadings be stricken and default entered pursuant to Idaho Judicial Rules of Practice 6 and or 16.

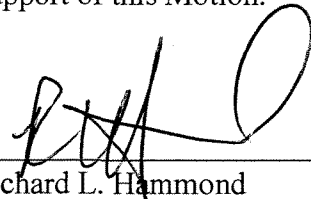
The purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering. It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose. *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338 (2006).

Alternatively, Claimant humbly asks, pursuant to the Idaho Judicial Rules of Practice and Procedure 8(D), for an Emergency Hearing and for an Order Compelling the Defendant to answer the Interrogatories and Request for Production outlined in Exhibit A. Claimant is ready for the hearing

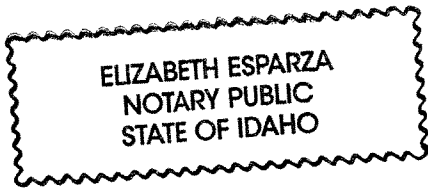
herein regarding the preliminary issues of whether he gave notice of the accident, whether treatment is necessary, whether TTD benefits are necessary and whether Claimant is entitled to Attorney fees and costs. Claimant requests a hearing in Boise Idaho before one hearing officer for less than one day with a Spanish Interpreter. Claimant is available after the 15<sup>th</sup> of September with the exception of September 19, 27, 28; and October 3, 4, 11, 12, 20, 21, 28.

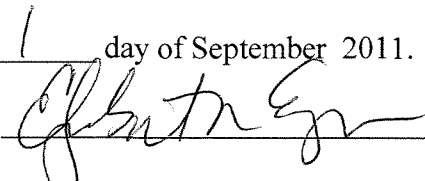
The Affidavit of Claimant is submitted herein in support of this Motion.

Dated this 1 day of September 2011

  
Richard L. Hammond

SUBSCRIBED AND SWORN TO before me this 1 day of September 2011.




  
Notary Public for Idaho  
Resides in Canyon County  
My Commission Expires: March 31, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of September 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

MAX M. SHEILS, JR.	<u>  X  </u>	U.S. Mail
ELLIS, BROWN & SHEILS, CHARTERED	<u>      </u>	Hand Delivered
Attorneys-at-Law	<u>      </u>	Overnight Mail
707 North 8th Street	<u>  X  </u>	Telecopy (FAX)
P.O. Box 388		
Boise, Idaho 83701-0388		
(208) 345-7832 (Telephone)		
(208) 345-9564 (Facsimile)		
ISB No. 1772		

Attorneys for Defendants

  
Richard L. Hammond

# HAMMOND LAW OFFICE, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Richard L. Hammond  
R. Aaron Morriss  
Jim Rice  
Kyle Hansen- Of Counsel

July 13, 2011

*Sent via fax/ Total Pages: 2*

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

RE: Injured: Marco Antonio Fonseca  
Date of Injury: September 2010  
Employer: Corral Agriculture, Inc.  
Claim No.: 201013928

Dear Mr. Sheils:

Thank you for the discovery responses we receive this week. The issues in this case are whether Mr. Fonseca was injured at work and whether notice was given. Therefore, the names, addresses, phone numbers, contact information, employee records with time cards of the coworkers are necessary and will likely lead to discoverable evidence as the Claimant alleges coworkers were present the day of the accident and when notice was given shortly thereafter.

Also, the employee file provided does not contain all the information that is required to be maintained in the employee file including but not limited to the employment application, I-9, identification, payroll and timesheets for after August 12, 2011, etc.

**Fair Labor Standards Act - FLSA - 29 U.S. Code Chapter 8: requires employers to maintain basic employment and earnings records and wage rate tables, order, shipping, and billing records, and records of additions to or deductions from wages paid, are required to be kept for two years and payroll records, certificates, agreements, plans, notices, and sales and purchase records for three years.**

**Civil Rights Act of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 US Code Chapter 21; Age Discrimination in Employment Act of 1967 - ADEA - 29 U.S. Code Chapter 14 (ADEA) and Americans with Disabilities Act of 1990 - ADA - 42 U.S. Code Chapter**

*126 (ADA): employers with at least fifteen employees must retain applications and other personnel records relating to hires, rehires, tests used in employment, promotion, transfers, demotions, selection for training, layoff, recall, terminations of discharge, for one year from making the record or taking the personnel action. The ADEA requires the retention of the same records for one year for employers with twenty or more employees. Title VII and the ADA require that basic employee demographic data, pay rates, and weekly compensation records be retained for at least one year.*

*Family and Medical Leave Act - FMLA - 29 U.S. Code Chapter 28: requires the retention of payroll and demographic information as well as information related to the individual employee's leave of absence for three years.*

*Occupational Safety and Health Act - OSHA - 29 U.S. Code Chapter 15: requires that records of job-related injuries and illnesses be kept for five years and are required to fill out and post an annual summary.*

**IRS; Form I-9, OMB 1615-0047** : requires employers to maintain records relating to wage withholding, tax withholdings, for **four years** from the date tax is due or paid and requires the employer to maintain the INS Form I-9, payroll records for **three years after the date of hire or one year after the date of termination, whichever is later.**

Please let us know if your client will provide the information above and requested in Interrogatory 10 and Request for Production 9 relating to the claimant and co workers and other employees within two weeks. Also, please let us know if the if the statements given by Mr. Corral or Mr. Coronado were recorded and if you will provide a copy of the audio / transcript of such.

For clarification, we would like to take the deposition of Roberto "Tito" Corral, Jorge Coronado, Luisa Corral, Mr. Fonseca's direct supervisor in September, Joyce Ellefson and the records custodian of Wilkerson Ranch and the records custodian for Corral Agriculture Inc. Once we obtain the employee records from the Wilkerson Ranch, we would like to take the deposition of all employees that worked the day of the accident and worked the week following.

This letter will also confirm that we are set for depositions on the 1<sup>st</sup> of September at 9:00 AM. Thank you for your assistance in this matter. If you have any questions, please contact our office.

Sincerely,

15/

Richard L. Hammond  
Attorney at Law

RICHARD L. HAMMOND  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, Idaho 83605  
Telephone: (208) 453-4857  
Facsimile: (208) 453-4861  
I.S.B. #6993

Attorney for Claimant

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,  
Claimant,

v.

CORRAL AGRICULTURE, INC.,  
Employer,

and

STATE INSURANCE FUND,  
Surety,  
Defendants.

I.C. No. 2010-031750

**NOTICE OF TAKING DEPOSITION  
AND TAKING DEPOSITION DUCES  
TECUM of CORRAL AGRICULTURE,  
INC.**

**THE STATE OF IDAHO TO: CORRAL AGRICULTURE, INC. and MAX M.  
SHEILS, JR, the attorney for Defendants.**

**PURSUANT TO IDAHO RULES OF CIVIL PROCEDURE 26, 30(a), 45(a), (b),**

**and (c) AND BY ORDER OF THE COURT, YOU ARE HEREBY COMMANDED:**

[X ] to appear at the place, date and time specified below to for your deposition to be taken in the above case.

[X] to appoint the records custodian of the above Corporation to appear at the place, date and time specified below to testify at the taking of a deposition in the above case relating to the records requested below and he questions in Claimant's Discovery.

**NOTICE OF TAKING DEPOSITION AND TAKING DEPOSITION DUCES 1  
TECUM of CORRAL AGRICULTURE, INC.**

Exhibit B<sup>u</sup>

15



[X] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date, and time specified below.

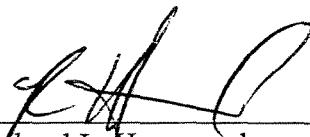
YOU WILL PLEASE TAKE NOTICE, that the Claimant, will take the testimony on oral examination of CORRAL AGRICULTURE, INC pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, a notary public, or in case of their inability to act or be present before some other officer authorized to administer oaths on the 1<sup>st</sup> of September 2011, at the hour of 10:00 A.M. of said day at Hammond Law Office, P.A., 811 E. Chicago Street, Caldwell, ID 83605. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination.

CORRAL AGRICULTURE, INC is also commanded to bring each and every document it possess relating to Claimant's accident that occurred on or about September 2010 any and all records and documents relating to the EMPLOYMNET AND ACCIDENT(S) OF MARCO ANTONIO FONSECA DURING 2010 specifically, but not limited to August, September and October 2010. This Subpoena demands all records and documents specifically but not limited to the following:

- i. Notes, journals, journal entries and case notes for the above case number. Please include but do not limit your response to all written and stored media in your possession regarding the parties and witnesses. Please provide a privilege log of all items withheld.
- ii. All documents requested in discovery.
- iii. Time cards or any records of hours and work performed by Marco Antonio Fonseca.
- iv. Payment(s) to CORRAL AGRICULTURE, INC for any work performed by Marco Antonio Fonseca and other employees during 2010 from Williamson Orchards, Inc. or any subcontractor where Claimant worked.
- v. Agreement(s), Contracts, and Correspondence with Williamson Orchards, Inc. relating to Marco Antonio Fonseca and or other employees of CORRAL AGRICULTUE, INC for work done in 2010.

- vi. The employee manual of Corral Agriculture, Inc. and any safety policy effective the September 2010.
- vii. Any notes or other documents relating to Marco Antonio Fonseca's accident or work performance whether, positive, negative or neutral.
- viii. Documentation relating to the accident of Marco Antonio Fonseca, or any other employee of Corral Agriculture, Inc, that occurred in 2010.
- ix. Notes, statements, emails, correspondence and other records that identify witnesses or relate to the accident in September 2010 or employment of Marco Antonio Fonseca in 2010.

Dated this 1 day of August 2011.


  
 \_\_\_\_\_  
 Richard L. Hammond

HEREBY CERTIFY that on this 1 day of August 2011, I caused to be served a true and correct copy of the foregoing document with Claimant's Answers to Defendants' Discovery was served by the method indicated below, and addressed to the following:

MAX M. SHEILS, JR.  
 ELLIS, BROWN & SHEILS,  
 CHARTERED  
 Attorneys-at-Law  
 707 North 8th Street  
 P.O. Box 388  
 Boise, Idaho 83701-0388  
 (208) 345-7832 (Telephone)  
 (208) 345-9564 (Facsimile)  
 ISB No. 1772

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (FAX)

Attorneys for Defendants

  
 \_\_\_\_\_  
 Richard L. Hammond

### Case History

Ada

1 Cases Found.

<b>Idaho State Insurance Fund vs. Roberto Corral Sr, etal.</b>			
Case: <b>CV-OC-2011-16027</b>	Magistrate Filed: <b>08/19/2011</b>	Subtype: <b>Other Claims</b>	Judge: <b>Patricia Young</b> Status: <b>Pending</b>
Defendants: <b>Corral Agriculture Inc Corral, Roberto Sr</b>			
Plaintiffs: <b>Idaho State Insurance Fund,</b>			
Register Date			
of			
actions:			
08/19/2011 New Case Filed - Other Claims			
08/19/2011 Complaint Filed			
08/19/2011 Summons Filed			

Connection: Public

Exhibit "C"  
18

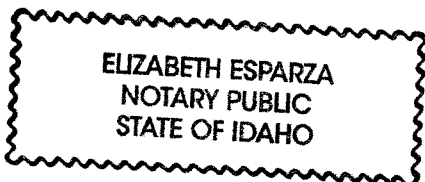




3. I immediately notified Mr. Williamson and George of the accident and was told to go home because I was unable to continue working.
4. The next working day I presented to work at Williamson Orchard, Inc. and had a short meeting with the co workers, and the supervisors including but not limited to "Tito" Corral, Jr, George and Mr. Williamson and discussed the accident that occurred on the 10<sup>th</sup> of September 2010 and was let go and told to go home.
5. A few days later, "Tito", called me and informed me that he had a light duty job for me due to my injury and transferred me approximately a week after the accident to Wilder.
6. I notified Tito and George various times after the accident in September and October 2010 and was not offered any more work after the end of October 2010.
7. Tito and George refused to pay for any treatment for me to obtain treatment.
8. "Tito" then finally agreed to pay me in December 2010 for my wages; however, the wages were paid in cash as the previous checks were returned without funds.
9. I am unable to afford treatment recommended, have been in severe pain since the accident, and have not been able to find gainful employment due to my injuries and work restrictions.
10. Exhibit A is a true and correct copy of my medical records.

SUBSCRIBED AND SWORN TO before me this 1 day of September 2011.

