

12-10-2013

# Giles v. Eagle Farms Clerk's Record v. 1 Dckt. 41469

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**LAW CLERK**

Vol. 1 of 2

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

NEWMAN K. GILES,

Claimant/Appellant,

v.

EAGLE FARMS, INC., Employer, and STATE  
INSURANCE FUND, Surety,

Defendants/Respondents.

**SUPREME COURT NO. 41469**

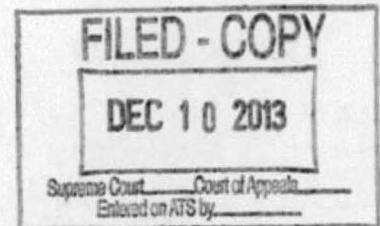
**AGENCY RECORD**

Attorney for Appellant:

Bryan D. Smith  
Po Box 50731  
Idaho Falls, ID 83405

Attorney for Respondents:

Paul J. Augustine  
Po Box 1521  
Boise, ID 83701



COPY

41469

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

NEWMAN K. GILES,

Claimant/Appellant,

v.

EAGLE FARMS, INC., Employer, and STATE  
INSURANCE FUND, Surety,

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**SUPREME COURT NO. 41469**

**AGENCY RECORD**

Attorney for Appellant:

Bryan D. Smith  
Po Box 50731  
Idaho Falls, ID 83405

Attorney for Respondents:

Paul J. Augustine  
Po Box 1521  
Boise, ID 83701

COPY

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# In the Supreme Court of the State of Idaho

NEWMAN K. GILES, )  
 )  
 Claimant-Appellant, ) ORDER GRANTING STIPULATION  
 ) TO AUGMENT AGENCY RECORD  
 v. )  
 ) Supreme Court Docket No. 41469-2013  
 EAGLE FARMS, INC., Employer; STATE ) Industrial Commission No. 2008-27691  
 INSURANCE FUND, Surety, )  
 )  
 Defendants-Respondents. )

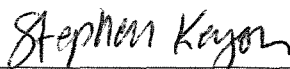
A STIPULATION TO AUGMENT AGENCY RECORD was filed by counsel for Appellant on January 17, 2014. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the STIPULATION TO AUGMENT AGENCY RECORD be, and hereby is, GRANTED and the augmentation record shall include the item listed below, copies of which accompanied this Motion, as an EXHIBIT:

1. Post-Hearing Deposition of Gary Dawson, Ph.D.

DATED this 23 of January, 2014.

For the Supreme Court

  
\_\_\_\_\_  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

## LIST OF EXHIBITS

*Reporter's Transcript taken on June 12, 2012, will be filed with the Supreme Court*

### Claimant's Exhibits:

1. Idaho State Police Report of Corporal Allen W. Bivens
2. Photographs taken by Corporal Allen W. Bivens
3. Report of Dr. Joe Anderson dated June 7, 2012

### Defendants' Exhibits:

1. Idaho Falls Ambulance Service Record
2. Medical Records of Eastern Idaho Regional Medical Center
3. Report of Gary Dawson
4. Curriculum Vitae of Gary Dawson
5. Medication Sheet from Dr. Biddulph
6. Deposition Transcript of Claimant, taken July 22, 2010

### Additional Document:



1. Deposition transcript of Dr. Joe Anderson, D.O., taken February 13, 2013

WORKERS' COMPENSATION COMPLAINT

ORIGINAL

CLAIMANT'S (INJURED WORKER) NAME AND ADDRESS NEWMAN KALAHAN GILES 135 N 3300 E RIBGY, ID 83442  TELEPHONE NUMBER: 208-243-1026	CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER G. LANCE NALDER, ESQ NALDER LAW OFFICE 591 PARK AVENUE, SUITE 201 IDAHO FALLS, ID 83402 208-542-0525  BRYAN D. SMITH, ESQ SMITH, DRISCOLL & ASSOCIATES, PLLC 414 SHOUP P O BOX 50731 IDAHO FALLS, ID 83405 208-524-0731
---	---

EMPLOYER'S NAME AND ADDRESS (at time of injury) EAGLE FARMS, INC. PO BOX 460 IONA, ID 83427  NEWMAN GILES 4050 E. LINCOLN ROAD IDAHO FALLS, ID 83401	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS IDAHO STATE INSURANCE FUND 700 S. CLEARWATER LANE P.O. BOX 83720 BOISE, ID 83720-0044
---	---

CLAIMANT'S SOCIAL SECURITY NO. 	CLAIMANT'S BIRTHDATE 	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE August 17, 2008
--	---	--

STATE AND COUNTY IN WHICH INJURY OCCURRED Idaho, Jefferson County	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE OF: \$ 538.00, PURSUANT TO IDAHO CODE § 72-419
--	---

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

Claimant was traveling to/from locations to change irrigation water and rolled his vehicle on a turn, thereby seriously injuring claimant.

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

Claimant sustained fractures and soft tissue injuries, including traumatic brain injuries, requiring extended hospitalization and care.

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

Past and future medical, TTD, PPI, disability and retraining benefits.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER August 17, 2008	TO WHOM NOTICE WAS GIVEN Owner - Newman Giles
---	--

HOW NOTICE WAS GIVEN:  ORAL  WRITTEN  OTHER, PLEASE SPECIFY

Claimant's supervisor is claimant's father, Newman Giles, who is also an owner of Eagle Eye. Claimant's father was notified of claimant's accident and injuries within hours of the occurrence of the accident by law enforcement authorities.



ISSUE OR ISSUES INVOLVED

Claimant's entitlement to past and future medical, TTD, PPI, Disability and Retraining Benefits; issues re compensability (alleged alcohol consumption by Claimant prior to accident).

