12-4-2014

Chavez v. Stokes Clerk's Record Dckt. 42589

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant-Respondent, v. KEVIN STOKES, Defendant-Appellant.	**SUPREME COURT NO. 42589** **AGENCY'S RECORD**

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Attorney for Appellant:

R. Daniel Bowen
PO Box 1007
Boise, ID 83701

Attorney for Respondent

Richard S. Owen
PO Box 278
Nampa, ID 83653

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Reporter's Transcript taken October 30, 2013 will be lodged with the Supreme Court.

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B. Letter from R. Daniel Bowen to Richard S. Owen, dated December 21, 2012

Defendants' Exhibits:

1. Form 1
2. City of Fruitland/Payette County Paramedics records
3. St. Alphonsus RMC/EMS Transport Sheets (Life Flight)
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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	CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER
Sohar Chavez 880 N. Oregon St. #15 Ontario, OR 97914 TELEPHONE NUMBER: 541-212-8802	Richard S. Owen P.O. Box 278 Nampa, Idaho 83653
EMPLOYER'S NAME AND ADDRESS (at time of injury)	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
Kevin Stokes P.O. Box 584 New Plymouth, Idaho 83655	Uninsured

CLAIMANT'S [redacted] SECURITY NO.	CLAIMANT'S BIRTHDATE	DATE OF INJURY OR MANIFESTATION OF OCCUPATIONAL DISEASE
[redacted]	[redacted]	9/8/12

STATE AND COUNTY IN WHICH INJURY OCCURRED	WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE
Idaho, Payette County	OF: $400.00, PURSUANT TO IDAHO CODE § 72-419

DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED (WHAT HAPPENED)

I was moving irrigation lines, slipped and my left hand fell in the chain of the motor.

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

My left pinky was amputated.

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

Compensability of the case.

DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER	TO WHOM NOTICE WAS GIVEN
9/8/12	Kevin Stokes

HOW NOTICE WAS GIVEN: ☒ ORAL ☐ WRITTEN ☐ OTHER, PLEASE SPECIFY

ISSUE OR ISSUES INVOLVED

Compensability of case; determination of need for medical care and reimbursement for the cost thereof; assessment of attorney's fees for uninsured status; determination of extent of total temporary disability benefits, need for retraining, determination of permanent partial impairment; determination of permanent partial disability which may be total and permanent which accounts for all medical and non-medical factors and retention of jurisdiction past the statute of limitations.

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

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS)

St. Alphonsus RMC
1055 N. Curtis Rd.
Boise, Idaho 83706

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE?

WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? $ Unknown

WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? $_____

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

DATE	SIGNATURE OF CLAIMANT OR ATTORNEY
10-9-12	Ann Lane

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

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

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of October, 2012, I caused to be served a true and correct copy of the foregoing Complaint upon:

EMPLOYER'S NAME AND ADDRESS

Kevin Stokes
P.O. Box 584
New Plymouth, Idaho 83655

via: ☐ personal service of process
X regular U.S. Mail

SURETY'S NAME AND ADDRESS

Uninsured

via: ☐ personal service of process
X regular U.S. Mail

Ann Lane
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.

(COMPLETE MEDICAL RELEASE FORM ON PAGE 3)

INDUSTRIAL COMMISSIO
PO BOX 83720
BOISE ID 83720-0041

Patient Name: S r Chavez
[redacted]
Address: 880 N. Oregon St. #15, Ontario, OR 97914
Phone Number: 541-212-8802
[redacted]or Case Number: [redacted]

(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 patients' 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.

Sohar Chavez
_____
Signature of Patient ***Date***

_____
Signature of Legal Representative & Relationship to Patient/Authority to Act ***Date***

_____
Signature of Witness ***Title*** ***Date***

Original: Medical Record Copy: Patient

Print Form

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

ANSWER TO COMPLAINT

I.C. NO. _____ INJURY DATE _____

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:

CLAIMANT'S NAME AND ADDRESS	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS
Sohar Chavez 880 N. Oregon St. #15 Ontario, OR 97914	Richard S. Owen P.O. Box 278 Nampa, ID 83653
EMPLOYER'S NAME AND ADDRESS Kevin Stokes Post Office Box 584 New Plymouth, ID 83655 TELEPHONE NUMBER:	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
ATTORNEY REPRESENTING EMPLOYER OR EMPLOYER/SURETY (NAME AND ADDRESS) Ron R. Shepherd HAMILTON, MICHAELSON & HILTY, LLP Post Office Box 65 Nampa, ID 83653-0065	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

IT IS: (Check One)		
Admitted	Denied	
√		1. That the accident or occupational exposure 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 partly entirely by an accident arising out of and in the course of Claimant's employment.
N/A	N/A	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: $ 300.00 to $350.00 per week.
	√	8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

9. What benefits, if any, do you concede are due Claimant?

None

FILED

INDUSTRIAL COMMISSION

(Continued from front)

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

Claimant was a self-employed subcontractor, not an employee.

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
PPI/PPD	TTD	Medical		Ron R. Shepherd Print or Type Name

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 20 12, 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)
Sohar Chavez c/o Richard S. Owen Post Office Box 278 Nampa, ID 83653		

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

Ron R. Shepherd
Signature
Type or Print Name

Send Original To: Industrial Commission, Judicial Division, 317 Main Street, PO BOX 83720, Boise, Idaho 83720-0041 IC1003 (Rev. 1/01/2004)

AMENDED ANSWER TO COMPLAINT

I.C. NO. 2012-025814 INJURY DATE 09/08/2012

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:

CLAIMANT'S NAME AND ADDRESS	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS
SOHAR CHAVEZ 880 N. OREGON ST. #15 ONTARIO, OR 97914	RICHARD S. OWEN, ESQ. PO BOX 278 NAMPA, ID 83653
EMPLOYER'S NAME AND ADDRESS KEVIN STOKES PO BOX 584 NEW PLYMOUHT, ID 83655	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS) R. DANIEL BOWEN, ESQ. (ISB #2673) BOWEN & BAILEY, L.L.P. 1311 W. JEFFERSON STREET BOISE, IDAHO 83702	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

FILED
DEC 17 2012
INDUSTRIAL COMMISSION

IT IS: (Check one)	
Admitted	Denied
X	
X	
X	
X	
N/A	N/A
X	
	X
X	

1. That the accident or occupational exposure 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 partly ☒ 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 the 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, Section 72-419: $ 300.00 TO $350.00 PER WEEK.

8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

9. What benefits, if any, do you concede are due Claimant?.

REASONABLE AND NECESSARY MEDICAL EXPENSES, PHYSICAL IMPAIRMENT, AND POSSIBLY TEMPORARY DISABILITY.

(COMPLETE OTHER SIDE)

Send Original To: Industrial Commission, Judicial Division, 317 Main Street, PO BOX 83720, Boise, Idaho 83720-0041

IC1003 (Rev. 1/01/2004)

ORIGINAL

AMENDED ANSWER TO COMPLAINT

I.C. NO. 2012-025814 INJURY DATE 09/08/2012

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:

CLAIMANT'S NAME AND ADDRESS	CLAIMANT'S ATTORNEY'S NAME AND ADDRESS
SOHAR CHAVEZ 880 N. OREGON ST. #15 ONTARIO, OR 97914	RICHARD S. OWEN, ESQ. PO BOX 278 NAMPA, ID 83653
EMPLOYER'S NAME AND ADDRESS KEVIN STOKES PO BOX 584 NEW PLYMOUHT, ID 83655	WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS
ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS) R. DANIEL BOWEN, ESQ. (ISB #2673) BOWEN & BAILEY, L.L.P. 1311 W. JEFFERSON STREET BOISE, IDAHO 83702	ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)

IT IS: (Check one)	
Admitted	Denied
X	
X	
X	
X	
N/A	N/A
X	
	X
X	

1. That the accident or occupational exposure 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 partly ☒ 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 the 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, Section 72-419: $ 300.00 TO $350.00 PER WEEK.

8. That the alleged employer was insured or permissibly self-insured under the Idaho Workers' Compensation Act.

9. What benefits, if any, do you concede are due Claimant?.

REASONABLE AND NECESSARY MEDICAL EXPENSES, PHYSICAL IMPAIRMENT, AND POSSIBLY TEMPORARY DISABILITY.