Marco Fonseca  
 Marco Fonseca  
 September



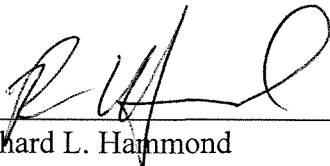
Elizabeth Esparza  
 Notary Public for Idaho  
 Resides in Canyon County  
 My Commission Expires: March 31, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of September 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

MAX M. SHEILS, JR.	<u>  X  </u>	U.S. Mail
ELLIS, BROWN & SHEILS, CHARTERED	<u>      </u>	Hand Delivered
Attorneys-at-Law	<u>      </u>	Overnight Mail
707 North 8th Street	<u>  X  </u>	Telecopy (FAX)
P.O. Box 388		
Boise, Idaho 83701-0388		
(208) 345-7832 (Telephone)		
(208) 345-9564 (Facsimile)		
ISB No. 1772		

Attorneys for Defendants

  
\_\_\_\_\_  
Richard L. Hammond



**WEST VALLEY  
MEDICAL CENTER**  
Employee Injury Treatment Report  
Coordinator (208) 455-3961

Yellow  
Blue  
Medical Examiner - Green  
Pink

**NOTICE TO EMPLOYER:** This form is specifically for use in reporting your employee's work status. All other information contained herein should be considered confidential between you and your employee. We suggest you keep this information separate from any personnel file to avoid any conflict with the American Disabilities Act.

Employee: Marco A. Fonseca Date of Birth: 04-25-60 Phone: 208) 703-9461

Employer: Rancho Wilkenson Phone: \_\_\_\_\_

Date/Time of Injury: \_\_\_/\_\_\_/\_\_\_ : \_\_\_ am/pm Date/Time of Treatment: \_\_\_/\_\_\_/\_\_\_ : \_\_\_ am/pm

Injury Description(how injury happened): Fell off ladder.

DIAGNOSIS:	
	<u>Hip Injury</u>
Aggravation of pre-existing condition? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

TREATMENT:	
<input checked="" type="checkbox"/>	X-rays taken
<input type="checkbox"/>	Tetanus given
<input checked="" type="checkbox"/>	Referrals made below
	Prescriptions sent home:
	<u>Ibuprofen</u>
	<u>Ultrasounds</u>

- Returned to supervisor; NO RESTRICTIONS
- Returned to supervisor WITH THE FOLLOWING LIMITATIONS:
  - No lifting, pushing, pulling greater than \_\_\_\_\_ pounds
  - No or limited repetitive use of \_\_\_\_\_
  - Keep wound/dressing clean and dry
  - Patient is able to:
 

	Frequently	Occasionally	Not at all
a. Sit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Walk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Bend/Squat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Kneel/Crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Reach / lift above shoulder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Limit working hours to _____ daily			
j. Other: _____			

**Post Accident Drug Screen Requested?:**

Yes  No

No  Info

Preferred Medical Provider: \_\_\_\_\_

No Medical Provider Specified

**DRUG SCREEN COLLECTED**

Collector Initials: \_\_\_\_\_ Date: \_\_\_\_\_

- Return to supervisor; SEND HOME UNTIL seen by jobcare (date)
- Admitted to hospital
- NO FOLLOW-UP NEEDED

Medical Examiner Signature \_\_\_\_\_  
Date 12/15/10

Referred to:	Days to follow-up:
Return to ER	
Preferred Medical Provider listed	
Ortho	
Physical Therapy	
Other:	<u>physical therapy</u>

**Note:** If employee is unable to return to work on the date specified above, they will need to seek medical care for re-evaluation for any time loss.

1 - CHART COPY    2 - P A S    3-TAKE TO EMPLOYER

Exhibit "A"  
**23**





4519 Enterprise Way Caldwell, ID 83605  
 (208) 454-0742 PHONE (208) 454-2341 FAX  
[www.ImagingCenterofIdaho.com](http://www.ImagingCenterofIdaho.com)

Exam Date: February 24, 2011

**REFERRED BY**

Christopher PARTRIDGE M.D.,  
 223 16th Ave N  
 Nampa ID 83653  
 Telephone: 208-466-7869  
 Fax: 208-466-5359

**PATIENT INFORMATION**

Patient Name: FONSECA, MARCO  
 Birth Date: [REDACTED]  
 Medical Record #: 17233-1  
 Accession #: 26119  
 Exam Description: MRI LUMBAR SPINE CANAL WITHOUT CONTRAST

---

**EXAM: MRI LUMBAR SPINE CANAL WITHOUT CONTRAST**

Indication: Low back pain extending into the lower extremities.

Technique: Multiplanar T1 and T2-weighted images of the lumbar spine were obtained without the administration of contrast using a 1.5 T MRI system. No prior studies are available for comparison.

Findings: The alignment of the lumbar vertebral bodies is normal. No suspicious marrow signal abnormalities are noted. There is desiccation of the intervertebral discs at L3-L4, L4-L5, and L5-S1. The conus medullaris tip terminates at L1. The cord demonstrates normal signal and morphology.

T12-L1: No significant discogenic disease is seen. Slight anterior spurring is noted.

L1-L2: No significant discogenic disease is seen. No neurological compression is noted. Slight anterior spurring is noted.

L2-L3: Slight broad based disc bulging is present causing slight flattening of the ventral thecal sac. No neurological compression is noted. Modic type II endplate changes are seen anteriorly.

L3-L4: Slight broad-based disk bulging is present. No neurological compression is noted. Mild hypertrophic changes are present in the posterior elements. Slight anterior spurring is noted.

L4-L5: There is a focal central disc bulge present causing slight flattening of the ventral thecal sac. Mild hypertrophic changes are present in the facet joints. No neurological compression is seen. Slight anterior spurring is noted.

L5-S1: Mild broad-based disc bulging is present with lateral extension. Bilateral pars defects are



4519 Enterprise Way Caldwell, ID 83605  
(208) 454-0742 PHONE (208) 454-2341 FAX  
[www.ImagingCenterofIdaho.com](http://www.ImagingCenterofIdaho.com)

present with L5. Hypertrophic facet changes are present which contribute to bilateral mild to modest neural foraminal narrowing. No neurological impingement can be appreciated. Modest anterior spurring is noted.

No sacral abnormality is seen. No presacral edema is present.

**Impression:**

1. Bilateral pars defects at L5 without evidence of anterior subluxation. The hypertrophic changes of the facet joints and broad-based disk bulging contribute to bilateral mild to modest neuroforamina narrowing.
2. Focal central disc bulge at L4-L5 without neurologic impingement.

Electronically signed by: MICHEAL JOHNSON, D.O.

Date: 02/24/11

Time: 15:42



REHAB AUTHORITY, NAMPA

Initial EVAL

Site Specific Text

Physical therapy examination and evaluation completed. Today's treatment consisted of education on anatomy, biomechanics and physiological changes involved with lumbar spine, prognosis and physical therapy plan of care. Started on standing lumbar flexion for initial HEP with explanation of possible centralization of symptoms.

McKenzie Lumbar

<u>Posture Assessment</u>	<u>Amount of Loss</u>	<u>Comment</u>
Sitting	Fair	
Correction of Posture	No effect	

<u>Movement Loss</u>	<u>Amount of Loss</u>	<u>Comment</u>
Flexion	Minimum	buttock pain
Extension	Moderate	Increase leg pain
Side Gliding (R)	Minimum	Increase leg pain
Side Gliding (L)	Minimum	Increase leg pain

<u>Pretest Symptoms Standing</u>	<u>back, hip, groin and left leg pain</u>
<u>Motion Testing</u>	<u>During Testing</u> <u>After Testing</u>
FIS	Centralizing      Better
Rep FIS	Centralizing      Better

Post-Test Symptoms Standl left buttock pain

Patient educated on doing standing lumbar flexion. He was unsure if he wanted to do this as it increased hip/buttock pain. Educated on centralization and instructed to stop exercise if it increased his left leg pain.

Clinical Impression

At this time patient demonstrates symptoms consistent with a Lumbar Derangement with unilateral or Asymmetrical Symptoms Below the Knee. Patients have symptoms in the lower leg that are referred from the low back. These symptoms may be pain and/or paraesthesia and may be accompanied by pain in the foot, calf, thigh, buttock or low back regions. Treatment consisted of a 24-48 hour trial of a home exercise program following a directional preference and education regarding low back pathologies and biomechanics.

Diagnosis

<u>Treatment Code</u>
B47.2      SPRAIN LUMBAR REGION

PT Guide Code

4F: Impaired Joint Mobility, Motor Function, Muscle Performance, Range of Motion, and Reflex Integrity Associated with Spinal Disorders

Problem List

1. Back, hip, groin and left leg pain
2. Decreased left dorsiflexor strength
3. Decreased lumbar ROM
4. Patient unable to work due to pain

Short-term Goals

- 2 weeks
1. Patient will demonstrate independence and compliance with McKenzie protocol low back program and lumbar stabilization program.
  2. Patient will demonstrate proper posture in sitting and standing to facilitate proper healing and prevent recurrence of injury.

Long-term Goals

- 4-6 weeks
1. Patient will return to full work duties and complete all ADL's without limitation secondary to LBP.
  2. Oswestry score will be 4 or less indicating the patient's past back problems are having little to no impact on functional activities.
  3. The patient will demonstrate WNL AROM of lumbar spine.
  4. The patient will demonstrate proper body mechanics and postures with work and ADL's to facilitate healing and decrease risk of re-injury.
  5. Patient will report no further radicular symptoms.

Prognosis

REHABAUTHORITY, NARPA

Initial EVAL

The patient's rehabilitation potential is Fair for stated goals.

Interventions

1. Educate patient regarding treatment options, appropriate posture, exercise, body mechanics, and behavior modifications to minimize symptoms.
2. Patient will be initiated into a home exercise program to promote independent management of the current diagnosis.
3. Joint mobilization and manual therapy techniques as indicated to restore normal biomechanical movement.
4. Modalities as needed to control / relieve symptoms.
5. Patient will be initiated into a comprehensive spinal rehabilitation program. This will include specific lumbar stabilization training, neuromuscular re-education and directional preference exercise activities.

Frequency & Durations

2-3 times per week for 4-6 weeks.

Conclusion

Thank you for this referral. We will keep you apprised of any changes in the patient's condition. If there are any questions please feel free to contact me at 467-7889.

Provider: Mark Conlin PT Date: Feb 07 2011  
 MARK CONLIN, License #RPT-1642



28

ORIGINAL ✓

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED 2011 SEP -9 PM 3:26  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)  
ISB No. 1772

RECEIVED  
INDUSTRIAL COMMISSION

Attorneys for Defendants

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. No. 2010-031750

DEFENDANTS' RESPONSE TO  
CLAIMANT'S MOTION  
FOR SANCTIONS OR FOR  
EMERGENCY HEARING

COME NOW the above-named Employer and Surety, Defendants, by and through their attorney of record, Max M. Sheils, Jr., and hereby respond to Claimant's Motion for Sanctions or for Emergency Hearing dated September 1, 2011, as follows:

DEFENDANTS' RESPONSE TO CLAIMANT'S MOTION  
FOR SANCTIONS OR FOR EMERGENCY HEARING - 1

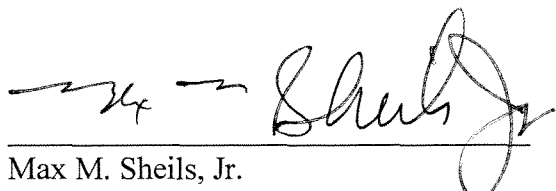
Concerning an Emergency Hearing, Defendants respectfully submit there is no emergency justifying an Emergency Hearing at this time and that, further, Claimant has failed to adequately explain why an Emergency Hearing is necessary in this case. Defendants suggest that, pursuant to the Judicial Rules of Practice and Procedure, the Commission conduct a conference in which all parties are provided an opportunity to present their positions as to the necessity of an Emergency Hearing.

Further, the Claimant has requested "Sanctions be entered and Defendants' pleadings be stricken and Default be entered." Defendants respectfully submit an entry of a Default in this matter is inappropriate and, pursuant to the JRP (Rule 6), the facts in this case do not support an entry of Default. Further, the reliance placed by Claimant on JRP Rules 6 and 16 concerning his request that the Defendants' pleadings be stricken is likewise ungrounded.

Respectfully submitted this 9th day of September, 2011.

ELLIS, BROWN & SHEILS, CHARTERED

By

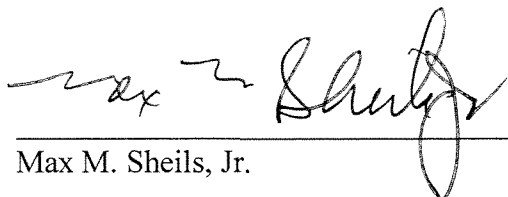
  
\_\_\_\_\_  
Max M. Sheils, Jr.  
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (FAX)

  
\_\_\_\_\_  
Max M. Sheils, Jr.



09/27/2011 10:22 20845346

HAMMOND LAW OFFICE

PAGE 02/03

*FAX*

2011 SEP 27 A 11:01

RICHARD L. HAMMOND, I. S. B. #6993  
HAMMOND LAW OFFICE, PA  
811 East Chicago Street  
Caldwell, Idaho 83605  
Telephone: (208) 453-4857  
Facsimile: (208) 453-4861  
Attorney for Claimant

RECEIVED  
INDUSTRIAL COMMISSION

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,  
Claimant,

v.

CORRAL AGRICULTURE, INC.,  
Employer,

and

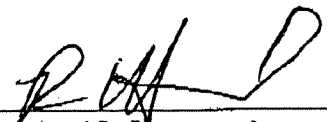
STATE INSURANCE FUND,  
Surety,  
Defendants.