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

Claimant is alleged to have consumed alcohol prior to the incident, and bifurcation of issues regarding compensability/liability and benefits/damages may be appropriate and is requested.

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

IC1001 (Rev. 1/01/2004)

(COMPLETE OTHER SIDE)

Complaint - Page 2 of 4

Appendix I

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

EASTERN IDAHO REGIONAL MEDICAL CENTER, 3100 CHANNING WAY, IDAHO FALLS, ID

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? UNKNOWN

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

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

DATE 6/12/2009

SIGNATURE OF CLAIMANT OR ATTORNEY

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

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS FILING PARTY DEPENDENT ON DECEASED?  YES  NO

DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT?  YES  NO

**CLAIMANT MUST COMPLETE, SIGN AND DATE THE ATTACHED MEDICAL RELEASE FORM**

CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of June, 2009, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

SURETY'S NAME AND ADDRESS

EAGLE FARMS, INC.  
PO BOX 460  
IONA, ID 83427

IDAHO STATE INSURANCE FUND  
1215 WEST STATE STREET  
P.O. BOX 83720  
BOISE, ID 83720-0044

NEWMAN GILES  
4050 E. LINCOLN ROAD  
IDAHO FALLS, ID 83401

via:  personal service of process

via:  personal service of process

regular U.S. Mail

regular U.S. Mail

Signature

2

**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.

*(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)*

Complaint – Page 3 of 4

INDUSTRIAL COMMISSION  
PO BOX 83720  
BOISE ID 83720-0041

Patient Name: NEWMAN KALAHAN GILES  
Birth Date: [REDACTED]  
Address: [REDACTED]  
Phone Number: 208-243-1026  
SSN or Case Number:

(Provider Use Only)  
Medical Record Number: \_\_\_\_\_  
 Pick up Copies  Fax Copies  
# \_\_\_\_\_

**AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION**

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

To: \_\_\_\_\_  
*Insurance Company/Third Party Administrator/Self Insured Employer/ISIF, their attorneys or patient's attorney*

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City State Zip Code*

Purpose or need for data: \_\_\_\_\_  
*(e.g. Worker's Compensation Claim)*


Information to be disclosed: \_\_\_\_\_ Date(s) of Hospitalization/Care: \_\_\_\_\_

- 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):

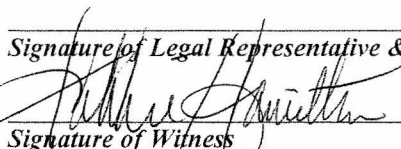
- AIDS or HIV
- Psychiatric or Mental Health Information
- Drug/Alcohol Abuse Information

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*

6-3-09  
\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Legal Representative & Relationship to Patient/Authority to Act*

  
\_\_\_\_\_  
*Signature of Witness*

*Legal Assistant*  
\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

6-3-09  
\_\_\_\_\_  
*Date*

Original: Medical Record Copy: Patient  
Complaint – Page 4 of 4

ORIGINAL



Send Original To: Industrial Commission, Judicial Division, 700 S. Clearwater Lane, Boise, Idaho 83712

IC1003 (Rev. 11/91)

ANSWER TO COMPLAINT

I.C. NO. 2008-027691

INJURY DATE 08/17/2008

X 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:

Table with 2 columns: CLAIMANT'S NAME AND ADDRESS, CLAIMANT'S ATTORNEY'S NAME AND ADDRESS, EMPLOYER'S NAME AND ADDRESS, WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS, ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS), ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

RECEIVED INDUSTRIAL COMMISSION AUG 20 2008 11:30 AM

Table with 2 columns: Admitted, Denied. Rows for IT IS: (Check One) with various X and NA marks.

- 1. That the accident alleged in the Complaint actually occurred on or about the time claimed.
2. That the employer/employee relationship existed.
3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.
4. That the condition for which benefits are claimed was caused entirely by an accident arising out of and in the course of Claimant's employment.
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.
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.
7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, § 72-419: under investigation
8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

12. What benefits, if any, do you concede are due Claimant? Continuing reasonable and necessary medical benefits.


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

See Exhibit "A" attached hereto.

Under the Commission rules, you have 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 3.D., Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, applies. Complaints against the Industrial Special Indemnity Fund must be filed on Form I.C. 1002.

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

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

Amount of Compensation Paid to Date			Dated	Signature of Defendant or Attorney
PPD	TTD	Medical	June 20, 2009	
\$00.00	\$00.00	\$153,430.54		

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of June, 2009 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	INDUSTRIAL SPECIAL INDEMNITY FUND (if applicable)
Newman Kalahan Giles c/o G. Lance Nalder 591 Park Avenue, Suite 201 Idaho Falls, ID 83402	State Insurance Fund	
Newman Kalahan Giles c/o Bryan D. Smith P.O. Box 50731	1215 W. State Street	
Idaho Falls, ID 83405	Boise, ID 83720	

Via:  personal service of process  
 regular U.S. Mail

Via:  personal service of process  
 regular U.S. Mail

Via:  personal service of process  
 regular U.S. Mail

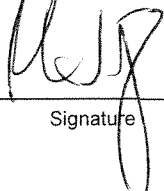
  
Signature

Exhibit A

**Affirmative Defenses**

1. Defendants deny each and every allegation of the Complaint not specifically admitted herein.
2. Defendants deny that they have acted unreasonably and Claimant is therefore not entitled to an award of attorney fees pursuant to the provisions of Idaho Code Section 72-804.
3. Defendants contend that Claimant's intoxication was a reasonable and substantial cause of his injury, such that pursuant to Idaho Code Section 72-208, no income benefits shall be paid to Claimant.