(Continued from front)

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

I. WHETHER THE HELICOPTER TRANSPORT OF CLAIMANT WAS REASONABLE AND NECESSARY PURSUANT TO IDAHO CODE §72-432.

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 Special Indemnity Fund must be filed on Form I.C. 1002.

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

DO YOU BELIEVE THIS CLAIM PRESENTS A NEW QUESTION OF LAW OR A COMPLICATED SET OF FACTS? IF SO, PLEASE STATE.

REASONABLENESS AND NECESSITY OF LIFEFLIGHT SERVICES EXCEEDING $21,000.00 FOR A NON-DOMINANT HAND LITTLE FINGER AMPUTATION.

Amount of Compensation paid to date			Dated	Signature of Defendant or Attorney
PPD	TTD	Medical		
- 0 -	- 0 -	- 0 -	12/17/12	R. DANIEL BOWEN (ISB #2673)

PLEASE COMPLETE

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2012, I caused to be served a true and correct copy of the foregoing Answer upon:

RICHARD S. OWEN, ESQ.
PO BOX 278
NAMPA, ID 83653
FAX: (208) 3399

via ☐ personal service of process
☐ regular U.S. mail
☒ facsimile

R. DANIEL BOWEN

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant, v. KEVIN STOKES, Employer, Defendant.	**IC 2012-025814** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

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 Boise on October 30, 2013. Claimant was not present but was represented by Richard S. Owen of Nampa who appeared on Claimant's behalf. R. Daniel Bowen of Boise represented uninsured Employer, Kevin Stokes, who was also present. Oral and documentary evidence was presented. No post-hearing depositions were taken and the parties waived their opportunity to submit post-hearing briefs. This matter came under advisement on November 6, 2013. and is now ready for decision.

ISSUE

The sole issue to be decided is whether the transport of Claimant by St. Alphonsus Life Flight (Life Flight) constituted reasonable medical care pursuant to Idaho Code § 72-432.

CONTENTIONS OF THE PARTIES

Claimant contends that Life Flight's bill incurred in transporting him from the work site where the tip of his left small finger was partially amputated was not reasonable and he should not be required to pay it. He relies on the opinion of Paul C. Collins, M.D.

Employer agrees that the charge is unreasonable under the circumstances of Claimant's injury.

Life Flight has not appeared in this matter, even though Defense counsel sent certified letters to the two addresses listed on the invoice Life Flight sent to Claimant indicating that there was a problem with the bill and that a hearing was set for October 30, 2013 in Boise.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Employer, Kevin Stokes, taken at the hearing.
2. Claimant's Exhibits A and B, admitted at the hearing.
3. Employer's Exhibits 1-10, admitted at the hearing.

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

FINDINGS OF FACT

1. Claimant was employed by Employer as a part-time irrigator. On September 8, 2012, Claimant suffered a partial amputation of his left small finger when his left had slipped into the chain of a motor on the irrigation line he was moving in the Payette/Fruitland area.

2. Payette County EMTs arrived at the scene of Claimant's accident. Apparently, it was determined that Claimant's small finger was salvageable, so Life Flight was called and transported Claimant to St. Alphonsus hospital in Boise. As it turned out, the tip of Claimant's finger could not be reattached.

3. Life Flight sent Claimant a bill for $21,201.00 for the transport.

4. Although not insured for workers' compensation purposes on the advice of his accountant, to his credit Employer has paid all of Claimant's medical bills and associate benefits. The only bill not paid is the one from Life Flight.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured worker with reasonable medical, surgical, or other treatment immediately following an injury and for a reasonable time thereafter

5. Both parties hereto agree that it was not reasonable to life flight Claimant to a hospital in Boise when Claimant's injury occurred approximately 15 minutes from Holy Rosary Hospital in Ontario, Oregon.

6. Employer testified that he owns a farm in Fruitland and employed Claimant as a part-time irrigator. On September 8, 2012, Employer received a call from Payette County Dispatch that Claimant had been injured. Claimant got his left hand caught in the chain/sprocket mechanism on an irrigation line and crushed the tip of his left small finger. Upon his arrival at the accident scene, Employer observed three Payette County paramedics, and a deputy sheriff. Employer testified as follows regarding his observations:

> Q. (By Mr. Bowen): When you got there, what was Mr. Chavez's situation?
>
> A. He was sitting on a bench on the deck of the sheriff deputy's house. One of the paramedics had his hand up in the air, had Mr. Chavez's

hand up in the air, elevated. It was bandaged. You know, I talked to him briefly, Mr. Chavez, asked, you know, how he was, and then tried to talk to the paramedics, you know, what's happening, you know, what are we doing now. They didn't respond to me, basically brushed me off, but eventually one of the paramedics who was brand new on the job said she didn't know what was happening, so . . .

Q. The reason you were inquiring was you were wondering why he wasn't already being taken to Holy Rosary?

A. Exactly. You know, like I said, you know, they had him already bandaged and, you know, their ambulance was sitting there, you know, five, ten yards away and, you know, doors open, and I thought well, let's get him going, you know, and like I said, no one would answer me. I asked the sheriff's deputy and he said the bird was on its way, and that's when I asked, you know, why and no one would answer that. I got nothing from anyone after that.

Hearing Transcript, pp. 20-21.

7. After the above transpired, Employer made the trip from the scene of Claimant's accident three times each at different times of the day.[1] He calculated the distance by his odometer at 9.8 miles to the helipad at Holy Rosary. At noontime, Employer made the trip in 15 minutes. The quickest time, 12 minutes, occurred around 5:00 p.m. Employer did not exceed the posted speed limit on any of his "test runs." It can be reasonably inferred that an ambulance in full emergency mode could make the trip in less time that Employer.

8. According to the EMT report, an off-duty Payette County paramedic contacted "Medic 20" and was advised that the fingertip may be "surgically fixed" and Life Flight was requested to "launch." *See*, Defendant's Exhibit 2.

9. Claimant was life-flighted to St. Alphonsus emergency department where he came under the care of hand specialist Mark Clawson, M.D., who deemed Claimant's finger irreparable and performed a revision amputation.

[1] According to the EMT report, Claimant's accident happened at about 5:00 p.m.

10. In an April 9, 2013 letter to Employer's counsel, Paul C. Collins, M.D., an orthopedic surgeon practicing is Boise, opined:

> Having reviewed the case and specifically, as an example, the x-ray report of 09/08/12, it is evident that this is a 5th finger crushing/tearing type injury that was not in any way, shape or form, life critical. For that reason I do not understand why Life Flight was called or addressed in the first place, and why the case was not taken to Holy Rosary. Indeed, it is extremely reasonable that the patient would be taken physically to Holy Rosary Hospital. Had there been an incident which may in some way benefitted from a vascular reconstruction, then the patient could be transferred to St. Alphonsus or St. Luke's. Indeed, this was in no way necessary.

Defendant's Exhibit 6, p. 55.

11. The Referee is unable to find in the record as submitted any evidence that it was reasonable or necessary to life flight Claimant from near Fruitland to Boise based on an apparent misconception that Claimant's small fingertip could be salvaged. Even if it could have been salvaged, there is no evidence that such could not have been accomplished at Holy Rosary or that arrangements could not have been made to transfer him to St. Alphonsus.

12. It is unfortunate that Life Flight did not appear and defend itself in this matter. Nonetheless, the Referee is convinced that counsel for Employer exercised due diligence in attempting to locate them and providing them with a letter fully explaining Employer's position, as well as the Notice of Hearing and other pleadings.

CONCLUSIONS OF LAW

1. The Idaho Industrial Commission has jurisdiction in this matter. *See,* Idaho Code §§ 72-209 and 211.

2. Neither Employer nor Claimant is liable for payment of the invoice for Life Flight services in the amount of $21,201.00. *See,* Defendant's Exhibit 8.

RECOMMENDATION

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

DATED this 10th day of March, 2014.