I.C. No. 2010-031750

REQUEST FOR AN ORDER OR  
TELEPHONIC CONFERENCE

COMES NOW THE CLAIMANT, through his attorney of record, and gives notice that the above parties are at an impasse and Claimant therefore requests an Order for Sanctions against the Defendants or an Order allowing an Emergency Hearing to be had in the above matter; alternatively, Claimant requests a telephonic conference to discuss the matters related to Claimant's motion filed on the 1<sup>st</sup> of September 2011.

Dated this 27 day of September 2011

  
Richard L. Hammond

09/27/2011 10:22 20845346

HAMMOND LAW OFFICE


PAGE 03/03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of September 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

MAX M. SHEILS, JR.	<u>  X  </u>	U.S. Mail
ELLIS, BROWN & SHEILS, CHARTERED	<u>      </u>	Hand Delivered
Attorneys-at-Law	<u>      </u>	Overnight Mail
707 North 8th Street	<u>  X  </u>	Telecopy (FAX)
P.O. Box 388		
Boise, Idaho 83701-0388		
(208) 345-7832 (Telephone)		
(208) 345-9564 (Facsimile)		
ISB No. 1772		

Attorneys for Defendants




---

Richard L. Hammond

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED 2011 SEP 27 P 3:31  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)  
ISB No. 1772

RECEIVED  
INDUSTRIAL COMMISSION

Attorneys for Defendants

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. No. 2010-031750

DEFENDANTS' RESPONSE TO  
CLAIMANT'S REQUEST  
FOR ORDER OR TELEPHONIC  
CONFERENCE

COME NOW the above-named Employer and Surety, Defendants, by and through their attorney of record, Max M. Sheils, Jr., and hereby respond to Claimant's September 27, 2011 REQUEST FOR ORDER OR TELEPHONIC CONFERENCE, as follows:

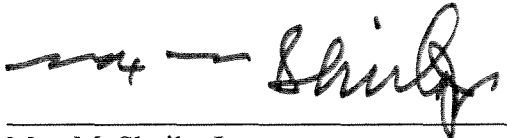
DEFENDANTS' RESPONSE TO CLAIMANT'S REQUEST  
FOR ORDER OR TELEPHONIC CONFERENCE - 1

On September 1, 2011, claimant filed a Motion for Sanctions and for Emergency Hearing, to which these responding defendants filed a response September 9, 2011. Defendants respectfully submit the Commission will, in due course, act on the claimant's currently outstanding motions.

However, the defendants have no objection concerning the September 27 request of the claimant that the Industrial Commission conduct a telephonic conference but, at the same time, defer to the Industrial Commission as to the multiple motions and/or requests of claimant concerning this litigated matter.

RESPECTFULLY SUBMITTED this 27th day of September, 2011.

ELLIS, BROWN & SHEILS, CHARTERED

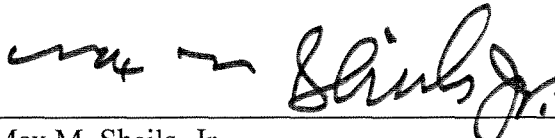
By   
Max M. Sheils, Jr.  
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (FAX)

  
Max M. Sheils, Jr.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 CORRAL AGRICULTURE, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IC 2010-031750

ORDER ON MOTION

FILED

NOV - 4 2011

INDUSTRIAL COMMISSION

On October 26, 2011, Referee Alan Taylor conducted a telephone conference with all parties represented to discuss Claimant's Motion for Sanctions or Emergency Hearing. The Referee reviewed the file and being fully advised in the premises,

HEREBY ORDERS that Claimant's Motion is DENIED.

However, Defendants are ORDERED to produce to Claimant within 21 days of this Order a list of the names, telephone numbers, and addresses of all of Employer's employees during the period of September 5-26, 2010. Defendants are also ORDERED to produce to Claimant within 21 days of this Order a complete copy of the Employer's employee file of Claimant.

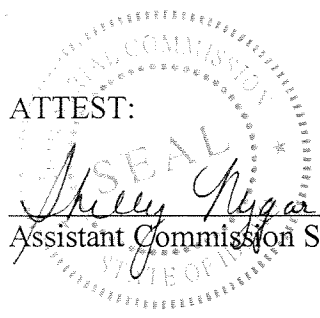
IT IS SO ORDERED.

DATED this 4<sup>th</sup> day of November, 2011.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

The seal of the State of Idaho is visible in the background, featuring a circular design with the words "SEAL" and "STATE OF IDAHO" and a central figure.  
*Shelley Nygard*  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of November, 2011, a true and correct copy of the foregoing **ORDER ON MOTION** was served by regular United States mail upon each of the following persons:

RICHARD L HAMMOND  
811 E CHICAGO  
CALDWELL ID 83605

MAX M SHEILS JR  
PO BOX 388  
BOISE ID 83701-0388

srn

*Shelley Nygard*




- payroll records, offers of employment, etc. of the Claimant and the name and address of the employees that were working between the 5<sup>th</sup> and 26<sup>th</sup> of September 2010.
5. Defendants failed to comply with the above Order and only provided time sheets ONLY from the 5<sup>th</sup> – 12<sup>th</sup> of September 2010 and the Form I-9 for the employees.
  6. The time sheets provided by the Defendants reflect that Claimant was only earning \$7.25 per hour and had an employee ID of 5187. However, Exhibit A, which is a copy of the last pay stub provided to the Defendants by the Claimants, reflects that Claimant's employee ID was 5128 and was earning \$8.50 per hour.
  7. Exhibit B is a true and correct copy of correspondence to the Defendants to request the missing information.
  8. Counsel herein undertook the Deposition of Williamson Orchards, Inc and its official representatives and learned that Defendant Corral Agriculture, Inc was a Farm Labor Contractor and that Claimant was subcontracted to Williamson Orchard, Inc. and picking fruits pursuant to the records received from Williamson Orchard, Inc.
  9. Defendant Corral Agriculture, Inc was required to create and maintain the records outlined in IC 44-1607.
  10. Upon information and belief, Corral Agriculture, Inc. was registered as a Farm Labor Contractor in 2010 and subsequently renamed his company to Corral Ag. Labor, Inc, and registered again with license number JM11033 as reflected in Exhibit C.
  11. No additional information or records have been provided to date.
  12. A hearing is scheduled herein for the limited purpose to determine if notice was given and to calculate TTD benefits and the records withheld are necessary for the Claimant to calculate his correct wages and TTD benefits.

Therefore, Claimant again humbly asks, pursuant to the Idaho Judicial Rules of Practice and Procedure 16, that sanctions be entered and that Defendants' pleadings be stricken and default entered pursuant to Idaho Judicial Rules of Practice 7 and 16. Alternatively, Claimant asks that this Commission to certify the facts to the District Court of Canyon County Idaho pursuant to Contempt Powers under Idaho Code 72-715.

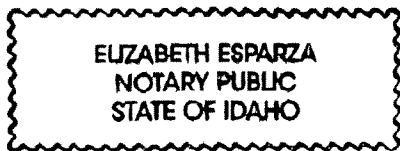


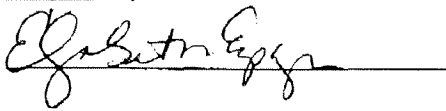
The purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering. It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose. *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338 (2006).

Dated this 23 day of November 2011

  
Richard L. Hammond

SUBSCRIBED AND SWORN TO before me this 23 day of November 2011.



  
Notary Public for Idaho  
Resides in Canyon County  
My Commission Expires: March 31, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of November 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

MAX M. SHEILS, JR.	<u>  X  </u>	U.S. Mail
ELLIS, BROWN & SHEILS, CHARTERED	<u>      </u>	Hand Delivered
Attorneys-at-Law	<u>      </u>	Overnight Mail
707 North 8th Street	<u>  X  </u>	Telecopy (FAX)
P.O. Box 388		
Boise, Idaho 83701-0388		
(208) 345-7832 (Telephone)		
(208) 345-9564 (Facsimile)		
ISB No. 1772		

Attorneys for Defendants

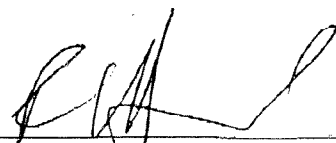
  
Richard L. Hammond

Exhibit A

41

CORNAL AGRICULTURAL SERVICES, INC. - PAYROLL ACCOUNT  
 P.O. BOX 3234 - NAAMPA, IDAHO 83406

82555

Employee ID: 5128

Employee Name: Marco A Fonseca

Check #:

Pay period : 09/19/10 to : 09/25/10		Earnings		Taxes		Deductions & Other Pays		
		Type	Hours	Dollars	Type	Dollars		
Gross	97.75	Reg	11.50	97.75	FWT	0.00	HRADJ	0.00
Other	0.00	OT	0.00		QASDI	5.06	ADVANCE	0.00
Tips	0.00				MED	1.42	BANKFEE	0.00
Cash Tips	0.00				SWT	0.00	HRADJ	0.00
					SDI	0.00	PRCOMM	0.00
					SUI	0.00		
Subtotal	97.75							
Taxes	-7.48	Comm						
Deducts	0.00	Misc						
		Other						
Net Pay	90.27	Gross Pay		97.75	Total Tax	7.48		
Year-to-Date: Gross	1349.00	FWT	19.21	SWT	0.00	Vacation: Earned	0.00	
		QASDI	83.68	SDI	0.00	Taken	0.00	

11/23/2011 13:25 208453486

HAMMOND LAW OFFICE

PAGE 06/07

**HAMMOND LAW OFFICE, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW

Richard L. Hammond  
R. Aaron Morris  
Jim Rice

November 9, 2011

*Sent via fax/ Total Pages: 1*

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-9564 (Facsimile)

RE: Injured: Marco Antonio Fonseca  
Date of Injury: September 2010  
Employer: Corral Agriculture, Inc.  
Claim No.: 201013928


Dear Max:

Thank you for the letter and records dated the 28<sup>th</sup> of October 2011 in following up regarding the order to produce the employee file and financial records so we can calculate TTD benefits and the names, addresses and contact information of employees that worked during September.

The records provided inadvertently left out the phone numbers and the written statement of employment as required in IC 44-1607(7)(a-g) including specifics of the employment relationships including the details of the rate of compensations, terms, bonuses, housing provided, insurance, the employee's rights and remedies, etc. The records also inadvertently left out all payroll, tax and financial records as required in IC 44-1607(8) that are required to be maintained for three years as outlined in IC 44-1607(9) including the following details:

- (a) The basis on which wages were paid;
- (b) The number of piecework units earned, if paid on a piecework basis;
- (c) The number of hours worked;
- (d) The total pay period earnings;
- (e) The specific sums withheld and the reason for withholding each sum;
- (f) The net pay; and
- (g) The name and address of the owner of all operations, or the owner's agent, where the employee worked.

The letter received stated you did not believe you will be producing any additional records. However, please let me know within five days if you client will produce the above records.

Sincerely,  
  
Richard L. Hammond  
Attorney for Claimant

be:rlh  
cc: Client

*Exhibit "B"*

Farm Labor Contractor Registry

Our Business is Your Future

Home Contact Us Office Directory

State of Idaho  
Department of Labor

Search   
 Calendar of Events  
 News Releases  


- Home
- About Us
- Businesses
- Education & Training
- Job Seekers
- Labor Laws
- News Releases
- Publications
- Statistics & Research
- Unemployment Insurance
- Disability Determination
- Idaho Human Rights Commission
- Serve Idaho
- Site Map

Farm Labor Contractor Registry

Farm Labor Contractors Registered in Idaho

Business Name/ Contractor Name	Address	City	State	Zip	Phone No.	License Number	# Employees	Expires
Ag Labor Plus, Inc.	5 W. Commercial St.	Weiser	ID	83672	208-549-1183	JM11028	21+	12/31/2011
Alvarez Environmental, LLC	780 N. Cecil Rd. Ste 303	Post Falls	ID	83854	208-773-7116	JB11013	20+	12/31/2011
American Staffing Inc.	440 W. Pennwood St., Ste 160	Meridian	ID	83642	208-887-2008	JM11012	20+	12/31/2011
Brandon Talbot	450 N 850 W	Blackfoot	ID	83221	208-541-5417	JM11045	20 total	12/31/2011
C & R Forestry, Inc.	780 N. Cecil Rd. Ste. 303	Post Falls	ID	83854	208-777-9332	JM11011	20+	12/31/2011
Cadena Farm Labor Services, Inc.	P.O. Box 1994	Lodi	CA	95241	208-931-3025	JM11040	21+	12/31/2011
Corral Ag. Labor, Inc.	6116 E. Lewis Lane	Nampa	ID	83686	208-880-0690	JM11033	21+	12/31/2011
Crookham Co. Inc.	P.O. Box 520	Caldwell	ID	83606	208-459-7451	JM11036	21+	12/31/2011
Crookham Co. Inc.	P.O. Box 520	Caldwell	ID	83606	208-459-7451	JM11037	21+	12/31/2011
Crookham Co. Inc.	P.O. Box 520	Caldwell	ID	83606	208-459-7451	JM11038	21+	12/31/2011
Crookham Co. Inc.	P.O. Box 520	Caldwell	ID	83606	208-459-7451	JM11039	21+	12/31/2011
Cutting Edge Forestry Inc.	1423 Tyrell Lane	Boise	ID	83706	541-535-4878	JM11016	20+	12/31/2011
Encinas Contracting, Inc.	198 South Fork Rd.	Garden Valley	ID	83622	208-462-5901	JM11031	21+	12/31/2011
Heraclio G. Garza	P.O. Box 452	Buhl	ID	83316	208-421-8665	JM11041	20 total	12/31/2011
IES, LLC	7964 W. Fairview Ave.	Boise	ID	83704	208-377-0945	JM11025	20 total	12/31/2011

*Exhibit C*

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)  
ISB No. 1772

2011 DEC -7 P 3:19

RECEIVED  
INDUSTRIAL COMMISSION

Attorneys for Defendants

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. No. 2010-031750

DEFENDANTS' RESPONSE TO  
CLAIMANT'S SECOND VERIFIED  
MOTION FOR SANCTIONS

COME NOW the above-named Employer and Surety, Defendants, by and through their attorney of record, Max M. Sheils, Jr., and hereby respectfully respond to Claimant's Second Verified Motion for Sanctions dated November 23, 2011, as follows:

This motion concerns the Industrial Commission's November 4 ORDER ON MOTION entered by Referee Alan Reed Taylor, requiring Defendants to produce, within 21 days of the November 4, 2011 order, a complete copy of the Employer's employee file of Claimant and, in addition thereto, to provide a list of the names, telephone numbers, and addresses of all of the Employer's employees during the period of September 5-26, 2010.