G. Lance Nalder Esq., ISB #3398  
Benjamin K. Mason, Esq., ISB #7437  
NALDER LAW OFFICE, P.C.  
591 Park Avenue, Suite 201  
Idaho Falls, ID 83402  
Telephone: 208-542-0525  
Facsimile: 208-542-1002

ORIGINAL

Bryan D. Smith  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup  
P.O. Box 50731  
Idaho Falls, ID 83405

Attorneys for Claimant

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

NEWMAN KALAHAN GILES )  
 )  
 Claimant )  
 )  
 v. )  
 )  
 EAGLE FARMS, INC. )  
 )  
 Employer, )  
 )  
 and )  
 )  
 IDAHO STATE INSURANCE FUND )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

I.C. No. 2008-027691

MOTION TO  
BIFURCATE

RECEIVED  
INDUSTRIAL COMMISSION  
2009 JUL 27 A 11:06

COMES NOW CLAIMANT and requests that the Industrial Commission bifurcate the issues of compensability/liability in the above matter such that the same may be heard separate and apart from issues related to benefits/damages. This motion is made for the reason that compensability/liability is expected to be in dispute given the unique circumstances attending the accident giving rise to Claimant's injuries. The nature and extent of Claimant's injuries and the effects thereof would be addressed in a subsequent hearing if liability/compensability is established. Bifurcation would serve as a more efficient use of the Commission's time and of the resources of all parties and counsel involved. If liability/compensability is established, it is expected that the remaining issues regarding the specific benefits to which Claimant is entitled and the amount thereof can be addressed and, in all likelihood, resolved through an abbreviated hearing or mediation.

The Claimant requests oral argument on this issue, should the Commission/Referee deem such necessary or appropriate.

DATED this 24th day of July, 2009.

NALDER LAW OFFICE, P.C.

By:



G. Lance Nalder, Esq.



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 24th day of July, 2009, I mailed a true and correct copy of the foregoing MOTION TO BIFURCATE to defendants, by placing a copy of the same in the United States mail addressed to the following persons:

Dated this 24th day of July, 2009.

DEAN DALLING ESQ  
DALLING & DALLING  
525 PARK AVENUE SUITE 2D  
IDAHO FALLS ID 83405

Nalder Law Office, P.C.

By:



G. Lance Nalder, Esq.

GLN/dh  
400-1\002 mot to bifurcate

ORIGINAL

G. Lance Nalder Esq., ISB #3398  
Benjamin K. Mason, Esq., ISB #7437  
NALDER LAW OFFICE, P.C.  
591 Park Avenue, Suite 201  
Idaho Falls, ID 83402  
Telephone: 208-542-0525  
Facsimile: 208-542-1002

2008 APR 11 P 4:54  
RECEIVED  
INDUSTRIAL COMMISSION

Bryan D. Smith, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup  
P.O. Box 50731  
Idaho Falls, ID 83405

Attorneys for Claimant

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

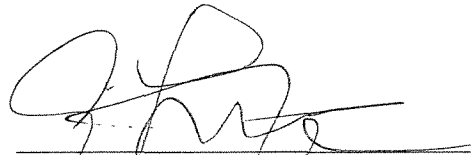
NEWMAN KALAHAN GILES, )  
 )  
 Claimant )  
 )  
 v. )  
 )  
 EAGLE FARMS, INC. )  
 )  
 Employer, )  
 )  
 and )  
 )  
 IDAHO STATE INSURANCE FUND )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

I.C. No. 2008-027691

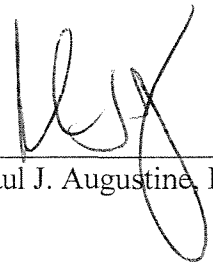
STIPULATION  
TO BIFURCATE ISSUES

COME NOW COUNSEL for Claimant and counsel for Defendants, and hereby stipulate and agree that the issues in the above captioned matter may be bifurcated so as first to determine the existence of a compensable accident and injury, separate and apart from a determination of benefits. The parties further stipulate and agree that the issues pertaining to claimants entitlement to medical, TTD, PPI, disability and retraining benefits will be deferred until all compensability issues have been resolved.

DATED this 4<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
G. Lance Nalder, Esq.

DATED this 11<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Paul J. Augustine, Esq.

GLN/dh  
400-1\003 stip to bifurcate issues

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NEWMAN KALAHAN GILES, )  
)  
Claimant, )  
)  
v. )  
)  
EAGLE FARMS, INC., )  
)  
Employer, )  
)  
and )  
)  
STATE INSURANCE FUND, )  
)  
Surety, )  
)  
Defendants. )  
\_\_\_\_\_ )

IC 2008-027691

ORDER BIFURCATING ISSUES

**FILED**

AUG 19 2009


INDUSTRIAL COMMISSION

Pursuant to the Motion to Bifurcate, filed July 27, 2009, and the Stipulation to Bifurcate Issues, filed August 11, 2009, and having reviewed the file and good cause appearing therefor, the Commission hereby ORDERS that the only issues before the Commission at this time are:

1. Whether Claimant suffered a personal injury arising out of and in the course of employment; and,
2. Whether Claimant's injury was the result of an accident arising out of and in the course of employment.