INDUSTRIAL COMMISSION

Michael E. Powers

Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2014, 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 S OWEN
PO BOX 278
NAMPA ID 83653

R DANIEL BOWEN
PO BOX 1007
BOISE ID 83701-1007

ge

Gina Eskinson

C.L. "BUTCH" OTTER, GOVERNOR

IDAHO INDUSTRIAL COMMISSION

PO Box 83720
Boise, ID 83720-0041
(208) 334-6000 - FAX (208) 334-2321
1-800-950-2110

COMMISSIONERS
Thomas P. Baskin, Chairman
R. D. Maynard
Thomas E. Limbaugh

Mindy Montgomery, Director

April 7, 2014

Richard Owen
PO Box 278
Nampa, ID 83653

R Daniel Bowen
PO Box 1007
Boise, ID 83701-1007

Re: Sohar Chavez v. Kevin Stokes
IC 2012-025814

Dear Mr. Owen and Mr. Bowen:

The Commissioners have received Referee Powers' recommendation in the above entitled case. As we reviewed the same, we have concluded that decision on the case would be advanced by some briefing on the following issue.

The parties seem to be in agreement that the care in question is unreasonable. Mr. Owen has acknowledged that Claimant may be sued in the civil arena by the provider, but takes the position that by treating the reasonableness issue, the Commission has assumed jurisdiction, and that jurisdiction is exclusive. In other words, the Commission's decision to treat the issue means the district court cannot. The Commission is not convinced that this result necessarily follows. If the Commission determines that the treatment is unreasonable, thus freeing Employer from the obligation of payment, is the Claimant exposed to civil action for collection of the bill?

How is this case different than the following scenario: Claimant suffers a compensable low back injury. Medical care is provided up to a point, but surety eventually denies further care. Claimant goes off on his own and receives extensive additional care. Later, he seeks the Commission's determination that such care was needed and reasonable. The Commission finds the care was unreasonable. Would anybody argue that Claimant is not on the hook for the expenses in question? Does it matter that in one scenario Claimant sought the care, while in the other it was simply provided?

We appreciate that the provider appears disinterested in getting paid, but if Employer is relieved of responsibility for payment, is it appropriate to conclude that provider is foreclosed from other remedy? After all, as far as we can tell, the provider is faultless in this matter; all it did was send an air ambulance when it received a valid request to do so.

With these issues in mind, the Commission is asking for guidance from the parties and any argument you would like to present.

Please inform us of an agreeable briefing schedule and we will issue an order.

Sincerely,

Thomas P. Baskin

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SOHAR CHAVEZ,	)	
	)	
Claimant,	)	**I. C. No. 2012-025814**
	)	
v.	)	
	)	
KEVIN STOKES,	)	**CLAIMANT'S SUPPLEMENTAL BRIEF**
	)	
Uninsured,	)	
Employer,	)	
	)	
Defendants.	)	
	)	

COMES NOW, Claimant, by and through his attorney of record, hereby supplies this Supplemental Brief pursuant to the Industrial Commission's request of April 7, 2014.

BACKGROUND

The additional briefing supplied herein is supplied in response to a concern by the Industrial Commission that a decision of the Industrial Commission herein with regard to the reasonableness of medical care supplied to the Claimant will not have any affect upon subsequent proceedings in this case if it happens that the provider in this case sues the Claimant in District Court.

Claimant is providing additional authorities herein to demonstrate that the Industrial

Commission herein has concurrent jurisdiction over this question with the District Court's of this State and a decision herein may indeed have precedential affect on any action brought in the District Court's of this State.

ARGUMENT

The seminal case of *Anderson v. Gailey,* 97 Idaho 813, 555 P.2d 144 (1976), arose out of a situation in which a wrongful death case had been brought by the parents of a young man who died as a result of a reckless employer who paid the young man to go down into a mine drill shaft to make repairs on the employers broken equipment at the bottom of the shaft. When the young man was killed as a result of this endeavor the parents of the young man brought a case against the employer for wrongful death alleging that District Court rather than the Industrial Commission had jurisdiction over the claim and that the employer had breached his duty to young man under tort law. After trial, the jury returned a general verdict denying recovery and upon appeal, the Supreme Court reversed and remanded.

In its holding, the Supreme Court was very concerned about the jurisdictional question of whether or not the District Court or the Industrial Commission had jurisdiction over the question of whether or not the young man was within the course and scope of his employment at the time of the accident. After reviewing the jury instructions with regard to whether or not the young man was an employee or an independent contractor or, alternatively, a casual employee, the Supreme Court noted that it appeared clear that the resolution of these factual issues was the key to determining whether or not the Industrial Commission or the District Court had jurisdiction.

Because the question of jurisdiction was submitted to the jury, and those issues had become intermingled with the factual determinations, the Supreme Court remanded the case with additional

instructions on the jurisdictional issue upon remand. In this regard, the Court held as follows:

> "Although the Industrial Commission and the district court have mutually exclusive jurisdiction for the award of benefits to an injured Claimant or damages to an injured plaintiff, they have concurrent jurisdiction to determine whether they have jurisdiction to consider the claim or hear the case. *Scott v. Industrial Accident Commission*, 46 Cal.2d 76, 293 P.2d 18 (1956). As the Supreme Court of California said in Scott:
>
> > 'The determinations of the commission, like those of the superior court, are res judicata in all subsequent proceedings, including court actions, between the same parties or those privy to them. [Citations omitted]. Thus, if there is a final determination as to the matter of coverage (i.e., of jurisdiction) in either the commission or the superior court proceedings, such determination will be res judicata in subsequent proceedings before the other tribunal between the same parties or those privy to them.'
> >
> > 293 P.2d at 22.
>
> We adopt this rule for Idaho. Furthermore, because the wrongful death statute has been interpreted so that persons suing under the statute can recover damages only if the decedent could have recovered for his injuries if he had lived, we hold that the plaintiffs in this case would be bound by an Industrial Commission determination of jurisdiction to which the decedent's estate was a party. (Citations omitted). On the other hand, an Industrial Commission determination that it did not have jurisdiction to consider the claim would be conclusive upon the defendant that the decedent's employment relation was outside the scope of coverage of the Workmen's Compensation Law."

Based upon this decision, several other court decisions find that many basic questions arising under the Worker's Compensation Law can also be decided by District Court and that both the Commission and the Court has concurrent jurisdiction. In the case of *Brooks v. Standard Fire Insurance Co.,* 117 Idaho 1066, 793 P.2d 1238 (1990), the Supreme Court was concerned with a

worker's compensation case in which two sureties had been involved in a dispute about which surety should cover the Claimant *Brooks* injury. One surety had paid the benefits and discovering additional proof about causation, brought a case against the other surety for reimbursement. The second surety alleged that the Industrial Commission did not have jurisdiction to determine whether or not reimbursement was owed and claimed that the case should have been brought in District Court.

In discussing the jurisdiction question, the Court cited to the *Anderson v. Gailey* decision, *supra*, and noted that Idaho Code 72-707 gives the Industrial Commission jurisdiction to determine all questions arising under the Worker's Compensation Law. Further, the Supreme Court held as follows:

> "In *Anderson v. Gailey*, this Court also adopted the rule that the decision of the tribunal in which the questions of jurisdiction is first filed shall prevail and as to that issue, the question is res judicata. The question of which of the two sureties is responsible for the claimant's injury is a 'question arising under this law' as provided in I.C. Sec. 72-707, and is a proper case to be determined by the Industrial Commission. Unless error is shown on appeal, the Industrial Commission's ruling is res judicata as to the issue of jurisdiction. We hold that the Industrial Commission had jurisdiction to hear and rule on the claim for reimbursement and contribution between sureties."

Given the expansive jurisdiction of the Industrial Commission and the recent decisions of the Supreme Court in *St. Alphonsus Regional Medical Center v. Edmondson*, 130 Idaho 108, 937 P.2d 420 (1997) and *Williams v. Blue Cross of Idaho*, 151 Idaho 51, 260 P.3d 1186 (2011), the Claimant in this matter contends that if the Industrial Commission assumes jurisdiction over the issue of whether or not the medical care provided to the Claimant was reasonable, that assumption of jurisdiction and the Industrial Commission decision on the issue would be honored by any District

Court presented with the issue at a later time.