On October 28, 2011, the defendants, through counsel, provided a complete copy of all employment records the defendant employer maintained as a result of their employment of the Claimant. Apparently, Claimant believes there are more documents than were provided but, to the best knowledge of the undersigned, all employment records concerning Mr. Fonseca have been provided to the claimant through counsel.

Further, these responding defendants do acknowledge the fact that, to date, the list of employees working for the defendant employer during the time period of September 5-26, 2010, have not yet been provided. However, the defendant employer representatives are doing what they can to provide this information to claimant counsel. As the attorney for the defendants understands it, there are several hundred individuals who may have been employed by the employer during the time in question.

The Industrial Commission is advised that the defendants are not in any way attempting to ignore and not comply with the November 4 Order issued by the Industrial Commission.

Further, the Claimant, again, has requested "that sanctions be entered and that Defendants' pleadings be stricken and default be entered pursuant to Idaho Judicial Rules of Practice 7 and 16." Defendants respectfully submit an entry of a Default in this matter is inappropriate, as responsive pleadings have been appropriately filed in this case and, further, pursuant to JRP (Rule 6) the facts in

this case do not support an entry of Default. Additionally, Defendants respectfully submit the reliance placed by Claimant on JRP Rules 7 and 16 concerning his request that the Defendants' pleadings be stricken is likewise not supported by the Judicial Rules of Practice and Procedure adopted by the Industrial Commission.

Further, the Claimant has requested that the Industrial Commission "certify the facts to the District Court of Canyon County, Idaho, pursuant to Contempt Powers under Idaho Code 72-715." Defendants respectfully submit, through counsel, that they are doing all they can to comply with the November 4 Order issued by the Industrial Commission and certainly are not attempting to ignore and/or disobey any Order from the Industrial Commission. Hence, these responding Defendants urge the Industrial Commission to deny the Claimant's Motion in this regard.

Respectfully submitted this 7th day of December, 2011.

ELLIS, BROWN & SHEILS, CHARTERED

By 

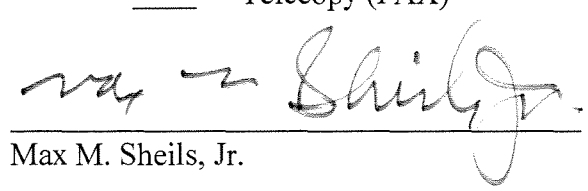
Max M. Sheils, Jr.  
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (FAX)

  
Max M. Sheils, Jr.

ORIGINAL

MAX M. SHEILS, JR.  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)  
ISB No. 1772

2011 DEC 15 P 3: 31  
RECEIVED  
INDUSTRIAL COMMISSION

Attorneys for Defendants

IN AND BEFORE THE IDAHO INDUSTRIAL COMMISSION

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

I.C. No. 2010-031750

NOTIFICATION OF COMPLIANCE  
OF NOVEMBER 4, 2011 ORDER  
ON MOTION

COME NOW the above-named employer and surety, defendants, by and through their attorney of record, Max M. Sheils, Jr., and hereby provide the following notification to the Idaho Industrial Commission:

NOTIFICATION OF COMPLIANCE OF NOVEMBER 4, 2011 ORDER ON MOTION - 1

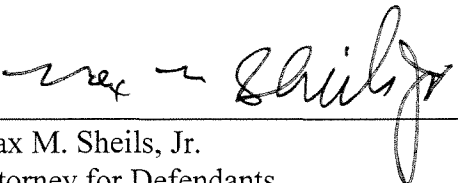


On November 4, 2011, the Industrial Commission entered an Order compelling the defendant employer to provide to the claimant certain documents.

Please be advised that, today, December 15, 2011, the defendants, through counsel, hand-delivered to claimant attorney Hammond all of the records in the possession of the defendant employer relevant to the November 4, 2011 Order.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of December, 2011.

ELLIS, BROWN & SHEILS, CHARTERED

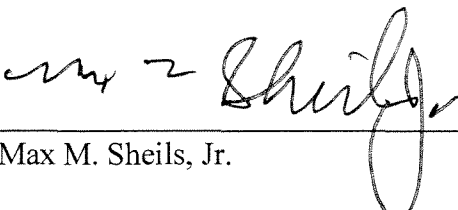
By   
\_\_\_\_\_  
Max M. Sheils, Jr.  
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Richard L. Hammond  
Hammond Law Office, PA  
811 E. Chicago St.  
Caldwell, ID 83605

\_\_\_\_ U.S. Mail  
X Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy (FAX)

  
\_\_\_\_\_  
Max M. Sheils, Jr.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 CORRAL AGRICULTURE, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IC 2010-031750

ORDER DENYING CLAIMANT'S  
SECOND VERIFIED MOTION  
FOR SANCTIONS

FILED  
JAN - 6 2012  
INDUSTRIAL COMMISSION

On November 23, 2011, Claimant filed a Second Verified Motion for Sanctions. On December 7, 2011, Defendants filed their response to Claimant's motion. After review of the pleadings, and pursuant to the telephone conference held by Referee Alan Taylor with the parties on December 30, 2011, Claimant's Second Verified Motion for Sanctions is DENIED for the reason that Defendants have produced all relevant information in their control or possession responsive to the Commission's November 4, 2011 Order.

IT IS SO ORDERED.

DATED this 6<sup>th</sup> day of January, 2012.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

  
Shelley Bedsoe  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of January, 2012, a true and correct copy of the foregoing **ORDER DENYING CLAIMANT'S SECOND VERIFIED MOTION FOR SANCTIONS** was served by regular United States mail upon each of the following:

RICHARD L HAMMOND  
811 E CHICAGO  
CALDWELL ID 83605

MAX M SHEILS JR  
PO BOX 388  
BOISE ID 83701-0388

sb

Shelley Bedsoe

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

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

IC 2010-031750

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

FILED

NOV - 8 2012

INDUSTRIAL COMMISSION

**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 Boise, Idaho on January 10, and March 2, 2012. Claimant, Marco Antonio Fonseca, was present in person and represented by Richard L. Hammond, of Caldwell, Idaho. Defendant Employer, Corral Agriculture, Inc., and Defendant Surety, State Insurance Fund, were represented by Max M. Sheils, Jr., of Boise, Idaho. The parties presented oral and documentary evidence. Briefs were submitted and the matter came under advisement on July 12, 2012.

**ISSUES**

The issues to be decided are:

1. Whether Claimant suffered an accident in the course of his employment on or about September 10, 2010; and
2. Whether Claimant gave timely notice of any accident.

**CONTENTIONS OF THE PARTIES**

Claimant asserts that he fell from a ladder and was injured while picking apples for Corral Agriculture on September 10, 2010, and that he timely reported his accident. Claimant asserts that

even if notice was not timely, Defendants were not prejudiced by delayed notice. Defendants note discrepancies in Claimant's accounts of the circumstances surrounding his alleged accident and other evidence of record. Employer representatives deny Claimant timely reported any accident. Defendants contend that Claimant's assertion of an accident is not credible.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The verbatim report of proceedings regarding the scheduled pre-hearing depositions of Corral Agriculture, Inc., Roberto Corral, Jorge Coronado, and Luisa Corral, dated September 1, 2011;
3. The verbatim report of proceedings regarding the scheduled pre-hearing depositions of Roberto Corral, Sr., and Luisa Corral, dated December 15, 2011;
4. The pre-hearing deposition testimony of Claimant, taken December 15, 2011;
5. The pre-hearing deposition testimony of Jorge Coronado, taken December 15, 2011;
6. Claimant's Exhibits 1 (except pp. 1, 3-10, 12, 15, and 17-20 thereof), 3-5, 6 (except pp. 51, 53-54, 63, and 67-72 thereof), 7 (except pp. 85-96 thereof), 8-10, 15, 17<sup>1</sup>, 17a<sup>2</sup>, and 19-20 admitted at hearing;<sup>3</sup>
7. Defendants' Exhibits 1-3, admitted at hearing;

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<sup>1</sup> Claimant's Exhibit 17 (a single page sketch of a tree and ladder drawn by Claimant during his pre-hearing deposition) was admitted at the January 10, 2012 hearing as Exhibit 17. The same sketch was offered by Claimant at the March 2, 2012 hearing and erroneously identified then as Exhibit 16.

<sup>2</sup> At the March 2, 2012 hearing, Claimant offered a single page document entitled "Reinstatement Annual Report Form" for Corral Agriculture, Inc., issued by the Idaho Secretary of State in 2010, which was admitted into evidence and erroneously identified as Exhibit 17. Said document is identified herein as Claimant's Exhibit 17a.

<sup>3</sup> Claimant's proposed Exhibits 13, 14, and 16, consisting of portions of the pre-hearing depositions of Diane Evans, Joyce Ellefson, and Roberto Corral, Jr., respectively, were conditionally admitted at hearing contingent upon the timely filing of the complete transcript of each deposition. Complete transcripts of each deposition were not filed and thus Exhibits 13, 14, and 16 are not considered in evidence.

8. The testimony of Claimant, taken at the January 10, 2012 hearing; and
9. The testimony of Sarai Fonseca, Ana Fonseca, Roger Williamson, John Williamson, Jorge Coronado, and Roberto Corral, Jr., taken at the March 2, 2012 hearing.

All objections posed during the pre-hearing depositions are overruled.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was born in 1960 and was educated in Mexico where he completed high school and four years of training to teach elementary school. He never worked as a teacher and left Mexico in approximately 1985. Claimant testified at hearing only through a Spanish interpreter.

2. Corral Agriculture, Inc., (Corral Agriculture) is a corporation owned by Roberto Corral, Sr., (Roberto), who is also its president. Corral Agriculture provided crews of laborers for various agricultural businesses. In 2010, Corral Agriculture had approximately 500 employees. Corral Agriculture employee work assignments were dynamic. Corral Agriculture's employees generally worked periodically. Turnover among work crews of employees was high. At all relevant times, Corral Agriculture was insured for its obligations under the Workers' Compensation Act by State Insurance Fund. At all relevant times, Roberto Corral, Jr., (Tito), son of Roberto Corral, Sr., was a supervisor for Corral Agriculture and supervised Jorge Coronado, who supervised a crew of Corral Agriculture employees. Coronado had worked for Corral Agriculture for approximately ten years.

3. Williamson Orchards is a fruit growing operation owned by brothers Roger and John Williamson. Roger is the president and oversees all office and paperwork regarding the business while John is the vice president and oversees all field operations, including the care of the orchards and harvesting of fruit.

4. On March 25, 2010, Claimant presented to Marjorie Humphrey, PA-C, at the Terry Reilly clinic in Nampa seeking treatment for depression. He was very depressed because he was unemployed, homeless, and estranged from his wife and son. Prozac was prescribed.

5. In September 2010, Williamson Orchards contracted with Corral Agriculture to provide laborers to pick apples. Williamson Orchards provided all step ladders required for picking apples.

6. In September 2010, Claimant worked as a laborer for Corral Agriculture, earning \$8.50 per hour. He was a member of Coronado's crew. Claimant had worked for Corral Agriculture from time to time since 2009.