DATED this 19<sup>th</sup> day of August, 2009.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

Lina Espinosa  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of August, 2009, a true and correct copy of **ORDER BIFURCATING ISSUES** was served by regular United States Mail upon each of the following:

G LANCE NALDER  
591 PARK AVE STE 201  
IDAHO FALLS ID 83402

BRYAN D SMITH  
PO BOX 50731  
IDAHO FALLS ID 83405

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

Lina Espinosa

ge

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NEWMAN K. GILES, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 EAGLE FARMS, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IC 2008-027691

AMENDED  
ORDER BIFURCATING ISSUES

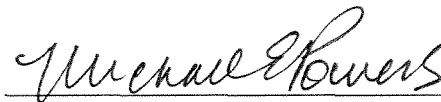
FILED  
JAN 26 2010  
INDUSTRIAL COMMISSION

The Referee, *sua sponte*, AMENDS the Order Bifurcating Issues, filed August 19, 2009, as follows:

The only issue before the Industrial Commission at this time is whether Claimant is precluded from recovering income benefits pursuant to Idaho Code § 72-208(2).

DATED this 26<sup>th</sup> day of January, 2010.

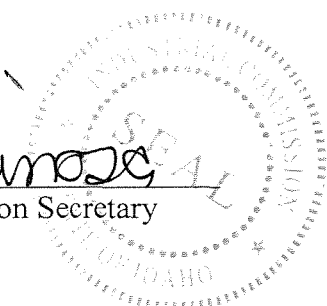
INDUSTRIAL COMMISSION



Michael E. Powers, Referee

ATTEST:

  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of January, 2010, a true and correct copy of **AMENDED ORDER BIFURCATING ISSUES** was served by regular United States Mail upon each of the following:

G LANCE NALDER  
591 PARK AVE STE 201  
IDAHO FALLS ID 83402

BRYAN D SMITH  
PO BOX 50731  
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PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

*Lana Estancia*

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NEWMAN K. GILES,  
Claimant,  
v.  
EAGLE FARMS, INC.,  
Employer,  
and  
STATE INSURANCE FUND,  
Surety,  
Defendants.

IC 2008-027691

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

FILED

AUG 27 2013

INDUSTRIAL COMMISSION

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Idaho Falls on June 12, 2012. Claimant was present and represented by G. Lance Nalder and Bryan D. Smith of Idaho Falls. Paul J. Augustine of Boise represented Employer/Surety.<sup>1</sup> Oral and documentary evidence was presented. The record remained open for the taking of two post-hearing depositions. The parties then submitted briefs and this matter came under advisement on April 29, 2013. It is now ready for decision.

**ISSUE**

By agreement of the parties, the sole issue to be decided is whether Claimant's intoxication bars recovery of income benefits pursuant to Idaho Code § 72-208.

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<sup>1</sup> Claimant's father is also Claimant's employer.



## CONTENTIONS OF THE PARTIES

Defendants contend <sup>2</sup> that Claimant's intoxication was a reasonable and substantial cause of the injuries he received when the vehicle he was driving crashed, and he is, therefore, not entitled to income benefits

Claimant contends that his alcohol consumption was not a substantial factor in causing his motor vehicle accident. At the time of his accident, Claimant was traveling over 120 miles per hour. Claimant is a habitual speeder so the alcohol he consumed did not make him speed at the time of his accident. Further, Claimant's cell phone indicated that there had been a series of text messages between Claimant and a friend right before Claimant's accident. Therefore, Claimant's theory goes, while alcohol may have been a contributing factor in Claimant's missing a curve and crashing, speeding and texting were the substantial factors in causing Claimant to crash. Even had he not been under the influence, he never would have made the corner in question at over 120 miles per hour while texting.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Claimant's father, and Idaho State Police Trooper Allen Bivens, taken at the hearing.
2. Claimant's Exhibits 1-6, admitted at the hearing.
3. Defendants' Exhibits 1-3, admitted at the hearing.
4. The post-hearing deposition of Gary Dawson, Ph.D., taken by Defendants on October 19, 2012.

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<sup>2</sup> Because Defendants assert Idaho Code § 72-208 as an affirmative defense, they carry the burden of proof.

5. The post-hearing deposition of Joe Anderson, D.O., taken by Claimant on February 13, 2013.

Defendants' objections at pp. 59 and 78-79 of Dr. Dawson's deposition are sustained. Defendants' objections at pp. 19-20, 22 and 36 of Dr. Anderson's deposition are sustained. All other objections are overruled.

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

### **FINDINGS OF FACT**

1. Claimant was 23 years of age and resided in the Idaho Falls area at the time of the hearing. He was 18 years of age at the time of the subject accident.<sup>3</sup> Claimant likes to drive fast; sometimes in excess of 100 miles an hour, but claims he can "... handle it." HT, pp. 32-33.

2. At about 3:30 a.m. on August 17, 2008, Claimant was traveling down Old Bassett Highway near Idaho Falls at speeds exceeding 120 miles an hour.<sup>4</sup> Claimant was familiar with the road, having driven it "100s" of times. HT, p. 35. Claimant was also aware of the curve in the road that he failed to negotiate. Claimant was unbelted and thrown from his vehicle.<sup>5</sup> He suffered serious injuries in the accident and has no clear memory of the events leading up to the accident, or of the accident itself.

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<sup>3</sup> Claimant contends he was travelling in conjunction with a work-related task. No findings in this regard are made herein.

<sup>4</sup> Claimant was driving his brother's pickup truck that was "double chipped." According to Claimant, that means the vehicle produces more horsepower, and consequently, more speed than a stock pickup. It was also "jacked up," giving it a higher-than-stock center of gravity. The truck also sported over-size wheels and tires.

<sup>5</sup> Claimant argues that it was Claimant's failure to wear his seatbelt that caused his serious injuries and Defendants have failed to prove that alcohol caused Claimant to not use his seatbelt. The Referee finds this argument unpersuasive. It was the fact that Claimant left the roadway at 123 miles per hour while legally intoxicated that caused his accident which resulted in serious injuries. Moreover, the evidence in the record is insufficient to establish the degree, if any, to which Claimant's injuries would have been ameliorated, had he been belted in.