Given the expansive jurisdiction of the Industrial Commission as set forth in recent the decisions of *St. Alphonsus Regional Medical Center v. Edmondson*, 130 Idaho 108, 937 P.2d 420 (1997) and *Williams v. Blue Cross of Idaho*, 151 Idaho 51, 260 P.3d 1186 (2011), the Claimant in this matter contends that if the Industrial Commission assumes jurisdiction over the issue of whether or not the medical care provided to the Claimant was reasonable, that assumption of jurisdiction and the Industrial Commission decision on the issue regarding medical care would be honored by any District Court presented with the issue at a latter time.

Clearly, if the medical provider brings a case against the Claimant in District Court at a later time, that provider must demonstrate that the medical care at issue was reasonable and necessarily related in order to prove its case for compensation in the District Court. Because the issue of reasonableness is a common issue and could easily be decided by the Industrial Commission herein or by a District Court in later proceedings, Claimant contends that the Industrial Commission decision herein will have precedential effect in this matter depending on the resolution of certain other questions to be discussed later in this brief.

Pursuant to the case of *Dominguez v. Evergreen Resources*, 141 Idaho 7, 121 P.3d 938 (2005), it is apparent that the body which assumes jurisdiction over an issue of concurrent jurisdiction first will get the benefit of being accorded res judicata in later determinations. In other words, if the Industrial Commission makes the first decision on this issue, a later decision by the District Court will have to take the decision of the Industrial Commission into account.

PRIVITY OF THE PARTIES

The only question left is whether or not the District Court would find that a later case brought

by the healthcare provider as against the Claimant was binding as against the healthcare provider. This depends upon whether or not the healthcare provider is in privy with the parties to the instant case.

The issue of privity is a factual, not a legal determination. *Foster v. City of St. Anthony*, 841 P.2d 413, 122 Idaho 883 (Idaho 1992). To establish privity, it must be shown that the party sought to be bound by the prior judgement "derives [its] interest from one who was a party to [the former action]...." *Weldon v. Bonner County Tax Coalition*, 855 P.2d 868, 124 Idaho 31 (Idaho 1993) (quoting *Kite v. Eckley*, 48 Idaho 454, 459, 282 P. 868, 869 (1929)).

Furthermore, "It is generally accepted that whether privity exiss is not simply a matter of relationship... but, rather, whether the party against whom the doctrine is asserted had its legal rights litigated in the prior action." *Schwan's Sales Enterprises, Inc. v. Idaho Transp. Dept.*, 136 P.3d 297, 142 Idaho 826 (Idaho 2006).

In this case, in order for privity to exist so as to bind the healthcare provider, it must be shown that the healthcare provider derived its interest from either the employer or the Claimant, and that the healthcare provider had its legal rights litigated in the present action.

Unfortunately, it does not appear that either the Employer or the Claimant is in privity with the healthcare provider whose bill is at issue in this case. Stated differently, it does not appear that either the Employer or the Claimant in this matter have argued a position that is the same that the healthcare provider would have argued in this matter or that there is any contractual or legal foundation for connecting the Employer or the employee with the healthcare provider in a legal sense.

It therefore appears that there is no privity as between either of the parties to this litigation

and the healthcare provider.

This means that the Industrial Commission's decision would not bind the healthcare provider in subsequent litigation in District Court unless the Industrial Commission includes the healthcare provider in this litigation.

Because this has not been done, the effect of the Industrial Commission's decision herein would be limited. While it may have some persuasive effect in a case subsequently brought in District Court, it would not be legally binding upon the provider and the Claimant could still be liable for the bill in a case brought in District Court by the medical provider.

Claimant therefore requests that the Industrial Commission consider bringing the medical provider into this case affording that provider a chance to file briefs and fully litigate its position in this matter. Otherwise, the Claimant remains exposed to liability for a bill which is clearly within the purview of the Idaho Industrial Commission's jurisdiction.

Claimant would note that in the cases of *Williams v. Blue Cross of Idaho*, *supra*, and *St. Alphonsus Regional Medical Center*, *supra*, direct medical providers and sureties have been brought into the proceedings of the Industrial Commission to solve disputes involving injured Claimant's and the disbursal of their monies. Claimant contends herein that for the Industrial Commission to exercise its jurisdiction to include the medical provider herein would be well within the jurisdictional bounds of their statutory grant of authority as contained in Idaho Code 72-707. Claimant would therefore request that the Industrial Commission stay the proceedings herein and order that the medical provider be brought into these proceedings for full adjudication of the Commission herein.

DATED This 30 day of April, 2014.

By: _____
Richard S. Owen

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30 day of April, 2014, I mailed a true and correct copy of the foregoing instrument, postage prepaid, to the following:

R. Daniel Bowen
P.O. Box 1007
Boise, Idaho 83701

by causing the same to be deposited in the United States Mail, postage prepaid, enclosed in an envelope addressed as above set forth.

_____
Richard S. Owen

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BEFORE THE INDUSTRIAL COMMISSON OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant, v. KEVIN STOKES, Defendant.	**I.C. No: 2012-025814** **DEFENDANT'S POST-HEARING BRIEF**

I.

HISTORY OF CASE

This case involves an individual whose pinky finger was amputated as a result of moving irrigation lines. The accident occurred on September 8, 2012. Claimant's employer, it turns out, was uninsured. Defendant Stokes received some bad advice from his accountant, and they resisted the claim. As a result, Claimant got a lawyer and a Complaint was filed in October of 2012. The Answer was initially prepared and filed by a Canyon County law firm unfamiliar with workers' compensation. The matter found its way over to current defense counsel, at which time the case was reviewed with Defendant Stokes and an Amended Answer was filed admitting that

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Claimant, an employee of his, was covered by the Workers' Compensation Act at the time of injury. Thereafter, Defendant Stokes made payment for various benefits that Claimant was entitled to, as well as payment of penalties and fees. Defendant Stokes made his peace with the Industrial Commission Compliance Department, procured a workers' compensation policy, and paid his fines. The one thing Defendant Stokes did not want to do, and had not wanted to do from day one, was pay a LifeFlight bill to transport Claimant from the scene of the accident outside of Payette, Idaho, to St. Alphonsus Regional Medical Center in Boise, Idaho by helicopter. Defendant Stokes pointed out that a perfectly good hospital, St. Alphonsus in Ontario, Oregon, was 12 minutes away from the scene of the accident.

After acceptance of the claim and payment by Defendant Employer, the matter technically was still in litigation, and there was a rather large bill out there, over $20,000.00. Claimant's counsel understood that Defendant Stokes was reticent to pay the bill and that Defendant did not want to proceed in a fashion that would negatively impact Claimant. Defense counsel advocated sitting back and taking no action in order to see what LifeFlight would do. Claimant's counsel was concerned that at some point in time the LifeFlight people might come after his client. He felt compelled to take more definitive action and requested that the matter be calendared to review the reasonableness and necessity of the LifeFlight service. Defendant filed a Response to Request for Calendaring, acknowledging that it was perfectly appropriate to have a hearing on the issue.

Defendant was fully aware of how unusual this situation was insofar as the entity that really had a financial stake in the matter, the LifeFlight people, whoever they actually are, would probably not have standing to participate in the hearing. This concern was actually reviewed with the Industrial Commission for guidance. The Industrial Commission was reluctant to invite the

LifeFlight people to the party. That being the case, and the issue needing to be resolved, Defendant requested that the hearing be conducted by the Commissioners themselves, because the situation was unusual.

A Notice of Hearing was issued on October 3, 2013, for a hearing to be conducted on October 30, 2013. Defense counsel called several telephone numbers he had available for the LifeFlight entity and on both occasions talked to a person who was unable or unwilling to provide any information. Defense counsel could neither ascertain what sort of protocol LifeFlight had in place to determine the types of injuries it would respond to or the circumstances under which it would respond. Defense counsel was unable to obtain from the LifeFlight people the names of anybody who would be willing to discuss whatever claim they had or resolve it. Defense counsel was unable to get from them the name and number of any in-house lawyer they might have with whom he could discuss the matter.

Faced with no meaningful response from LifeFlight Network, defense counsel, on October 9, 2013, wrote to the two separate addresses he had available for LifeFlight Network further laying out the case and enclosing all pleadings that had been generated in the case, as well as all evidence defense counsel intended to submit. This information contained all the contact information for defense counsel and Claimant's counsel. Defense counsel invited LifeFlight Network to take whatever action they deemed appropriate. This letter was sent by certified mail, and was received by LifeFlight Network on October 18, 2013, according to the return receipt confirmation.