7. **Claimant's testimony.** At hearing, Claimant testified that on September 10, 2010, commencing at 8:00 a.m., he worked for Corral Agriculture picking apples at Williamson Orchards. Claimant testified that he was picking from near the top of a 10-15 foot ladder when the ladder broke and he fell, grabbing and breaking apple tree branches as he fell. Claimant testified that he fell 10-15 feet and landed on his feet, then fell to the ground on his left buttock. He noticed pain in his feet, hip, and back, extending up to his neck. He testified that five or six other Corral Agriculture employees were working near him when he fell and saw or heard him fall. He testified that he lay on the ground for approximately 30 minutes immediately after his fall. Claimant testified that one of the Williamson brothers saw him on the ground after his fall, that Claimant showed him the broken ladder, and explained that he had fallen. Claimant testified he then asked Williamson if he could work from the ground, but Williamson said no. Claimant testified that he then worked for two or three more hours picking apples, after which Williamson said he did not want any problems and told Claimant to go home.

8. At hearing, Claimant testified that he told Tito about five times the day of his accident that he had fallen and that Tito told Claimant to see Tito's father, Roberto. Claimant testified that the day of his accident he also reported his fall to Coronado in front of 20 other Corral Agriculture employees before leaving work that day. Claimant testified that about one week later he talked to Tito again and told him about the accident. Claimant testified that he told Coronado about the accident

week after week, a total of at least 10 times over the ensuing 60 days. Claimant testified that because he was hurt, Tito assigned Claimant to lighter work—throwing leaves into a shredder—for two weeks after his accident.

9. In his pre-hearing deposition, Claimant testified that the accident happened in the morning between 10:00 and 11:00 on a Friday in September, likely September 17, 2010. Claimant testified in his deposition that he worked the rest of the day of his accident on the ground. In his deposition, Claimant also testified that the day of the accident he told Williamson, the owner of the orchard, as well as Coronado, Tito, and approximately 20 coworkers, that he had fallen and needed medical care. In his deposition, Claimant testified that he was discharged from working in the orchard the day after his fall.

10. Claimant testified that after the accident, he went to Roberto's home many times, but did not find him. Claimant testified that he told Roberto's wife about the accident, but she responded that it was not her business and Claimant should discuss the matter with Roberto himself. Claimant testified that after about two weeks of repeated efforts, he encountered Tito and Roberto and asked them who would take responsibility for Claimant's accident and injuries, to which Roberto replied that Williamson would do so.

11. Claimant testified that Roberto owed him money for Claimant's work at Corral Agriculture and that Roberto's checks bounced. Claimant testified that, a week or two after his alleged accident, and after repeated efforts, Roberto finally paid Claimant \$200.00 cash for his work at Corral Agriculture. Claimant testified that he told Roberto he needed part of this money for medication for his alleged accident. Claimant testified that after this conversation, he did not visit Roberto's home any further, but wrote him a letter and called him. However, Roberto paid Claimant nothing further and thereafter avoided all contact with Claimant. Tito's phone number was subsequently disconnected.

12. Claimant testified at hearing that he has not worked for anyone since his employment with Corral Agriculture ended. However, Claimant later testified at hearing that sometime after his



alleged accident, he helped someone for about four days, after which Claimant's physical condition worsened. Claimant testified at hearing that his pain was not so bad at first, but it became worse approximately a month after the alleged accident. Claimant then attempted to call Tito to request money.

13. Claimant testified that towards the end of November 2010, he called Coronado who provided Claimant Tito's new telephone number. Claimant called Tito at the end of November or the beginning of December 2010, indicating Claimant needed money for pain medication. Tito met Claimant near the mall and gave him \$69.00 in cash.

14. On January 20, 2011, Surety's investigator called Claimant in his attorney's office. Claimant told the investigator he was injured on September 2, 2010. The investigator asked Claimant to whom he reported the alleged accident. Claimant responded that he initially reported it to the orchard owner, Williamson, then to Tito and Coronado, and finally to Tito's father, Roberto. During the January 20, 2011 phone call, Claimant told the investigator that he did not contact Tito or Coronado about the accident for a week after the accident.

15. On December 15, 2011, Defendants took Claimant's deposition. At his deposition, Claimant testified that his accident occurred on September 17, 2010. On December 30, 2011, Claimant's counsel by letter asserted an accident date of September 10, 2010.

16. **Sarai's testimony.** Claimant's adult daughter, Sarai, testified at hearing that on September 10, 2010, she returned home after starting her new semester at school and found her father, Claimant herein, resting on the couch with his leg elevated and complaining of left hip pain. In response to her questions, he told her that he had fallen from a tree or ladder while picking apples.

17. **Ana's testimony.** Claimant's wife, Ana, testified at hearing that she picked her husband up from work on September 10, 2010, and he told her that a ladder had broken and he had fallen while picking apples that day. She testified that she later drove Claimant several times to Roberto's home and initially testified that no one was home. She subsequently testified that Claimant

succeeded in talking with a lady at Roberto's home. Ana also testified on cross-examination that she was not sure of the date of the alleged accident.

18. **Roberto's and Luisa's absence.** Claimant unsuccessfully attempted to obtain Roberto's testimony via subpoena and also the testimony of Roberto's wife, Luisa Corral via subpoena. However, neither Roberto nor Luisa were present at hearing and neither were available for deposition. Defendants acknowledged that after Claimant's alleged accident and prior to hearing, Roberto was deported to Mexico due to a tax issue.

19. **Tito's testimony.** Tito speaks fluent Spanish. At hearing, Tito testified that he had never met Claimant until they met at a Home Depot in Nampa in late November or early December 2010. Tito testified that was the first time Claimant reported he had fallen from a ladder while working for Corral Agriculture. Tito paid Claimant cash for a Corral Agriculture paycheck that had bounced. Tito testified that he asked Claimant why he had not reported the fall when it occurred, to which Claimant did not say anything. Tito testified that Coronado never notified him that Claimant had reported an accident. Tito did not believe Claimant fell from a ladder because Tito believed he would have been notified of any such event by one or more co-workers. Tito also testified that if a ladder had been broken by a Corral Agriculture employee in Williamson Orchards in September 2010, Tito would have been notified because Williamson Orchards would have required Corral Agriculture to replace the broken ladder. Tito affirmed he was never notified of any broken ladder.

20. **Coronado's testimony.** Coronado speaks fluent Spanish. At hearing, Coronado testified that he was out of the area when Claimant's accident allegedly happened. Coronado testified that he did not know about Claimant's alleged accident until the Surety telephoned him about it—several months later. Coronado insisted that Claimant did not notify him of the alleged fall.

21. **John Williamson's testimony.** At hearing, John Williamson testified that he first heard of Claimant's alleged accident in February 2011. John confirmed that he would have been the designated person to contact in the event of an accident in Williamson Orchards in September 2010, but that he did not recall hearing anything about Claimant's alleged accident in the fall of 2010. John

did not recall seeing Claimant laying on the ground or seeing a broken ladder anywhere near Claimant in September 2010. John testified that he remembered seeing Claimant in the orchard in September 2010 and that he instructed Claimant to go home and not come back because John was not pleased with Claimant's work. Claimant became agitated upon being excused. This was approximately 4:00 in the afternoon. John dismissed Claimant from further work in the orchard because Claimant "had an attitude," was mad, and argumentative. John conversed with Claimant through a Spanish interpreter. John observed no indication that Claimant was in pain. John believed that he would have remembered if Claimant had told him of an accident at that time.

22. John testified that he was aware of a younger man that fell from a ladder in the orchard in the fall of 2010. That individual went to a doctor and, after returning, refused to work from a ladder. John affirmed that Claimant was not that individual.

23. **Roger Williamson's testimony.** Roger affirmed that he first heard of Claimant's alleged accident in February 2011. Roger testified that his brother, John, confirmed there were some accidents in Williamson Orchards in the fall of 2010. Roger affirmed that he heard from John that several people slipped off ladders in the orchard, including a man that thereafter did not want to work from a ladder. Roger observed that 95% of the work crews at Williamson Orchards were Hispanic, thus he assumed the man that slipped off the ladder was Hispanic. Roger testified that if someone fell from a ladder and did not need urgent medical treatment, they were usually sent home to rest and invited to return the next day and again asked whether they desired medical treatment. Roger testified that his only knowledge of anyone falling in the orchard in September 2010 was what his brother told him. Roger affirmed that in September 2010, Williamson Orchards had only eight and ten foot ladders.

24. **Medical records.** On September 24, 2010, Claimant presented to Christopher Partridge, M.D., at the Terry Reilly clinic in Nampa. Claimant presented with a stomach problem indicating he was defecating 12 times a day. He reported having similar symptoms for years. Dr. Partridge assessed "acute chronic abdominal pain with boody [sic] diarrhea and chills, undetermined

etiology, however strongly considering IBD.” Defendants’ Exhibit 1, p. 13. Dr. Partridge ordered blood tests and instructed Claimant to return in one week. At hearing, Claimant testified that he reported his fall from the ladder and his resultant back and hip pain to the Terry Reilly clinic and to every medical provider that he visited. In his deposition, Claimant also testified that he reported his fall from the ladder to the providers at the Terry Reilly clinic. However, there is no record that Claimant reported any fall or any back, hip or neck symptoms to Dr. Partridge or to anyone else at the Terry Reilly clinic on September 24, 2010.

25. On October 11, 2010, Claimant presented again to Dr. Partridge at the Terry Reilly clinic in Nampa. Claimant complained of constipation and abdominal and rectal pain. Dr. Partridge ordered further blood testing and instructed Claimant to return after a colonoscopy and consultation with a gastroenterologist. Claimant testified at hearing that he reported his fall from the ladder and his resultant back and hip pain to every medical provider he visited. There is no record that Claimant reported any fall or any back, hip or neck pain to Dr. Partridge on October 11, 2010.

26. On December 15, 2010, the same day Claimant signed a claim form in his attorney’s office, Claimant presented to the emergency room of West Valley Medical Center where he was examined by Jessica Wasielewski, M.D. Claimant reported: “FALL. LEFT HIP INJURY. The injury occurred september [sic]. Fell (states was picking apples on a ladder 3-4 ft off ground and it broke and he fell on left hip. Has not been able to work since. Has not been evaluated for pain, went to workman’s [sic] comp office today and sent to ER.” Defendants’ Exhibit 2, p. 32. Dr. Wasielewski noted a limping gait, but found normal back range of motion without tenderness, no motor or sensory deficits, and concluded Claimant suffered a hip injury. This is the earliest medical record documenting Claimant’s report of his alleged fall to any medical provider.

27. On February 2, 2011, Claimant presented again to Dr. Partridge at the Terry Reilly clinic in Nampa. Claimant presented for follow-up to an emergency room visit for left hip pain. Dr. Partridge recorded: “He states that he fell about 5 months ago while at work picking apples. He stats [sic] taht [sic] he fell from the top of the tree and landed on his side and has had contant [sic] pain

since that time. Pain is located in the L lower flank area, is worse with ambulation [sic], is rated as 6/10 and he states that the pain is keeping him up at night secondary to the pain.” Defendants’ Exhibit 1, p. 18.

### DISCUSSION AND FURTHER FINDINGS

28. 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).

29. **Occurrence of an accident.** The credibility of the witnesses is pivotal in this case. If Claimant’s testimony is credible then an accident is established. However, if Claimant’s testimony is not more credible than the contrary evidence of record, then his claim must fail.

30. Claimant’s testimony of an accident is supported by the testimony of his wife and daughter who affirmed they saw him in pain on September 10, 2010, and heard his account of having fallen from a tree or ladder while picking apples. However, neither Claimant’s wife nor daughter witnessed the accident, saw the allegedly broken ladder, or witnessed Claimant’s conversations with John Williamson, Coronado, or Tito.

31. Claimant submitted the translated signed statements of three Corral Agriculture employees, Nazario Marquez, Bruno Aguilar C., and Feliciano Diaz, who were Claimant’s co-workers. Diaz’s statement is a single sentence, does not claim to have witnessed any accident, and makes no mention of any date. Marquez’s entire statement is two sentences long; Aguilar’s statement is a single sentence. The statements of Marquez and Aguilar both assert that they were co-workers of Claimant and that they witnessed an accident on September 10, 2010. Neither contains even a single word describing the alleged accident and neither expressly identifies Claimant as the victim of the alleged

accident. All of the statements are undated. Without opportunity to examine the authors of these statements, the weight afforded this evidence is less than that attributed to the testimony of the hearing witnesses.

32. Claimant's accounts of his accident are not entirely consistent. Claimant's Exhibit 20, p. B-11, indicates Claimant worked eight hours at Williamson Orchards on September 10, 2010, from 8:00 a.m. until 4:30 p.m. with a one-half hour lunch break. Most members of the crew worked eight hours on September 10, 2010; none worked longer. Claimant's Form 1 indicates his accident occurred at 4:00 p.m. in September 2010. Claimant's Exhibit 1, p. 2. Claimant testified at hearing that after falling on September 10, he laid on the ground for 30 minutes, then had a conversation with one of the Williamson brothers and then worked for another two or three hours before being sent home from the orchard by one of the Williamson brothers. This account is irreconcilable with an accident at 4:00 p.m.