3. It is undisputed that Claimant was intoxicated at the time of the accident, with a blood alcohol content (BAC) of .11. Under Idaho law, an adult is presumptively under the influence of alcohol with a BAC of .08 or above. The legal limit for persons under 21 years of age is .02. See Idaho Code § 18-8004(d). Lab testing at the hospital following the accident also identified opiate and amphetamine substances in Claimant's system. There is no evidence that these results were inconsistent with the prescription medication Claimant was taking. For example, Claimant was taking Adderall, an amphetamine, for Attention Deficit Hyperactivity Disorder (ADHD).

4. For the first time, Claimant alleged at hearing that he may also have been texting and was thereby distracted at the time he missed the curve. Although he has no independent recollection of texting, he bases this proposition on the fact that once he recovered his cell phone from the accident scene, it showed that he had been texting a friend at the time of the accident. As Claimant cannot locate his cell phone, and his cell phone usage as a contributing factor in causing his accident was not raised until the hearing, any evidence regarding texting cannot be corroborated and will not be considered in this decision, even though some quoted material may reference cell phone usage.

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

Idaho Code § 72-208(2) provides that if intoxication **is a reasonable and substantial cause** of an injury, no income benefits shall be paid subject to exceptions not applicable here. The burden of proof of establishing Claimant's intoxication lies with Defendants. See *Seamans v. Maaco Auto Painting and Bodyworks*, 128 Idaho 747, 918 P.2d 1192 (1996). Neither the legislature nor the Idaho Supreme Court has provided a definition of "reasonable" or "substantial." "Reasonable" is defined by Black's Law

Dictionary as “Just; proper. Ordinary or usual.” It defines “substantial” as “Significant or large and having substance.” See The Law Dictionary Featuring Black’s Law Dictionary Free Online Legal Dictionary, 2<sup>nd</sup> Ed.

## **EXPERT OPINIONS**

5. **ISP Corporal Bivens.** Corporal Bivens testified at the hearing that he reconstructs accidents for the Idaho State Police in eastern Idaho. He has a combined 25 years of experience in military and civilian law enforcement. He did not reconstruct Claimant’s accident because it did not result in any fatalities.

6. Corporal Bivens investigated the scene of Claimant’s accident and took relevant measurements, leading him to the conclusion that Claimant’s speed at the time he left the roadway was 123 miles an hour. Corporal Bivens described the road conditions as dry with clear visibility at the time of Claimant’s 3:30 a.m. crash. The posted speed limit was 50 miles per hour.

7. Corporal Bivens testified that he would not attempt to negotiate the curve Claimant missed at 123 miles an hour if he was “stone cold sober.” HT p. 63. He opined that alcohol affects an individual’s judgment, inhibitions, and the ability to safely control a motor vehicle. He concluded that Claimant’s speed was a “major contributing factor” in causing Claimant’s accident. HT p. 70. He also concluded that alcohol was a contributing factor, but he was unable to quantify the extent of its contribution. Corporal Bivens was aware that Claimant had received three speeding tickets prior to his accident. Her has also personally stopped Claimant for speeding once or twice, but did not write a ticket.

8. Corporal Bivens summed up his opinions in this matter this way:

Q. (By Mr. Augustine): And would you agree with me that someone who has been drinking, has a blood alcohol content of .12, who’s driving 122

miles an hour on a road they've driven hundreds of times before, and even if they're texting, is exhibiting extremely poor judgment?

A. Yes.

Q. Would you believe that their judgment is affected by their consumption of alcohol?

A. Yes.

Q. And that would affect how fast they're going and what they're doing under the circumstances that they're driving, correct?

[Claimant's objection overruled].

A. That would be correct.

HT pp. 97-88.

9. **Gary Dawson, Ph.D.** Employer/Surety retained Dr. Dawson of Boise to try to determine if, and to what degree, alcohol may have played a role in Claimant's accident. Dr. Dawson has a bachelor's degree in pharmacy, and masters and Ph.D. degrees in pharmacology.<sup>6</sup> Dr. Dawson is self-employed as an advisor and consultant in the areas of pharmacology, toxicology, and clinical trial and new drug development. He has provided extensive expert testimony in both civil and criminal courts in Idaho, is an instructor at the POST academy, and is a certified breath testing specialist in Idaho. Dr. Dawson also instructs the Ada County Sheriff's Office in DUI detection and enforcement.

10. Among the records Dr. Dawson reviewed were the ISP Collision Report, an ambulance (EMT) record, ER notes, Eastern Idaho Regional Medical Center (EIRMC) records, and prescription drug records.

11. Dr. Dawson opined that the combination of alcohol and opiates in Claimant's system at the time of the accident produced an additive depressant effect on Claimant's central nervous system and the two are contraindicated. This, in turn, impaired Claimant's

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<sup>6</sup> According to Dr. Dawson, pharmacology is the study of the effects of drugs and alcohol on the human body.

cognitive abilities, judgment, alertness, decision-making, and attention, resulting in disinhibition.<sup>7</sup> Dr. Dawson opined that the alcohol Claimant consumed was a reasonable and substantial cause of Claimant's accident: "Blood alcohol, together with the presence of opiates, produced a marked impairment of his ability to operate a motor vehicle in a safe manner. His resultant intoxication was a reasonable and substantial cause of the crash and subsequent injury." Dr. Dawson Depo., pp. 27-28.

12. While acknowledging that speed was a factor in causing Claimant's accident, Dr. Dawson opined that it was the alcohol that caused it:

Well, most of the factors that we have talked about are things that were occurring prior to the time the speed, apparently, became an issue.