A hearing was held, at which time the medical records generated in the case were offered and admitted, including the paramedic records, the flight transport records, St. Alphonsus medical records, the records of Dr. Clawson, who concluded that the finger was not salvageable,

Emergency Department records from St. Alphonsus authored by Dr. Elliott, and followup records by Dr. Clawson. Finally, an opinion letter from Dr. Paul Collins to the effect that the LifeFlight services provided were unreasonable and unnecessary was offered and admitted. The LifeFlight bill was admitted into the record, as well as copies of the letters and the pleadings that defense counsel sent to LifeFlight Network along with the invitation to do whatever they felt they needed to do.

II.

FACTS

Defendant Kevin Stokes is a farmer in Fruitland. (HT, p. 17, ll. 8-22). He hired Sohar Chavez, the claimant in this case, to help him with irrigation in April of 2012. (HT, p. 18, ll. 6-14). On the day of the accident Defendant Stokes got a phone call from Ada County Dispatch advising him that Claimant had been injured and where he was. (HT, p. 19, ll. 21-24). He went to the scene of the accident, at which time he found three Payette County paramedics, a Sheriff's deputy, and his uncle. Claimant was there as well. (HT, p. 20, ll. 1 - 6). Claimant had obviously received first aid by the fact he was holding his hand up in the air elevated and it was bandaged. (HT, p. 20, ll. 9-12). Defendant Stokes immediately inquired as to what was going to happen next, and did not get an answer from any of the personnel there. (HT, p. 20, ll. 15-19). He initiated the inquiry, because the ambulance was there and he couldn't figure out why they weren't taking Claimant to the hospital. (HT, p. 20, l. 22 – p. 21, 1.). That was when he found out that a helicopter was going to show up, and he asked them why that was necessary. (HT, p.21, ll. 1 - 15). Defendant Stokes did not believe that bringing LifeFlight into the equation was reasonable and expressed these concerns to the personnel on the scene. They did not respond to his inquiries in this regard. (HT, p. 21, ll. 8-20).

After the incident, Defendant Stokes drove the distance between the accident scene and St. Alphonsus Hospital in Ontario, Oregon, three times at different times of the day. It took 15 minutes at the longest, and 12 minutes at the shortest. (HT, p. 22, ll. 4 - 8). The distance between the accident scene and the ER door of St. Alphonsus in Ontario turned out to be 9.8 miles. (HT, p. 22, ll. 20-21). After Defendant Stokes showed up, it was at least 10 minutes until the helicopter showed up. (HT, p. 22, l. 25 – p. 23, l. 1).

Defendant Stokes has lived in the Fruitland area most of his life. He is aware that there are several orthopedic surgeons in the vicinity. (HT, p. 24, ll. 1-7).

Later on in the evening Defendant Stokes received a phone call from Claimant at St. Alphonsus Regional Medical Center. Defendant Stokes drove over to Boise, picked up him, and took him home. During the drive home, Claimant asked him why he was flown to Boise -- that is to say, he did not know why he was flown to Boise. (HT, p. 27, ll. 5-10).

Exhibits include the Form 1, which documents that the accident occurred on September 8, 2012, at 5:00 p.m. The Form 1 establishes that Claimant was moving irrigation lines when his left hand got caught up in the chain of a motor. (Defendants' Exhibit 1). Payette Paramedic records establish that they responded to the incident on September 8, 2012, and that when they arrived, a language barrier prohibited them from learning how the injury had occurred or other "subjective information." These records document that some off-duty Payette County paramedic EMT made a request for LifeFlight Network. (Defendants' Exhibit 2). They do not document what if any conversation they had with Claimant as to what his desires were for treatment. Keep in mind, Defendant Stokes was there for at least 10 minutes before the helicopter arrived and could have aided in the conversation with Claimant as to what his desires were had anyone made the attempt.

LifeFlight records document that a request came in from Payette County EMTs for a 41-year-old man who sustained an amputation of his pinky finger. (Defendants' Exhibit 3). These records do not establish any sort of a protocol for some sort of a triage review, which clearly should have occurred in order to determine whether using an asset that valuable and expensive was appropriate. The records do not establish any sort of critical situation or emergency that sought to be addressed in transporting Claimant to the hospital in this fashion.

Records from St. Alphonsus Regional Medical Center start with a September 8, 2012, Emergency Department report authored by Dr. Elliott, who quickly concluded that it was likely nonviable. He brought in Dr. Clawson to consult on definitive treatment. Dr. Clawson authored an Emergency Department Consultation the same date, September 8, 2012, noting an incomplete amputation of the left small finger at two levels. He reviewed x-rays and concluded that the finger was not salvageable. He then proceeded to complete the amputation and repair the stump. (Defendants' Exhibit 4).

Dr. Clawson saw Claimant in followup on December 27, 2012, and noted that the stump was well healed. He noted that Claimant was medically stable and had suffered a 95% small finger impairment, which he noted corresponded to a 10% hand impairment, or 9% upper extremity impairment. He did not recommend any restrictions or followup care for Claimant. (Defendants' Exhibit 5).

Defendant had the matter reviewed by Dr. Paul Collins, an orthopedic surgeon well known to the Industrial Commission, and as the Commissioners are aware, a gentleman who is quite familiar with the border counties, including Payette County, having practiced in Caldwell for many years. Dr. Collins concluded that the injury sustained by Claimant was "not in any way, shape or form, life critical." He pointed out that Claimant should have been taken to St.

Alphonsus in Ontario and worked up, and that if it turned out for some reason he needed to be taken to Boise for vascular reconstruction, there still would have been plenty of time to get that done. (Defendants' Exhibit 6).

III.

ARGUMENT

Specifically, the issue in front of the Industrial Commission is whether or not LifeFlight services and the charges for them were reasonable and necessary as envisioned by Idaho Code § 72-432. However, Commission Baskin has requested briefing as to whether there could be a subsequent District Court action pursued by the LifeFlight Network leaving Claimant exposed.

A. Is an Industrial Commission Finding Binding on a Non-Party.

Claimant's counsel has filed a brief advising that there is exposure in District Court. In his opening statement at hearing, Mr. Owen understood that such could happen, and he was hoping that an Industrial Commission ruling on the matter, should the Industrial Commission decide that the LifeFlight services were not reasonable or necessary, would be of help – i.e. would work to discourage LifeFlight from pursuing the matter. Defense counsel pointed out in his opening statement at hearing that the issue was whether the LifeFlight service was reasonable and necessary under Idaho Code § 72-432. Defense counsel pointed out that the Industrial Commission had exclusive jurisdiction for this determination under Idaho Code § 72-432, which is on its face clear since that statute is within the Workers' Compensation Act and per Idaho Code § 72-707, the Industrial Commission has exclusive jurisdiction to decide this issue.

Defense counsel is not going to go into a lengthy analysis of whether LifeFlight Network can be bound by an Industrial Commission decision and precluded from pursuing recovery under some other theory in another forum. Obviously, LifeFlight Network is not a party to this action,

and as such, cannot be bound under some assertion of *res judicata*, *collateral estoppel* or issue preclusion. Similarly, anybody for the cost of a filing fee can file anything in District Court they want. That, however, does not mean that they will prevail, nor does it mean that the risk of a subsequent claim in another forum is unique to this situation. It is a risk in any situation where the Industrial Commission finds that a medical service is not compensable, be the reason failure of notice, causation, service provided outside the chain of referral, or reasonable and necessary under I.C. § 72-432. Defense counsel does not know what theory LifeFlight would assert should they at some point show up and make a claim, and because defense counsel does not know what theory they might employ, defense counsel cannot comment on what statute of limitations as to any such claim might apply.

Prior to the hearing, defense counsel, with the knowledge of Claimant's counsel, contacted the Industrial Commission in order to address concerns about LifeFlight Network's participation in the hearing requested by Claimant's counsel. The question was whether or not the Industrial Commission wanted to grant a medical provider standing to assert its claim. The Industrial Commission did not want to do so for perfectly valid reasons. There is absolutely nothing in the Workers' Compensation Act that would grant standing to a medical provider to participate as a party in a workers' compensation proceeding. The Industrial Commission has never done so on a straightforward substantive question as to the entitlement of benefits under the Act.