33. In his deposition, Claimant testified that the accident happened in the morning between 10:00 and 11:00 on a Friday in September, likely September 17, 2010. Claimant testified in his deposition that he worked the rest of the day of his accident on the ground, not on the ladder, and that when he returned the next day he was discharged. In his deposition, Claimant also testified that the day of the accident, he told Williamson, the owner of the orchard, as well as Coronado, Tito, and approximately 20 coworkers, that he had fallen and needed medical care. This account is not entirely consistent with his hearing testimony of working two or three more hours after his fall before being dismissed and his time card showing that he worked until 4:30 on September 10, 2010.

34. Claimant's testimony of several circumstances surrounding his alleged accident is inconsistent with other evidence in the record. Claimant testified at hearing that the day of his fall, one of the Williamsons saw him lying on the ground and that Claimant showed him the broken ladder and told him he had fallen. John Williamson testified that he did not remember seeing or being told of any fall or broken ladder. Claimant's counsel at hearing characterized Roger Williamson as "the only impartial third person witness." Hearing Transcript, p. 163, ll. 1-2. John Williamson is equally

deserving of this characterization. Tito testified that Williamson Orchards would have required Corral Agriculture to replace any broken ladder and he was never notified of any broken ladder. Other than Claimant's testimony, there is no indication of a ladder being broken by a Corral Agriculture crew in September 2010. There is no indication in the record that the allegedly broken ladder was ever located.

35. Claimant testified that he repeatedly told Coronado of his alleged accident. Coronado testified that Claimant never reported his alleged accident to him. Claimant testified that he repeatedly told Tito of his alleged accident. Tito testified that he first heard of Claimant's alleged accident in late November or early December 2010 when he met Claimant for the first time and paid him cash for a Corral Agriculture work check that had bounced.

36. As already noted, Claimant's credibility is pivotal. The testimonies of all other individuals supposedly present at or near the time of Claimant's alleged accident do not support, but rather refute Claimant's account of an accident. Claimant's records of his medical treatment from Terry Reilly on September 24, 2010, and October 11, 2010, make no mention of any back, hip, or neck pain, let alone any accident, yet Claimant testified he reported his fall and resulting back and hip pain to all of his medical providers. He attributes this apparent inconsistency to the failure of his medical providers to document his condition.

37. At hearing, Claimant was argumentative and defensive on multiple occasions. The irreconcilable inconsistencies between Claimant's testimony and other evidence of record are numerous. Having observed Claimant at hearing and compared his testimony to other evidence of record, the Referee finds that Claimant's credibility is suspect. The Referee finds Sarai and Ana credible witnesses; however their personal knowledge of the alleged accident is entirely dependent upon Claimant's report to them. The Referee finds the testimony of John and Roger Williamson more credible than that of Claimant. The Referee finds that Claimant's testimony is not more credible than that of Tito and Coronado.

38. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.

39. All other issues are moot.

### CONCLUSIONS OF LAW

1. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.


2. All other issues are moot.

### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 23<sup>rd</sup> day of October, 2012.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Alan Reed Taylor, Referee

ATTEST:

  
\_\_\_\_\_  
Assistant Commission Secretary



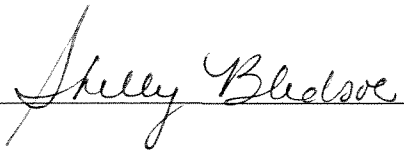
**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

RICHARD L HAMMOND  
811 E CHICAGO  
CALDWELL ID 83605

MAX M SHEILS JR  
PO BOX 388  
BOISE ID 83701-0388

sb

  
\_\_\_\_\_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,  
Defendants.

IC 2010-031750

ORDER

FILED

NOV - 8 2012

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

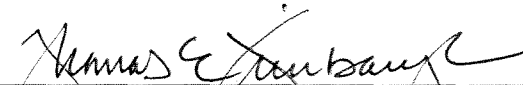
Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

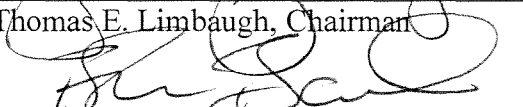
1. Claimant has not proven that he suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010.
2. All other issues are moot.

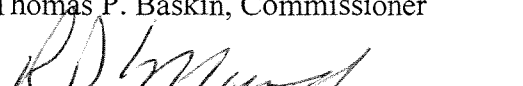
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 8<sup>th</sup> day of November, 2012.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Thomas E. Limbaugh, Chairman

  
\_\_\_\_\_  
Thomas P. Baskin, Commissioner

  
\_\_\_\_\_  
R. D. Maynard, Commissioner

ATTEST:

  
  
\_\_\_\_\_  
Assistant Commission Secretary

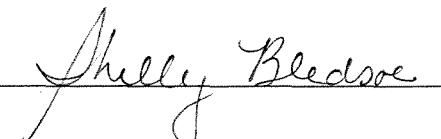
CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of November 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD L HAMMOND  
811 E CHICAGO ST  
CALDWELL ID 83605

MAX M SHEILS JR  
PO BOX 388  
BOISE ID 83701-0388

sb

  
\_\_\_\_\_

RICHARD L. HAMMOND, I. S. B. #6993  
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Facsimile: (208) 453 - 4861  
Attorney for Claimant-Appellant

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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,  
Claimant-Appellant

v.

CORRAL AGRICULTURE, INC.,  
Employer,  
and

IDAHO STATE INSURANCE FUND,  
Surety,  
Defendants-Respondents.

I.C. No. 2010 - 031750

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CORRAL AGRICULTURE, INC. AND STATE INSURANCE FUND, AND THE PARTY'S ATTORNEY OF RECORD, MAX M. SHEILS, JR., AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Claimant-Appellant, Marco Antonio Fonseca, appeals against the above named respondents, Corral Agriculture and the Idaho State Insurance Fund, to the Idaho Supreme Court from the final Order entered in the above entitled proceeding, Chairman Thomas E. Limbaugh presiding with hearing officer Alan Reed Taylor; Claimant-Appellant appeals the following:
  - a. Order dated the 8<sup>th</sup> day of November 2012.

- b. Failure to grant the relief requested in Claimant-Appellant's First Verified Motion for Sanctions filed on or about the first of September 2011 and the associated Orders on Motion dated November 4, 2011.
  - c. Failure to grant the relief requested in Claimant-Appellant's Second Verified Motion for Sanctions filed on or about the 23<sup>rd</sup> of November 2011 with no Order.
  - d. Failure to admit evidence and or records at the hearings herein.
2. The Claimant-Appellant has a right to appeal to the Idaho Supreme Court, and the orders described in paragraph number one above may be appealed under and pursuant to I.C. § 72-1368(9) and I.A.R. 14(b).
  3. The Claimant-Appellant's preliminary statement of the issues is as follows:
    - a. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed Claimant-Appellant's medical records, which were created in the Claimant-Appellant's Spanish native language, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Idaho Judicial Rules of Practice and Procedure G and Idaho Rules of Evidence?
    - b. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed the Hispanic Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Claimant-Appellant's State and Federal Equal

Protection and Due Process Rights?

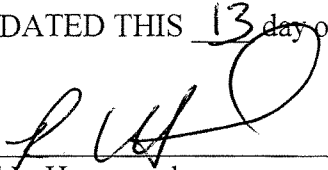
- c. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled that Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?
- d. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled Claimant-Appellant's proposed exhibits as irrelevant, namely:
  - i. Exhibit 1, Pages 1, 3, 9, 10, 12, 15, 16-20, 22, 23-25, 28-30, 31,
  - ii. Exhibit 2, Pages 32-34
  - iii. Exhibit 5, Pages 44-50
  - iv. Exhibit 6, Pages 51, 53, 63, 67
  - v. Exhibit 11, Verbatim Report of Proceedings from December 15, 2011.
  - vi. Exhibit 12, Deposition of Roger O. Williams.
  - vii. Exhibit 13, Deposition of Diane Evans.
  - viii. Exhibit 14, Deposition of Joyce Ellefson.
  - ix. Exhibit 15, Deposition of Jorge Coronado.
  - x. Exhibit 16, Deposition of Roberto Corral Jr.
  - xi. Exhibit 18, Entire
  - xii. Claimant-Appellant's medical records, which were created in the

Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?

- e. Did the Referee and Industrial Commission abuse their discretion when they determined the Claimant-Appellant had not proved that Claimant-Appellant suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010?
4. No order has been entered sealing any portion of the record.
  5. The Claimant-Appellant requests the reporter's entire standard transcript of all hearings including hearings on Motions as defined in Rule 25(c) I.A.R.
  6. The Claimant-Appellant requests that the following documents be included in the Industrial Commission's record in addition to those automatically included under Rule 28 I.A.R.
    - a. All transcripts and audios of all telephonic and in person hearings.
    - b. All exhibits offered, whether or not admitted.
  7. I certify:
    - a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below and at the address set out in the Certificate of Service below.
    - b. That the clerk of the Idaho Industrial Commission has been paid the estimated fee for preparation of the reporter's transcript and record.

- c. That the appellate filing fee has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 13 day of December, 2012

  
 \_\_\_\_\_  
 Richard L. Hammond  
 Attorney for the Appellant-Claimant

CERTIFICATE OF SERVICE: I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent on this 13<sup>th</sup> day of December 2012, to the parties and method outlined below:

Max M. Sheils, Jr.  
 Ellis, Brown & Sheils, Chartered  
 707 North 8th Street  
 P.O. Box 388  
 Boise, Idaho 83701-0388  
 (208) 345-7832 (Telephone)  
 (208) 345-9564 (Facsimile)  
 Attorneys for Defendants-Respondents

Hand Delivered   
 U.S. Mail   
 Fax   
 Fed. Express

IDAHO SUPREME COURT  
 451 W. State St.  
 Boise, Idaho 83702  
 Phone (208) 334-2210

Hand Delivered   
 U.S. Mail   
 Fax   
 Fed. Express

IDAHO INDUSTRIAL COMMISSION  
 P.O. Box 83720-0041  
 Boise, ID 83720

Hand Delivered   
 U.S. Mail   
 Fax   
 Fed. Express

Hand delivery  
 700 S. Clearwater Lane, Boise, ID 83712  
 Judicial Division  
 Fax (208) 334-2321

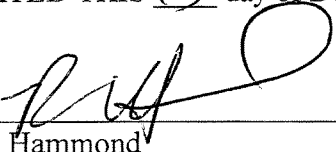


M. Dean Willis  
PO Box 1241  
Eagle, ID 83616  
Email: mdwillis1@msn.com

Hand Delivered  
U.S. Mail  
Fax  
Fed. Express  
*Emai*

<input type="checkbox"/>
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<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

DATED THIS 13 day of December, 2012

  
\_\_\_\_\_  
Richard L. Hammond  
Attorney for the Appellant-Claimant

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant/Appellant,

v.

CORRAL AGRICULTURE, INC, Employer,  
and STATE INSURANCE FUND, Surety,

Defendants/Respondents.

DEC 17 A 9 22

SUPREME COURT NO. 40578

Appeal From: Industrial Commission, Chairman, Thomas E. Limbaugh, presiding.

Case Number: IC 2010-031750

Order Appealed from: Findings of Fact, Conclusions of Law, and Recommendation, filed November 8, 2012; and Order, filed November 8, 2012.

Attorney for Appellant: Richard L. Hammond  
811 E. Chicago St.  
Caldwell, ID 83605

Attorney for Respondents: Max M Sheils, Jr.  
PO Box 388  
Boise, ID 83701-0388

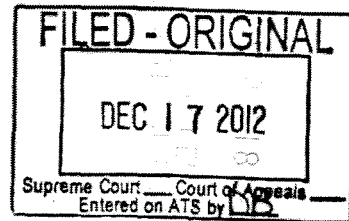
Appealed By: Claimant/Appellant

Appealed Against: Defendants/Respondents

Notice of Appeal Filed: December 13, 2012

Appellate Fee Paid: \$94.00

Name of Reporter: Dean Willis



CERTIFICATE OF APPEAL (FONSECA, S.C. # 40578) - 1

Transcript Requested:

Standard transcript has been requested. Transcript has been prepared and filed with the Commission.

Dated:

12/14/12

  
Assistant Commission Secretary



**CERTIFICATION**

I, Gina Espinosa, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal, Findings of Fact, Conclusions of Law, and Recommendation, and Order, and the whole thereof, in IC case number 2010-031750 for Marco Antonio Fonseca.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 14<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
Assistant Commission Secretary



Max M. Sheils, ISB # 1772  
Ellis, Brown & Sheils, Chartered  
707 N. Eighth Street  
Boise, Idaho 83701  
(208) 345-7832

Attorney for Corral Agricultural, Inc., and State Insurance Fund

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO A. FONSECA,	)	IC NO.: 2010031750
	)	
Claimant,	)	
	)	SIF NO.: 201013928
vs.	)	
	)	
CORRAL AGRICULTURE, INC.,	)	
	)	NOTICE OF
Employer,	)	SUBSTITUTION OF
	)	COUNSEL
and	)	
	)	
STATE INSURANCE FUND,	)	
	)	
	)	
Surety,	)	
Defendant	)	

---

YOU ARE HEREBY NOTIFIED That Employer/Surety above named have substituted  
DAVID J. LEE, Attorney at Law, as their attorney of record in the above-entitled action  
in the place and stead of MAX M. SHEILS, Attorney at Law.