An individual who is impaired to that degree may or may not even seriously recognize the threat that was posed by a road that, apparently, he was familiar with.

The ability to respond to that, for lack of a better word, threat associated with the sudden realization that, "Maybe I'm going too fast," or "Maybe I am distracted by somebody else in the car," or, "Maybe I'm looking at the radio or doing something else," the ability to multi-task is severely impaired; and the ability to respond to anything would be severely compromised.

So it is the alcohol and the potential for - - the fact that the opiates were present there, plus the lithium that he was taking at the same time, all add up to that.<sup>8</sup>

*Id.*, pp. 28-29.

13. On cross-examination, Dr. Dawson was asked whether Claimant's consumption of alcohol caused Claimant to speed in light of Claimant's history of driving fast. Dr. Dawson responded, "Again, it goes to judgment. If he is used to driving fast and

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<sup>7</sup> Dr. Dawson used the example of a normally quiet and shy individual who becomes the life of the party after a few glasses of wine in describing disinhibition.

<sup>8</sup> However, Dr. Dawson reiterated that when the opiates and lithium were excluded, it was the alcohol alone that was a reasonable and substantial cause of Claimant's accident and resultant injuries.

he gets drunk and he tries to drive fast, he is going to have a problem with his ability to operate a motor vehicle.” *Id.*, p. 56.

\* \* \*

Q. (By Mr. Smith): How can you say that (alcohol) was a substantial cause? What facts - - let me say this very specifically. What facts do you have to say that, on the night of the accident, the [sic] alcohol as the substantial factor, as opposed to his general propensity to drive fast?

A. The alcohol level of .11. He is drunk, and he crashed. He missed the turn. He didn't even try to make the turn, from what it looked like in the reconstruction. You are drunk, and you crash.

*Id.*, p. 90.

14. On redirect, Dr. Dawson further explained the effects of alcohol on one's judgment:

There are two pieces that we know specifically about the effects of alcohol, particularly, at these levels. It is not only judgment but, also, in terms of the decision-making and the planning process that is associated with the multi-tasking piece of operating a motor vehicle.

What we also know is that reaction time is also dramatically reduced - - or increased by about fifty percent in those circumstances where the time for assessment of a threat or assessment of a problem and the response to that problem is delayed.

What we also know is that, just from the standpoint of making that judgment about, “Oh, that light is turning red,” or “Yes, it's red,” as opposed to saying, “I need to stop because the light is going to turn yellow and then turn red.”

It is that kind of cognitive function that is impaired to the point where the true significance of danger or a threat is not fully appreciated.

*Id.*, pp. 94-95.

15. **Joe Anderson, D.O.** Dr. Anderson<sup>9</sup> is board certified in emergency medicine and is employed as an emergency room physician at EIRMC in Idaho Falls. Dr. Anderson also works at outpatient child and adult psychiatric clinics. He has been licensed

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<sup>9</sup> Claimant's counsel is Dr. Anderson's corporate attorney.

to practice medicine in Idaho since 1991. Dr. Anderson explained his training in toxicology and pharmacology as follows:

Sure. As an emergency physician, we see - - a large part of our practice is regarding drug overdoses, people that try to off - - you know, suicide attempts with pharmacology. And we get a big dose as part of our curriculum of alcohols - - you know, both ethanol, which we - - is the one you drink plus methanol, ethylene glycol, just - it's all part of our deal. It's toxicology. We're the first line in toxicology when people come to the hospital or sent there for poisonings whether it be accidental or whether it be, you know, self-induced.

Dr. Anderson Deposition, p. 7.

16. Dr. Anderson feels comfortable in diagnosing and treating ADHD and has done so in the past. He has also prescribed medications for ADHD and feels he is qualified to discuss the effects of medications on patients afflicted with that condition.

17. Claimant retained Dr. Anderson to render an opinion regarding factors that may have caused or contributed to his accident. Based on Dr. Anderson's review of Claimant's Rule 10 disclosures, Dr. Dawson's report and the hearing transcript, he opined that Claimant's accident was caused by:

a. Addiction to speed (driving fast). Dr. Anderson reasoned that because of Claimant's ADHD, he had an addictive personality; he was addicted to speed (driving fast). He further cited Claimant's many speeding tickets and the effort and money he spent making his truck the "fastest in town" as evidence of this addiction.

b. Texting while driving.<sup>10</sup>

c. Alcohol impairment.<sup>11</sup>

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<sup>10</sup> As previously indicated, Claimant's alleged cell phone use will not be considered in this decision.

<sup>11</sup> Idaho Code § 72-208 provides that no income benefits shall be paid if intoxication is a, not the, reasonable and substantial cause of a claimant's injuries. When later asked if he believed alcohol was a reasonable and substantial cause, Dr. Anderson responded that he did not.



18. Dr. Anderson summed up his opinion on direct examination:

Q. (By Mr. Smith) Okay. So in your opinion, what is the reasonable and substantial cause of the claimant's injuries in this case?

A. Excessive speed caused by an addictive personality with his ADHD where he was addicted to speed.

Q. Now, what do you base your opinion on that he had an addictive personality that caused him to speed?

A. Excessive speeding tickets. The need for speed. Building a truck that was built for speed.<sup>12</sup> A badge of courage, for lack of a better term in which he considered himself a speed demon, all those kind of things. And we know that ADHD people do have addictive personalities. We know that.

Q. Okay. Is there any evidence that you've seen in this record that on the night of the accident, alcohol caused him to drive at 123 miles an hour?

A. There is no evidence and there are no - - as I did a literature search I could not come up with an article that said if you drink alcohol, you drive faster. Reaction times are slower, can be slower, depending - - and again, it's a linear kind of thing. The higher the alcohol level, the more impairment you get.