As Claimant's counsel pointed out in his brief, there are, however, at least two occasions where medical providers have argued both before the Industrial Commission and the Idaho Supreme Court on matters that arose out of the Workers' Compensation Act.

Claimant's counsel makes note of the fact that a medical provider had argued in matters before the Industrial Commission in *St. Alphonsus Regional Medical Center v. Edmondson*, 130 Idaho 108, 937 P.2d 420 (1997), and in the case of *Williams of Blue Cross of Idaho*, 151 Idaho 51, 260 P.3d 1186 (2011). In the first instance, the case was tried on the substantive merits of the claim between the claimant, the surety, and the employer without the presence of any medical provider. The claimant prevailed. After the fact, a dispute arose, because St. Al's was not willing to concede a fee to the claimant's counsel for his efforts in securing a recovery at the hearing on the substantive merits, which resulted in an award that inured largely to the benefit of St. Alphonsus. It is true that the Industrial Commission allowed St. Alphonsus to argue on its own petition for declaratory ruling. This was not an evidentiary hearing. The Industrial Commission did not make clear at that time the basis upon which it was allowing St. Alphonsus to proceed.

The *Williams* case was a declaratory judgment action initially brought and entered into by the claimant's counsel and counsel for Blue Cross of Idaho to resolve a dispute as to whether or not the claimant's counsel had to honor a Blue Cross subro. Again, this was not any sort of evidentiary hearing on the substantive merits of the underlying worker's compensation claim; it was basically a dispute over issues arising out of matters of law and equity. In both cases, the medical provider wanted to argue before the Industrial Commission. There is no indication in the present matter that LifeFlight Network wanted to participate in an Industrial Commission inquiry as to the reasonableness and necessity for the LifeFlight service under Idaho Code § 72-432. There does not appear to be a statutory basis for the Industrial Commission to compel them to appear and argue as a party in the current proceedings.

Defense counsel does not wish to be misunderstood. If the Industrial Commission thinks they can compel LifeFlight Network into proceeding as a party and to be bound by the

proceedings, then have at it. If the Industrial Commission feels that calling medical providers to participate in and present evidence in substantive proceedings in workers' compensation claims is a good thing and that they have the authority to compel such participation, that is their affair, but defense counsel can think of no statute or decision that would support such.

LifeFlight Network showing up in this case is not going to make any difference in the ultimate outcome. LifeFlighting Claimant Chavez when he was just under 10 miles from St. Alphonsus Hospital in Ontario to St. Alphonsus in Boise was poorly thought out. Defense counsel cannot envision any argument that LifeFlight Network people could make to the contrary. There simply was no reason and no excuse to do what was done. However, if the Commission is asking for defense counsel's opinion in the matter, defense counsel does not see any basis upon which the Industrial Commission could compel participation, and defense counsel can think of a lot of reasons consistent with the mandate that workers' compensation proceedings be summary and simple proceedings as to why medical providers who might have a stake in the outcome of the proceedings and whose employees may very well constitute a substantial portion of the expert testimony to be offered maybe should not be parties to the proceeding. If you want to find out the finer points of discovery and motion practice, invite a bunch of hospital attorneys to participate in the workers' compensation hearings.

It is true that LifeFlight Network might contest the Industrial Commission's finding in another forum. However, that is potentially true in any case where the Industrial Commission finds a medical service unreasonable and/or unnecessary. There is nothing special about this case. The fact remains, an issue under I.C. § 72-432 has been framed up and a hearing held at the request of Claimant. The Industrial Commission is now tasked with the responsibility of deciding the issue based upon the evidence submitted.

B. **Are LifeFlight Services Compensable under I.C. § 72-432.**

Idaho Code § 72-432 concerns the compensability of medical services. Subsection (1) of the statute requires the employer to provide "reasonable medical" . . . "as may be reasonably required by the employee's physician," or "needed immediately after an injury" . . . "and for a time thereafter." The case of *Sprague v. Caldwell Transportation, Inc.,* 116 Idaho 720, 779 P.2d 395, is often cited as the end-all/be-all for questions of reasonableness and necessity under Idaho Code § 72-432. It is not. In *Sprague,* both the Industrial Commission and the Idaho Supreme Court grappled with the compensability of some chiropractic bills submitted by Dr. Downey. Dr. Downey had treated the claimant from the inception of his injury and for a considerable period of time. The surety made several runs at trying to end the chiropractic care by means of soliciting opinions from a couple of orthopedic surgeons as to the question of whether the claimant needed any further chiropractic are. At some point Chiropractor Downey got tired of the exercise and declared the claimant at maximum medical improvement. The surety paid his bill up through that date. Everything would have been fine, except that the claimant returned a week later seeking more treatment, and that treatment extended over a number of months to the tune of $1,848.96, which the surety declined to pay. The Industrial Commission opinion in the *Sprague* case, written by Referee Robert Youngstrom, concludes, stating:

> It is apparent that the forgoing statute requires that for medical treatment to be compensable under the Workman's Compensation law, it must be reasonable treatment, it must be required by the physician, it must be necessitated by the accident, and be rendered within a reasonable time thereafter. The Referee concludes that the claimant has failed to sustain his burden of proving that the treatment at issue in this case falls within the statutory provisions. The Referee therefore recommends that the Commission deny Claimant's request for reimbursement for the treatment by Dr. Downey subsequent to April 10, 1985.

While Referee Youngstrom was known for the brevity of his decisions, this one was perhaps a little too vague, inviting scrutiny from the Idaho Supreme Court. From reading the

Findings of Fact contained within the decision, it is clear that Referee Youngstrom made note of the fact that Dr. Downey, the chiropractor, was a treating physician, that the claimant and he felt that the claimant needed the treatment, and that the claimant improved somewhat with the treatment. It would appear that Referee Youngstrom was concerned that neither the claimant nor the chiropractor had requested authorization for these additional 34 treatments at any point in time during the treatment, and it was obvious that he was concerned that the record did not contain any explanation from Dr. Downey as to how or why the continued treatment was related to the original injury caused by the accident, particularly as Dr. Downey had declared him at maximum medical improvement from the accident prior to providing the contested treatment. The point of this would be Referee Youngstrom was concerned about an accident making necessary the treatment offered.

Justice Bistline, who by the way loved to take issue with Referee Youngstrom as is well known amongst anyone who practiced in the area of workers' compensation laws in the eighties, authored a decision reversing the Industrial Commission denial, which has been confusing practitioners ever since the opinion was issued in 1989. Instead of remanding to Referee Youngstrom in order to find out exactly why he held what he held, he concluded that the Industrial Commission had found that the medical treatment provided by Dr. Downey was not "reasonable." He dismissed whatever concerns Referee Youngstrom had with the necessity requirement by stating that the Industrial Commission decision, "incorrectly focuses on the necessity of treatment, rather than on whether it was reasonable and was required by Sprague's physician." *Sprague*, 16 Idaho 720 at p. 723 (Decision Filed May 12, 1989). He did not share with us why necessity in this instance was not of concern. Justine Bistline then went on to state:

> It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable.

He does not explain what the difference is between the physician's decision that treatment is required and the Industrial Commission's subsequent review of that decision process to determine whether the treatment was reasonable. The decision and this language are often cited, but defense counsel is hard-pressed to figure out why. It really does not tell us very much other than the Court did not like the Industrial Commission decision, which failed to specify its concerns and that the majority disagreed and wanted Dr. Downey paid.

In workers' compensation law, as in most areas of the law, the review of the provision of medical treatment is done by a commonsense analysis as to whether or not the treatment either proposed or provided was reasonable and was necessary. These terms are used in a number of contexts and for a number of reasons. Sometimes an analysis of what is reasonable or not reasonable has to do with costs. Thus, we grapple with questions as to whether a very expensive medical treatment, be it a spinal cord implant or a bionic leg that costs well over $100,000.00, is reasonable medical treatment in the context of the facts presented in the particular claim in front of us. Sometimes those treatments may be reasonable, and in other cases they may not. Sometimes it is not the service, but the charge that is challenged. Similarly, questions regarding necessity sometimes have to do with causation – i.e. was the need for the treatment truly caused by the injury or some other factor – did the injury make necessary the treatment. From those individuals who have a long history of chronic low back pain, we know that the mere occurrence of an accident and further insult to the low back does not always mean that the employer and surety are responsible for back care for the rest of the claimant's life. Sometimes they are, and sometimes they aren't, depending upon the facts of the case and the opinions of the experts.