YOU ARE HEREBY NOTIFIED that all papers and documents in said action are to be served on the said David J. Lee, P.O. Box 83720, 1215 West State Street, Boise, Idaho 83720-0044.

DATED This 20<sup>th</sup> day of DECEMBER, 2012.

STATE INSURANCE FUND

By: 

MAX M. SHEILS  
Attorney for Defendants  
State Insurance Fund and  
CORRAL AGRICULTURE, INC.

DAVID J. LEE

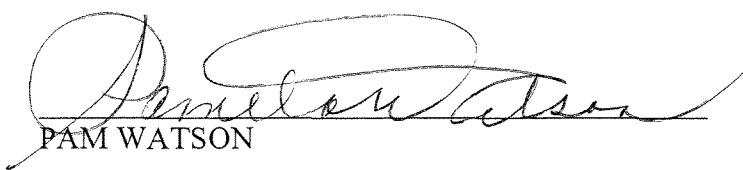
By: 

DAVID J. LEE  
Attorney for Defendants  
State Insurance Fund and  
CORRAL AGRICULTURE, INC.

#### CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of December, 2012, I caused to be served a true and correct copy of the foregoing NOTICE OF SUBSTITUTION by placing a copy thereof in the United States Mail, postage prepaid, addressed to:

Richard L. Hammond  
811 E. Chicago Street,  
Caldwell, Idaho 83605

  
PAM WATSON

RICHARD L. HAMMOND, I. S. B. #6993  
 HAMMOND LAW OFFICE, PA  
 811 East Chicago Street  
 Caldwell, Idaho 83605  
 Telephone: (208) 453 - 4857  
 Facsimile: (208) 453 - 4861  
 Attorney for Claimant-Appellant

RECEIVED  
 INDUSTRIAL COMMISSION  
 2012 DEC 26 P 2:09

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,  
 Claimant-Appellant  
 v.  
 CORRAL AGRICULTURE, INC.,  
 Employer,  
 and  
 IDAHO STATE INSURANCE FUND,  
 Surety,  
 Defendants-Respondents.

I.C. No. 2010 - 031750

AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CORRAL AGRICULTURE, INC. AND STATE INSURANCE FUND, AND THE PARTY'S ATTORNEY OF RECORD, MAX M. SHEILS, JR., AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Claimant-Appellant, Marco Antonio Fonseca, appeals against the above named respondents, Corral Agriculture and the Idaho State Insurance Fund, to the Idaho Supreme Court from the final Order entered in the above entitled proceeding, Chairman Thomas E. Limbaugh presiding with hearing officer Alan Reed Taylor; Claimant-Appellant appeals the following:

- a. Order dated the 8<sup>th</sup> day of November 2012.

RICHARD L. HAMMOND, I. S. B. #6993  
HAMMOND LAW OFFICE, PA  
811 East Chicago Street  
Caldwell, Idaho 83605  
Telephone: (208) 453 - 4857  
Facsimile: (208) 453 - 4861  
Attorney for Claimant-Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,  
Claimant-Appellant

v.

CORRAL AGRICULTURE, INC.,  
Employer,  
and

IDAHO STATE INSURANCE FUND,  
Surety,  
Defendants-Respondents.

I.C. No. 2010 - 031750

AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CORRAL AGRICULTURE, INC. AND STATE INSURANCE FUND, AND THE PARTY'S ATTORNEY OF RECORD, MAX M. SHEILS, JR., AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Claimant-Appellant, Marco Antonio Fonseca, appeals against the above named respondents, Corral Agriculture and the Idaho State Insurance Fund, to the Idaho Supreme Court from the final Order entered in the above entitled proceeding, Chairman Thomas E. Limbaugh presiding with hearing officer Alan Reed Taylor; Claimant-Appellant appeals the following:
  - a. Order dated the 8<sup>th</sup> day of November 2012.



- b. Failure to grant the relief requested in Claimant-Appellant's First Verified Motion for Sanctions filed on or about the first of September 2011 and the associated Orders on Motion dated November 4, 2011.
  - c. Failure to grant the relief requested in Claimant-Appellant's Second Verified Motion for Sanctions filed on or about the 23<sup>rd</sup> of November 2011 with no Order.
  - d. Failure to admit evidence and or records at the hearings herein.
2. The Claimant-Appellant has a right to appeal to the Idaho Supreme Court, and the orders described in paragraph number one above may be appealed under and pursuant to I.C. § 72-1368(9) and I.A.R. 14(b).
3. The Claimant-Appellant's preliminary statement of the issues is as follows:
  - a. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed Claimant-Appellant's medical records, which were created in the Claimant-Appellant's Spanish native language, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Idaho Judicial Rules of Practice and Procedure G and Idaho Rules of Evidence?
  - b. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed the Hispanic Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Claimant-Appellant's State and Federal Equal

Protection and Due Process Rights?

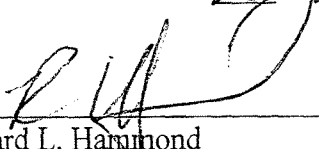
- c. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled that Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?
- d. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled Claimant-Appellant's proposed exhibits as irrelevant, namely:
  - i. Exhibit 1, Pages 1, 3, 9, 10, 12, 15, 16-20, 22, 23-25, 28-30, 31,
  - ii. Exhibit 2, Pages 32-34
  - iii. Exhibit 5, Pages 44-50
  - iv. Exhibit 6, Pages 51, 53, 63, 67
  - v. Exhibit 11, Verbatim Report of Proceedings from December 15, 2011.
  - vi. Exhibit 12, Deposition of Roger O. Williams.
  - vii. Exhibit 13, Deposition of Diane Evans.
  - viii. Exhibit 14, Deposition of Joyce Ellefson.
  - ix. Exhibit 15, Deposition of Jorge Coronado.
  - x. Exhibit 16, Deposition of Roberto Corral Jr.
  - xi. Exhibit 18, Entire
  - xii. Claimant-Appellant's medical records, which were created in the

Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?

- e. Did the Referee and Industrial Commission abuse their discretion when they determined the Claimant-Appellant had not proved that Claimant-Appellant suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010?
4. No order has been entered sealing any portion of the record.
5. The Claimant-Appellant requests the reporter's entire standard transcript of all hearings including hearings on Motions as defined in Rule 25(c) I.A.R.
6. The Claimant-Appellant requests that the following documents be included in the Industrial Commission's record in addition to those automatically included under Rule 28 I.A.R.
  - a. All transcripts and audios of all telephonic and in person hearings.
  - b. All exhibits offered, whether or not admitted.
  - c. All Orders, Motions, Briefs, Responses, Affidavits, Complaints, Answers and other documents filed herein.
7. I certify:
  - a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below and at the address set out in the Certificate of Service below.

- b. That the clerk of the Idaho Industrial Commission has been paid the estimated fee for preparation of the reporter's transcript and record.
- c. That the appellate filing fee has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 26 day of December, 2012

  
 \_\_\_\_\_  
 Richard L. Hammond  
 Attorney for the Appellant-Claimant

CERTIFICATE OF SERVICE: I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent on this 13<sup>th</sup> day of December 2012, to the parties and method outlined below: 26

Max M. Sheils, Jr.  
 Ellis, Brown & Sheils, Chartered  
 707 North 8th Street  
 P.O. Box 388  
 Boise, Idaho 83701-0388  
 (208) 345-7832 (Telephone)  
 (208) 345-9564 (Facsimile)  
 Attorneys for Defendants-Respondents

Hand Delivered   
 U.S. Mail   
 Fax   
 Fed. Express

IDAHO SUPREME COURT  
 451 W. State St.  
 Boise, Idaho 83702  
 Phone (208) 334-2210

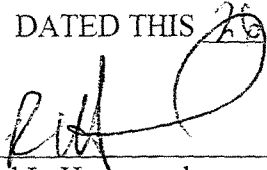
Hand Delivered   
 U.S. Mail   
 Fax   
 Fed. Express

IDAHO INDUSTRIAL COMMISSION  
P.O. Box 83720-0041  
Boise, ID 83720

Hand delivery  
700 S. Clearwater Lane, Boise, ID 83712  
Judicial Division  
Fax (208) 334-2321 / 332-7558

M. Dean Willis  
PO Box 1241  
Eagle, ID 83616  
Email: mdwillis1@msn.com

DATED THIS 26<sup>th</sup> day of December, 2012



Richard L. Hammond  
Attorney for the Appellant-Claimant

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U.S. Mail  
Fax  
Fed. Express

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U.S. Mail  
Fax  
Fed. Express  
*Email*

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**CERTIFICATION OF RECORD**

I, Gina Espinosa, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record Supreme Court No. 40578 on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits offered or admitted in this proceeding, if any, are correctly listed in the Certificate of Exhibits (i). Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Record herein.

DATED this 14<sup>th</sup> day of January, 2013.

  
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant/Appellant,

v.

CORRAL AGRICULTURE, INC, Employer,  
and STATE INSURANCE FUND, Surety,

Defendants/Respondents.

SUPREME COURT NO. 40578

TO: STEPHEN W. KENYON, Clerk of the Courts; and  
Richard L. Hammond, for the Appellants; and  
David J. Lee, for the Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date and,  
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served  
by regular U.S. mail upon each of the following:

RICHARD L HAMMOND  
811 E CHICAGO ST  
CALDWELL ID 83605

DAVID J LEE (*in lieu of Max M. Sheils, Jr.*)  
STATEHOUSE MAIL  
PO BOX 83720  
BOISE ID 83720-0044

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all  
parties have twenty-eight days from this date in which to file objections to the Record, including  
requests for corrections, additions or deletions. In the event no objections to the Agency's Record  
are filed within the twenty-eight day period, the Transcript and Record shall be deemed settled.

DATED this 14<sup>th</sup> day of January, 2012.

  
Assistant Commission Secretary

**HAMMOND LAW OFFICE, P.A.**

811 EAST CHICAGO STREET  
CALDWELL, IDAHO 83605  
PHONE: (208) 453-4857  
FAX: (208) 453-4861

2013 JAN 15 4 11:46

RECEIVED  
IDAHO INDUSTRIAL COMMISSION

**DATE:** January 16, 2013

**PLEASE DELIVER THE FOLLOWING TO:**

**NAME:** GINA ESPINOZA OF Judicial Division  
**FIRM:** Idaho Industrial Commission  
**FAX NO:** (208) 334-2321 / 332-7558

**NAME:** David Lee of  
**FIRM:** Idaho State Insurance Fund  
**FAX NO:** (208) 345-9564

**FROM:** Richard L. Hammond

**SUBJECT:** Marco Antonio Fonseca; AGENCY RECORD AUGMENTATION  
Case No.: 2010-031750

**TOTAL PAGES (INCLUDING THIS PAGE): 2**

---

**THIS SPACE FOR SUPPLEMENTAL MESSAGE**

**Mrs. Espinoza,**

Thank you for taking my call regarding augmenting the Agency Record and my request for a hearing date under IAR 29(a).

As you requested, we are submitting this letter and requesting that the record be augmented. The Amended Notice of Appeal requested the reporter's entire standard transcript of all hearings including hearings on Motions as defined in Rule 25(c) I.A.R. and also the following:

- a. All transcripts and audios of all telephonic and in person hearings.
- b. All exhibits offered, whether or not admitted.
- c. All Orders, Motions, Briefs, Responses, Affidavits, Complaints, Answers and other documents filed herein.

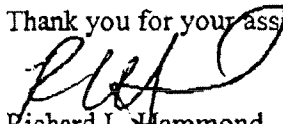


The Agency Record received on the 15<sup>th</sup> of January 2013 did not include the following records and therefore Claimant requests, pursuant to LAR 29(a), that the Agency Record be augmented and Claimant be mailed the following records not received on the 15<sup>th</sup> of January 2013:

- a. Transcript, notes, and records of the Hearing on the 30<sup>th</sup> of December 2011.
- b. Transcript, notes, and records of the Hearing on the 26<sup>th</sup> of October 2011.
- c. Copy of the November 4, 2011 Order to Compel.
- d. Transcript of the Hearing on the 10<sup>th</sup> of January 2012.
- e. Transcript of the Hearing on the 2<sup>nd</sup> of March 2012.
- f. The Exhibits including Claimant's Exhibits 1-20, Defendants' Exhibits 1-3, Claimant's Opening Brief (6-13-12), Post Hearing Brief of Employer and Surety (7-6-12) and Claimant's Closing Brief (7-10-12).

We were informed no hearing is needed. However, if a hearing is necessary, provide us the next available dates and we will prepare the Notice of Hearing.

Thank you for your assistance in this matter.

  
Richard L. Hammond  
Attorney at Law

Cc: David Lee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,

Claimant,

v.