Dr. Anderson Deposition, p. 25.

19. Dr. Anderson does not disagree that alcohol was a factor in causing Claimant's injuries:

I agree. As I mentioned, I think it's probably number four as a factor, but I disagree that it's the primary thing. I think I've made a pretty good case that I still believe that people that are .11 or .12 could negotiate that corner, so no. I don't think so.

*Id.*, p. 43.

20. Dr. Anderson's ultimate opinions are less persuasive than those of Dr. Dawson and Corporal Bivens because:

a. Dr. Anderson defined "reasonable and substantial" cause as: "...the number one cause...the main cause...the reproducible cause." *Id.*, p. 52. The

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<sup>12</sup> Claimant was driving his brother's truck at the time of his accident. However, that truck was also altered in ways that would make it go faster than a stock pickup.

applicable statute, Idaho Code § 72-208, however, does not require Defendants to prove intoxication was the main cause of Claimant's injuries.

b. Dr. Anderson did not know how many times or how fast Claimant drove sober on Old Bassett Highway. Dr. Anderson could not explain why, if alcohol was not a substantial factor in the accident, Claimant had not crashed before while driving on this stretch.

c. Dr. Anderson concedes that alcohol "played a role" in causing Claimant's injuries and agrees that alcohol slows one's reflexes, impairs judgment, motor skills, cognition and executive functioning including slowing reaction times, and can produce disinhibition. *Id.*, p. 66.

d. Dr. Anderson did not know if Claimant's ADHD was medically controlled at the time of his accident. If Claimant's ADHD was under control, then it follows that his speed addiction would be, too.

e. Dr. Anderson admitted that the only time Claimant attempted to negotiate the curve in the road at 123 miles per hour, "[h]e had alcohol on board" and was intoxicated "by definition." *Id.*, p. 78.

f. Dr. Anderson admitted that when he prescribes hydrocodone to patients, he advises them not to drink alcohol while taking the medication. He does not have an opinion regarding the effects of hydrocodone or opiates may have contributed to Claimant's accident because he does not know when Claimant last took the medications.

21. Claimant cites *Hatley v. Lewiston Grain Growers, Inc.*, 97 Idaho 719, 552 P.2d 482 (1076) for the proposition that Claimant's intoxication alone is not sufficient to

establish such to be a reasonable and substantial factor in causing his injuries. There, a claimant truck driver with a BAC of .117 missed a curve, ran off the road, and was killed. There was evidence that the claimant did not act impaired in the time shortly before his accident. The Supreme Court affirmed the Industrial Commission's decision that defendants therein had failed to prove that Claimant's intoxication **caused** his injuries. However, as Defendants point out, *Hatley* is readily distinguishable from the case at bar. First, the applicable statute required a showing of proximate cause rather than showing a reasonable and substantial cause as is required in the present statute. Second, the defendants had to overcome the rebuttable presumption set forth in Idaho Code § 72-228 that the claimant's death was not caused by his intoxication. Third, there is more evidence here that Claimant's intoxication was a reasonable and substantial cause of his injuries than was present in *Hatley*.

22. The Referee finds Defendants have met their burden of proving Claimant's intoxication was a reasonable and substantial factor contributing to his accident and injuries. While perhaps not the proximate cause, alcohol was certainly a reasonable and substantial cause. Claimant testified that he generally drove safely, even when speeding. Yet on the night of his accident he admitted to driving recklessly. The clearest explanation for Claimant's unusual reckless state of mind, based upon the evidence in the record, is that he was experiencing impairment due to intoxication.

#### **CONCLUSION OF LAW**

Defendants have met their burden of proving that Claimant's intoxication was a reasonable and substantial cause of his injuries, such that he is barred from receiving income benefits pursuant to Idaho Code § 72-208.

**RECOMMENDATION**

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

DATED this 16<sup>th</sup> day of August, 2013.

INDUSTRIAL COMMISSION

  
Michael E. Powers, Referee

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of August, 2013, 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:

G LANCE NALDER  
591 PARK AVE STE 201  
IDAHO FALLS ID 83402

BRYAN D SMITH  
PO BOX 50731  
IDAHO FALLS ID 83405

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

ge



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NEWMAN K. GILES,  
Claimant,  
v.  
EAGLE FARMS, INC.,  
Employer,  
and  
STATE INSURANCE FUND,  
Surety,  
Defendants.

IC 2008-027691

ORDER

FILED

AUG 27 2013

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion 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 conclusion of law as its own.

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

1. Defendants have met their burden of proving that Claimant's intoxication was a reasonable and substantial cause of his injuries, such that he is barred from receiving income benefits pursuant to Idaho Code § 72-208.

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

DATED this 27<sup>th</sup> day of August, 2013.

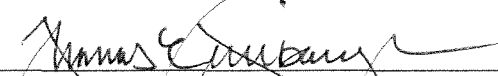
INDUSTRIAL COMMISSION



Thomas P. Baskin, Chairman



R. D. Maynard, Commissioner



Thomas E. Limbaugh, Commissioner

ATTEST:



Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

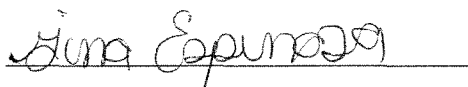
I hereby certify that on the 27<sup>th</sup> day of August 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

G LANCE NALDER  
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IDAHO FALLS ID 83402

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IDAHO FALLS ID 83405

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Attorneys for Claimant/Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NEWMAN K. GILES,  
  
Claimant/Appellant,  
  
v.  
  