Sometimes necessity is used in the context of whether a particular service was needed to treat a particular condition – i.e. is use of a hyperbaric chamber to treat a common wrist sprain necessary. In the latter scenario, necessity is much like an inquiry as to reasonableness.

The point of all this is, the review by the Industrial Commission is a commonsense matter, and any factual proposition put forward, whether the opinion of an expert witness or a factual statement by a witness, should be subject to challenge. No one made Dr. Downey God in the *Sprague* case, although Justine Bistline tried mightily. Every time the Industrial Commission has to weigh between the conflicting evidence of two physicians and pick one opinion over another, they reaffirm that such matters are subject to review.

In the present case, Claimant was less than 10 miles from the local hospital that has served people on the western end of Treasure Valley forever. While Defendant Employer does not wish to make light of Claimant's injury, on the scale of things, it was not a major injury. There is nothing in the medical records before the Industrial Commission that would lead anyone to believe Claimant Chavez was in a life threatening situation or that his situation was in any way critical. There is nothing in the record that would indicate who made the decision to LifeFlight Claimant and whether that individual would meet the statutory criteria to be considered a "physician" capable of making a decision such as was made in this instance. There is no explanation in the record as to why Claimant could not have been transported to St. Alphonsus Hospital in Ontario and worked up there for assessment as to whether re-attachment was an option, as well as decision making as to whether that facility could perform the procedure or whether Claimant needed to be transported to St. Alphonsus in Boise. It does not appear that the ultimate decision that the tissue was not viable, as made by Dr. Elliott and Dr. Clawson at St. Alphonsus in Boise, was a very difficult assessment for them to make. The only medical opinion

as to whether or not the LifeFlight trip was compensable under Idaho Code § 72-432 comes in the form of Dr. Paul Collins' comments as contained in his April 9, 2013 letter. He concludes, amongst other things, that "It is evident that this is a fifth finger crushing/tearing type injury that was not in any way, shape or form, life critical." He expresses some consternation as to why Claimant was not simply taken to St. Alphonsus in Ontario. He opines that LifeFlight was "in no way necessary." He concludes that the helicopter trip was unjustified. Dr. Collins clearly believes that the LifeFlight trip to Boise was unreasonable and unnecessary.

In this day and age of escalating medical costs, both the workers' compensation system and the nation at large struggle with ways to keep medical costs under control. The starting point in any such attempt is to hold medical providers accountable for what they do. They must be thoughtful and reasonable in what they do. If we do not demand that of them, then rest assured they will become thoughtless and unaccountable. In this instance, there was no reason to take this man directly to St. Alphonsus in Boise. He was not in critical condition, and while time is somewhat of an issue when you are considering or contemplating a revascularization procedure, it was in no way critical in this instance, as any simple Google search would reveal and as noted by Dr. Collins in his letter. Someone involved in the LifeFlight operation made a mistake, and that should remain their problem, not the problem of Claimant Sohar Chavez, nor should it be Mr. Stokes' problem.

IV.

CONCLUSION

Defense counsel understands that the current case and how it has come before the Commission is awkward. Frankly, the inquiry is simply a matter of whether the LifeFlight services rendered to Claimant Sohar Chavez in any way, shape, or form were reasonable or

necessary, as they must be to satisfy I.C. § 72-432. The issue was framed up and a hearing was requested by Claimant. The parties attended the hearing and put on their case. There is no evidence in front of the Industrial Commission at present as to who actually called LifeFlight, let alone who actually authorized LifeFlight to respond. There is no evidence in the record of the qualifications of whatever individual or individuals made these decisions, let alone whether they were competent as a matter of law or otherwise physicians as that term is defined in the Workers' Compensation Act. There is no evidence in the record to explain why LifeFlight services were necessary for such a modest injury, and there is nothing that can be gleaned from the medical records generated in this case from which one can conclude why Claimant Sohar Chavez was LifeFlighted to Boise.

The records reflect that somebody who remains unnamed thought that the finger tissue might be viable and reattachment attempted. We do not know who this individual is, we do not know what credentials this individual has, and we do not know what information this individual had at his disposal to believe such was the case. We do not know whether this individual lived in Payette, and if so, why it would not have occurred to this individual that a much better assessment could be done at St. Alphonsus in Ontario, where x-ray machines and real physicians were available to make this very expensive decision. There is no explanation in the record as to why Claimant could not have been taken to St. Alphonsus in Ontario and worked up and treated adequately without the expense of LifeFlight. There is no explanation in the record as to why Claimant could not have been taken to St. Alphonsus in Ontario and worked up, and even if it turned out transportation to St. Alphonsus in Boise was necessary in order to attempt revascularization of the finger, why that assessment could not have been made at St. Alphonsus in Ontario. The only evidence in the record offered is that offered by Defendants in the form of

Dr. Paul Collins' testimony to the effect that there was absolutely no need for LifeFlight to insert itself into the treatment of Claimant Sohar Chavez as they did.

The issue of reasonableness and necessity has been framed up and the matter put to the Industrial Commission. The Industrial Commission is the body chosen by the Idaho Legislature to determine whether medical treatment is compensable under Idaho Code § 72-432. The record in this case does not support any finding other than LifeFlight services in this instance were unreasonable and unnecessary. That being the case, the Industrial Commission should enter its order finding that the LifeFlight services were not reasonable, were not necessary, and are not compensable under the workers' compensation laws of the State of Idaho under Idaho Code §72-432.

The possibility that Claimant might face a claim in another forum is troubling, but at the end of the day, not relevant to the resolution of the issue before the Industrial Commission. Any such possibility is speculative in any event.

DATED this 15th day of May, 2014.

BOWEN & BAILEY, L.L.P.

R. DANIEL BOWEN - of the Firm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of May, 2014, a true and correct copy of the foregoing document was served upon the following party(ies) in the method indicated:

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☐ FACSIMILE

R. Daniel Bowen

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant, v. KEVIN STOKES, Employer, Defendant.	**IC 2012-025814** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** FILED SEP 26 2014 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on October 30, 2013. Claimant was not present but was represented by Richard S. Owen of Nampa who appeared on Claimant's behalf. R. Daniel Bowen of Boise represented uninsured Employer, Kevin Stokes, who was also present. Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties were asked to submit post-hearing briefs. This matter came under advisement on May 15, 2014 and is now ready for decision.

Due to the unusual procedural facts present in this case, the Commissioners hereby issue their own findings of fact, conclusions of law, and order.

ISSUE

The sole issue to be decided is whether the transport of Claimant by St. Alphonsus Life Flight ("Life Flight") constituted reasonable treatment pursuant to Idaho Code § 72-432.

CONTENTIONS OF THE PARTIES

Claimant contends that the Commission should stay the proceedings and order the medical provider Life Flight be brought into the proceedings. Employer contends that the Life

Flight transport charge is unreasonable under the circumstances of Claimant's injury and that Employer should not be required to cover the cost of the transport. He relies on the opinions of Mark C. Clawson, M.D. and Paul C. Collins, M.D.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Employer, Kevin Stokes, taken at the hearing;
2. Claimant's Exhibits A and B, admitted at hearing; and
3. Employer's Exhibits 1-10, admitted at the hearing.

FINDINGS OF FACT

1. Employer testified that he owns a farm in Fruitland and employed Claimant as a part-time irrigator. Hearing Transcript, pp. 17-18.

2. On September 8, 2012, Employer received a call from Payette County Dispatch that Claimant had been injured. Hearing Transcript p. 19.

3. On September 8, 2012, Claimant suffered a partial amputation of his small finger when his left hand slipped into the chain of a motor on the irrigation line he was moving on one of Employer's properties in the Payette/Fruitland area. Hearing Transcript, pg. 18; Defendant's Exhibits 2 and 4.

4. Claimant drove himself to the home of an off-duty Payette County Police Officer, who called 911. Defendant's Exhibit 2.

5. Payette County Paramedics EMTs arrived at the scene of Claimant's accident. Claimant was "writhing and moaning and appear[ed] in considerable pain." Claimant had also "vomited once". It was determined that Claimant's small finger was salvageable. Defendant's Exhibit 2.

6. Life Flight was called and transported Claimant to St. Alphonsus Regional Medical Center in Boise. Defendant's Exhibit 3.

7. The tip of Claimant's finger could not be reattached and a revision amputation was performed on his left small finger at the distal portion of the proximal phalanx. Defendant's Exhibit 5.

8. Life Flight sent Claimant a statement on September 12, 2012 with a due balance of $21,201.00 for the transport. Defendant's Exhibit 8.

9. Employer is not insured for workers' compensation purposes on the advice of his accountant. Hearing Transcript, p. 19, ll. 1-19.

10. The only bill for Claimant's treatment not paid by Employer is the bill at issue from Life Flight. Hearing Transcript, p.6, ll.7-13.

DISCUSSION AND FURTHER FINDINGS

11. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

REASONABLENESS OF CLAIMANT'S TREATMENT.

12. Idaho Code § 72-432(1) requires an employer to provide for an injured employee such reasonable medical, surgical, or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus, as may be reasonably required by the employee's physician

or needed immediately after an injury.[1] If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

13. For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. *Mulder v. Liberty Northwest Insurance Company*, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

14. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable. *Sprague v. Caldwell Transportation Inc.*, 116 Idaho 720, 722, 779 P.2d 395, 397 (1989).

15. Idaho Code § 72-102 (25) defines a physician as "medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses."

16. Idaho Code §56-1012 (14) defines an "emergency medical technician" as "a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined

[1] As we have noted in the past, Employer's obligation to provide treatment under Idaho Code § 72-432(1) is stated in the disjunctive. *Richan v. Arlo G. Lott Trucking Inc.*, 2011 IIC 0008.4 (Feb. 7, 2011). Because we find that the care in question was ordered by Claimant's "physician" we need not consider whether the helicopter ride would also qualify as "reasonable" care "needed" immediately after the industrial accident. However, based on our conclusion that the care required by Claimant's "physician" was reasonable, we think it likely that the care would also be found "reasonable" and "needed" under the second part of the disjunctive.

by the [Idaho emergency medical services physician] commission and practices under the supervision of an Idaho licensed physician."

17. The Idaho Code defines "paramedic" as a "person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho code" who "is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the [Idaho emergency medical services physician] commission and practices under the supervision of an Idaho licensed physician." Idaho Code § 56-1012 (19).

18. The record does not clarify if the responders to Claimant's injury were paramedics or EMTs. For the purposes of our analysis, it is sufficient that both are licensed by the state of Idaho.

19. The distinction between state licensing and non-licensing for purposes of establishing who qualifies as a "physician" was discussed in *Oliveros v. Rule Steel Tanks, Inc.*, 2012 IIC 0094.6 (Nov. 2, 2012). In *Oliveros*, Claimant sought payment for prosthetic fingers via a prosthetist although his primary physician opined they were not functional, only cosmetic. We held that because the "state of Idaho does not license prosthetists and has no statutory framework that authorizes the profession within the meaning of Idaho Code §72-102 (25) [...] it is clear that [Claimant's prosthetist] cannot, in the first place, even qualify as a 'physician' for the purpose of requiring certain treatment for Claimant." As both paramedics and EMTs are authorized and licensed by the State of Idaho, we are persuaded that the Payette County Paramedics EMTs who responded to Claimant's injury meet the definition of a "physician" for purposes of Idaho Code § 72-102 (25).

20. Claimant's accident happened on or about 5:00 p.m. Defendant's Exhibit 2. Upon his arrival, Employer observed three Payette County paramedics EMTs and a deputy Sheriff. Employer testified as follows:

> Q (By Mr. Bowen): When you got there, what was Mr. Chavez's situation?
>
> A (By Mr. Stokes): He was sitting on a bench on the deck of the sheriff deputy's house. One of the paramedics had his hand up in the air, had Mr. Chavez's hand up in the air, elevated. It was bandaged. You know, I talked to him briefly, Mr. Chavez, asked, you know, how he was, and then tried to talk to the paramedics, you know, what's happening, you know, what are we doing now. They didn't respond to me, basically brushed me off, but eventually one of the paramedics who was brand new on the job said she didn't know what was happening, so . . .
>
> Q: The reason you were inquiring was you were wondering why he wasn't already being taken to Holy Rosary?[2]
>
> A. Exactly. You know, like I said, they had him already bandaged and, you know, their ambulance was sitting there, you know, five, ten yards away and, you know, doors open and I thought, well, let's get him going, you know, and like I said, no one would answer me. I asked the sheriff's deputy and he said the bird was on its way, and that's when I asked, you know, why and not one would answer that. I got nothing from anyone after that.

Hearing Transcript, pp. 20-21.

21. According to the Prehospital Care Report, "Off duty Payette County Paramedics EMT land-lines Medic 20 and advises finger may be able to be surgically fixed. Life Flight Network is requested to launch." Defendant's Exhibit 2.[3]

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[2] "Holy Rosary" Medical Center as used throughout the records refers to the previous name of St. Alphonsus Medical Center – Ontario.

[3] The record leaves us unable to determine whether it was "Medic 20" or the onsite paramedic EMT who actually ordered that Claimant be flown to Boise. Nor do we know anything about who or what Medic 20 may be. However, since the onsite paramedic EMT sought medical approval from Medic 20, it stands to reason that Medic 20 is a "physician" with equal or greater credentials than the onsite paramedic EMT.

22. Claimant was taken by Life Flight to the St. Alphonsus - Boise emergency department. Hand specialist Mark Clawson, M.D. took over his treatment once Claimant arrived. Dr. Clawson deemed Claimant's severed finger irreparable and performed a revision amputation. Defendant's Exhibit 5.

23. Defendant contends that because Claimant's industrial injury occurred approximately 15 minutes from St. Alphonsus - Ontario in Oregon, it was not reasonable to fly Claimant to St. Alphonsus - Boise. However, the Commission is disinclined to join Defendant in that conclusion. As was elucidated in *Sprague*, "I.C. § 72-432(1) obligates the employer to provide treatment, if the employee's physician requires the treatment and if the treatment is reasonable. It is for the physician, not the Commission, to decide whether the treatment is required." *Sprague* at 722. Both the paramedic EMT on the scene of the industrial injury and Medic 20 had the authority to call for Life Flight under the terms of their respective licenses and Life Flight responded accordingly.

24. Reasonableness may be established via three factors established by the Idaho Supreme Court: 1) The claimant made gradual improvement from the treatment received; 2) The treatment was required by the claimant's physician, and 3) The treatment received was within the physician's standard of practice, the charges for which were fair, reasonable, and similar to charges in the same profession. *Sprague* at 722-723, 397-398.

25. In the instant case, Claimant did indeed lose the end of his pinky finger, but the quality of the amputation performed by Dr. Clawson is not under dispute. The flight to St. Alphonsus – Boise resulted in a "well healed and contoured" small finger. Defendant's Exhibit 5. Defendant does not question if the amputation was reasonable, his focus is instead on the reasonableness of the transport itself. Finally, the record provides no persuasive evidence

that the cost of the flight as called was unfair or unreasonable. Under the conditions of *Sprague*, Claimant's transport was a reasonable part of his treatment of his industrial injury.

26. Defendant further contends that because the tip of Claimant's finger was not ultimately viable for reattachment, the decision to call for Life Flight was not reasonable. This argument ignores that following the injury, a trained paramedic EMT or similarly licensed person within the EMS chain of authority established by the Idaho Code, i.e. Claimant's "physician", made the determination that it was possible to reattach the tip of Claimant's finger and that taking him to St. Alphonsus - Boise was Claimant's best chance of success for the procedure. Neither the type of injury nor the quality of the treatment Claimant received at St. Alphonsus – Boise is at issue.

27. As we discussed in *Page v. McCain Foods, Inc.*, "*Sprague* and its progeny have not created a rule that medical care is compensable only when it is successful. [...] [M]edical care does not always work. That does not mean the claimant must bear the costs of failed treatment." 2009 IIC 0424.7 (Sept. 8, 2009). If the finger had been reattached successfully, would Defendant be so adamantly opposed to covering Claimant's Life