CORRAL AGRICULTURE INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2010-0031750

**ORDER DENYING  
CLAIMANT'S REQUEST  
TO AUGMENT THE  
AGENCY RECORD**

FILED

JAN 25 2013

INDUSTRIAL COMMISSION

On January 16, 2013, Claimant filed a request to augment the agency record pursuant to

I.A.R. 29(a). He asks that the following items be included in the agency record:

1. Transcript, notes, and records of the hearing held on December 30, 2011;
2. Transcript, notes, and records of the hearing held on October 26, 2011;
3. Copy of the November 4, 2011 order to compel;
4. Transcript of the hearing on January 10, 2012;
5. Transcript of the hearing on March 2, 2012;
6. Exhibits including Claimant's Exhibits 1-20, Defendants' Exhibits 1-3, Claimant's post-hearing opening brief, Defendants' post-hearing brief, and Claimant's reply brief.

Under I.A.R. 28(b)(3), the agency record in administrative proceedings shall consist of:

1. Any order sealing all or any portion of the record;
2. Any original or amended complaint, petition, application, or other initial pleading;
3. Any answer or response thereto;
4. All documents relating to an application or petition to intervene;
5. Any protest or other opposition filed by a party;
6. A list of all exhibits offered, whether or not admitted;
7. The findings of fact and conclusions of law, or if none, any memorandum decision entered by the agency;
8. The final decision, order or award;
9. Petitions for rehearing or reconsideration and orders thereon;
10. Notice of appeal and any notice of cross-appeal;

**ORDER DENYING CLAIMANT'S REQUEST TO AUGMENT THE AGENCY  
RECORD - 1**

11. Any request for additional reporter's transcript or agency's record;
12. Table of contents and index.

Under I.A.R. 28(c), the agency record shall also include documents requested by a party to the appeal.

However, the Commission is unable to grant Claimant's request, because Claimant has requested inclusion of documents that do not exist. No hearings in this case were held on October 26, 2011 or December 30, 2011. On those dates, the Referee conducted telephone conferences with the parties. Motions and orders related to those conferences have been included in the agency record. No additional documents related to those conferences are part of the Commission's legal file.

Claimant further requests inclusion of an order to compel filed November 4, 2011; this appears to refer to the document titled Order on Motion, filed November 4, 2011. This order has already been included in the agency record.

Claimant further requests inclusion of the hearing transcripts from January 10, 2012 and March 2, 2012. Submission of transcripts to the Supreme Court on appeal is governed by I.A.R. 24-26, not I.A.R. 28. The transcripts will be submitted to the Court as prescribed by rule. There is no need for duplication in the agency record.

Claimant further requests inclusion of the hearing exhibits, as well as proposed exhibits that were not admitted. Submission of exhibits to the Court on appeal is governed by I.A.R. 31, not I.A.R. 28. While the parties will not receive copies of the exhibits, as they already possess them, the exhibits will be submitted to the Court as prescribed by Rule 31. There is no need for duplication in the agency record.

Finally, Claimant requests inclusion of his post-hearing briefs, as well as Defendants' post-hearing brief. These documents will be submitted to the Court along with the exhibits, as noted in the list of exhibits that appears in the agency record. Thus, there is no need for


duplication of these documents in the agency record.


Based on the foregoing, Claimant's request to augment the agency record is DENIED.

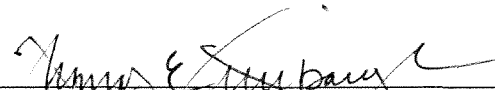
IT IS SO ORDERED.

DATED this 25<sup>th</sup> day of January, 2013.

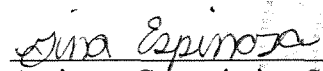
INDUSTRIAL COMMISSION

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

  
\_\_\_\_\_  
R.D. Maynard, Commissioner

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

ATTEST:

  
\_\_\_\_\_  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of January, 2013, a true and correct copy of the foregoing **ORDER DENYING CLAIMANT'S REQUEST TO AUGMENT THE AGENCY RECORD** was served by regular U.S. Mail upon each of the following:

RICHARD HAMMOND  
811 E CHICAGO ST  
CALDWELL ID 83605

DAVID J LEE  
STATEHOUSE MAIL  
PO BOX 83720  
BOISE ID 83720-0044

eb

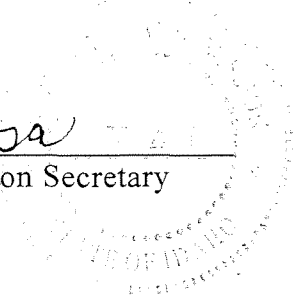
*Sino Espinoza*

CERTIFICATION

I, Gina Espinosa, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Order Denying Claimant's Request to Augment the Agency Record, and the whole thereof, in IC case number 2010-031750 for Marco Antonio Fonseca.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 25<sup>th</sup> day of January, 2013.

Gina Espinosa  
Assistant Commission Secretary



RECEIVED  
INDUSTRIAL COMMISSION  
2013 FEB - 11 P 2: 28

RICHARD L. HAMMOND, I. S. B. #6993  
HAMMOND LAW OFFICE, PA  
811 East Chicago Street  
Caldwell, Idaho 83605  
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Attorney for Claimant-Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCO ANTONIO FONSECA,  
Claimant-Appellant

v.

CORRAL AGRICULTURE, INC.,  
Employer,

and

IDAHO STATE INSURANCE FUND,  
Surety,  
Defendants-Respondents.

I.C. No. 2010 - 031750

SECOND AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CORRAL AGRICULTURE, INC. AND STATE INSURANCE FUND, AND THE PARTY'S ATTORNEY OF RECORD, MAX M. SHEILS, JR., AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Claimant-Appellant, Marco Antonio Fonseca, appeals against the above named respondents, Corral Agriculture and the Idaho State Insurance Fund, to the Idaho Supreme Court from the final Order entered in the above entitled proceeding, Chairman Thomas E. Limbaugh presiding with hearing officer Alan Reed Taylor; Claimant-Appellant appeals the following:

- a. Order Denying Claimant's Request to Augment the Agency Record dated the 25<sup>th</sup>

RICHARD L. HAMMOND, I. S. B. #6993  
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Employer,  
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Defendants-Respondents.

I.C. No. 2010 - 031750

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RECEIVED  
INDUSTRIAL COMMISSION  
2013 FEB - 6 A 10:30

TO: THE ABOVE NAMED RESPONDENT, CORRAL AGRICULTURE, INC. AND STATE INSURANCE FUND, AND THE PARTY'S ATTORNEY OF RECORD, MAX M. SHEILS, JR., AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Claimant-Appellant, Marco Antonio Fonseca, appeals against the above named respondents, Corral Agriculture and the Idaho State Insurance Fund, to the Idaho Supreme Court from the final Order entered in the above entitled proceeding, Chairman Thomas E. Limbaugh presiding with hearing officer Alan Reed Taylor; Claimant-Appellant appeals the following:

- a. Order Denying Claimant's Request to Augment the Agency Record dated the 25<sup>th</sup>



of January 2013 under Idaho Appellate Rules including but not limited to IAR 28, 29(a), 30.

- b. Order dated the 8<sup>th</sup> day of November 2012.
  - c. Failure to grant the relief requested in Claimant-Appellant's First Verified Motion for Sanctions filed on or about the first of September 2011 and the associated Orders on Motion dated November 4, 2011.
  - d. Failure to grant the relief requested in Claimant-Appellant's Second Verified Motion for Sanctions filed on or about the 23<sup>rd</sup> of November 2011 with no Order.
  - e. Failure to admit evidence and or records at the hearings herein.
2. The Claimant-Appellant has a right to appeal to the Idaho Supreme Court, and the orders described in paragraph number one above may be appealed under and pursuant to I.C. § 72-1368(9) and I.A.R. 14(b).
  3. The Claimant-Appellant's preliminary statement of the issues is as follows:
    - a. Did the Industrial Commission err as a matter of law or abuse their discretion when the Claimant was refused a complete copy of the Agency Record or when the Commission Denied Claimant's Request to Augment the Agency Record.
    - b. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed Claimant-Appellant's medical records, which were created in the Claimant-Appellant's Spanish native language, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Idaho Judicial Rules of Practice and Procedure G and Idaho Rules of Evidence?

- c. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they sustained Defendant-Respondent's objection of relevance and deemed the Hispanic Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, to be inadmissible and deny the translation by the court appointed certified Spanish interpreter, in violation of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?
- d. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled that Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?
- e. Did the Referee and Industrial Commission err as a matter of law or abuse their discretion when they ruled Claimant-Appellant's proposed exhibits as irrelevant, namely:
  - i. Exhibit 1, Pages 1, 3, 9, 10, 12, 15, 16-20, 22, 23-25, 28-30, 31,
  - ii. Exhibit 2, Pages 32-34
  - iii. Exhibit 5, Pages 44-50
  - iv. Exhibit 6, Pages 51, 53, 63, 67
  - v. Exhibit 11, Verbatim Report of Proceedings from December 15, 2011.
  - vi. Exhibit 12, Deposition of Roger O. Williams.

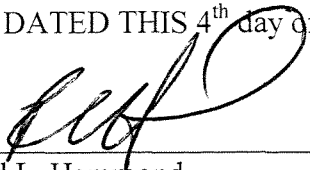
- vii. Exhibit 13, Deposition of Diane Evans.
  - viii. Exhibit 14, Deposition of Joyce Ellefson.
  - ix. Exhibit 15, Deposition of Jorge Coronado.
  - x. Exhibit 16, Deposition of Roberto Corral Jr.
  - xi. Exhibit 18, Entire
  - xii. Claimant-Appellant's medical records, which were created in the Claimant-Appellant's native language of Spanish, must be translated at the expense and burden of the Claimant-Appellant by a certified translator created an unlawful burden such that it is violative of Claimant-Appellant's State and Federal Equal Protection and Due Process Rights?
- f. Did the Referee and Industrial Commission abuse their discretion when they determined the Claimant-Appellant had not proved that Claimant-Appellant suffered an accident while picking apples for Corral Agriculture at Williamson Orchards on or about September 10, 2010?
4. No order has been entered sealing any portion of the record.
5. The Claimant-Appellant requests the reporter's entire standard transcript of all hearings including hearings on Motions as defined in Rule 25(c) I.A.R.
6. The Claimant-Appellant requests that the following documents be included in the Industrial Commission's record in addition to those automatically included under Rule 28 I.A.R.
- a. All transcripts, notes, records and audios of all telephonic and in person hearings and telephonic conferences including but not limited to:

- i. The 30<sup>th</sup> of December 2011.
  - ii. The 26<sup>th</sup> of October 2011.
  - iii. The 10<sup>th</sup> of January 2012.
  - iv. The 2<sup>nd</sup> of March 2012.
- b. All exhibits offered, whether or not admitted.
  - c. All Orders, Motions, Briefs, Responses, Affidavits, Complaints, Answers and other documents filed herein.
  - d. Claimant's Amended Notice of Appeal
  - e. Claimant's Motion to Augment the Agency Record filed on or about the 16<sup>th</sup> of January 2013.

7. I certify:

- a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below and at the address set out in the Certificate of Service below.
- b. That the clerk of the Idaho Industrial Commission has been paid the estimated fee for preparation of the reporter's transcript and record.
- c. That the appellate filing fee has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 4<sup>th</sup> day of February, 2013

  
\_\_\_\_\_  
Richard L. Hammond  
Attorney for the Appellant-Claimant

CERTIFICATE OF SERVICE: I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent on this 4<sup>th</sup> day of February 2013, to the parties and method outlined below:

David Lee of  
Idaho State Insurance Fund  
(208) 332-2225(Facsimile)  
Attorneys for Defendants-Respondents

Hand Delivered   
U.S. Mail   
Fax   
Fed. Express

IDAHO SUPREME COURT  
451 W. State St.  
Boise, Idaho 83702  
Phone (208) 334-2210

Hand Delivered   
U.S. Mail   
Fax   
Fed. Express

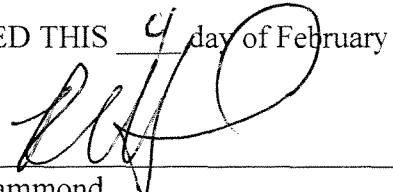
IDAHO INDUSTRIAL COMMISSION  
P.O. Box 83720-0041  
Boise, ID 83720  
  
700 S. Clearwater Lane, Boise, ID 83712  
Judicial Division  
Fax (208) 334-2321 / 332-7558

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Eagle, ID 83616  
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Hand Delivered   
U.S. Mail   
Fax   
Fed. Express   
*email*

DATED THIS 4 day of February 2013



Richard L. Hammond  
Attorney for the Appellant-Claimant

CERTIFICATION

I, Gina Espinosa, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of:

- Claimant/Appellant's *Amended Notice of Appeal*, filed December 26, 2012,
- Claimant/Appellant's *written request to augment the Agency Record*, filed January 16, 2013, and
- Claimant/Appellant's *Second Amended Notice of Appeal*, filed February 4, 2013,

and the whole thereof, in IC case number 2010-031750 for Marco Antonio Fonseca.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 8<sup>th</sup> day of February, 2013.

  
Assistant Commission Secretary