EAGLE FARMS, INC.,  
  
Employer,  
  
and  
  
STATE INSURANCE FUND,  
  
Surety,  
Defendants/Respondents.

IC No. 2008-027691  
  
**NOTICE OF APPEAL**

RECEIVED  
INDUSTRIAL COMMISSION  
2008 SEP 30 P 1:26

TO: ABOVE NAMED RESPONDENTS, EAGLE FARMS, INC., AND STATE INSURANCE FUND,  
AND THE PARTIES' ATTORNEY, PAUL AUGUSTINE, P.O. BOX 50731, BOISE, IDAHO, 83701:

**NOTICE OF APPEAL – Page 1**

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NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Newman K. Giles ("Kal"), appeals to the Idaho Supreme Court from the Industrial Commission's Findings of Fact, Conclusion of Law, and Recommendation, and Order entered in the above-entitled action of the 27<sup>th</sup> day of August, 2013, Chairman Thomas B. Baskin, presiding, entered in the matter filed against the above named respondents, Eagle Farms, Inc. and State Insurance Fund.

2. That the appellant has a right to appeal to the Idaho Supreme Court, and the Order described in paragraph 1 above is an appealable order pursuant to Rule 11(d) I.A.R.

3. The appellant intends to present the following issue on appeal:

- a. The Industrial Commission erred in refusing to consider evidence regarding appellant's use of a cell phone and texting at the time of the accident.
- b. The Industrial Commission erred in refusing to find that Kal's failure to wear a seat belt was a reasonable and substantial cause of his injuries.
- c. The Industrial Commission erred in finding that alcohol was a reasonable and substantial cause of his injuries.

4. A reporter's transcript was prepared and the original thereof filed with the Industrial Commission and appellant requests that it be filed with the Idaho Supreme Court.



5. The appellant requests the standard agency record including stipulations of fact per Rule 28 I.A.R. In addition, appellant requests the following additional documents to be included in the agency's record:

- a. The post-hearing deposition Dr. Joe Anderson, D.O., taken by appellant on February 13, 2013.

6. The appellant requests the following documents, charts, or pictures offered or admitted as exhibits be copied and sent to the Supreme Court.

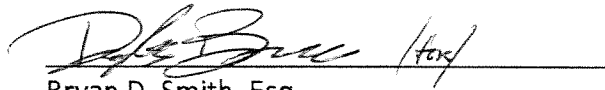
- a. Appellant's Exhibits 1-3, admitted at the hearing.

7. I certify:

- a. That the estimated fee for the preparation of the agency's record has been paid.
- b. That the appellant's filing fee has been paid.
- c. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 26 day of September, 2013

SMITH, DRISCOLL & ASSOCIATES, PLLC



Bryan D. Smith, Esq.

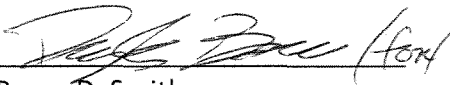
Attorneys for Claimant/Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26 day of September, 2013, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

- U.S. Mail
- FAX
- Overnight Delivery
- Hand Delivery

Paul J. Augustine, Esq.  
AUGUSTINE LAW OFFICES, PLLC  
1004 W. Fort Street  
Post Office Box 1521  
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Bryan D. Smith

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RECEIVED  
SUPREME COURT  
STATE OF IDAHO

NEWMAN K. GILES,

Claimant/Appellant,

v.

EAGLE FARMS, INC., Employer, and STATE  
INSURANCE FUND, Surety,

Defendants/Respondents.

2013 OCT -2 A 10: 05

SUPREME COURT NO. 41469

Appeal From: Industrial Commission, Chairman, Thomas P. Baskin, presiding.

Case Number: IC 2008-027691

Order Appealed from: Findings of Fact, Conclusions of Law, and Recommendation, filed August 27, 2013; and Order, filed August 27, 2013.

Attorney for Appellant: BRYAN D SMITH  
PO BOX 50731  
IDAHO FALLS ID 83405

Attorney for Respondents: PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

Appealed By: Claimant/Appellant

Appealed Against: Defendants/Respondents

Notice of Appeal Filed: September 30, 2013

Appellate Fee Paid: \$94.00

Name of Reporter: M & M Court Reporting

CERTIFICATE OF APPEAL (GILES) - 1

FILED - ORIGINAL

OCT - 2 2013

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by DB

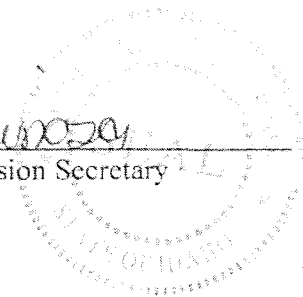
Transcript Requested:

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

Dated:

October 1, 2013

  
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 2008-027691 for Newman K. Giles.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 1<sup>st</sup> day of October, 2012.

  
Assistant Commission Secretary



**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. 41469 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 1<sup>st</sup> day of November, 2013.

  
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

NEWMAN K. GILES,

Claimant/Appellant,

v.

EAGLE FARMS, INC., Employer, and STATE  
INSURANCE FUND, Surety,

Defendants/Respondents.

SUPREME COURT NO. 41469

TO: STEPHEN W. KENYON, Clerk of the Courts; and  
Bryan D. Smith, for the Appellant; and  
Paul J. Augustine, for the Respondent.

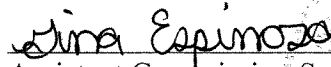
YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served by regular U.S. mail upon each of the following:

BRYAN D SMITH  
PO BOX 50731  
IDAHO FALLS ID 83405

PAUL J AUGUSTINE  
PO BOX 1521  
BOISE ID 83701

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 1<sup>st</sup> day of November, 2013.

  
Assistant Commission Secretary

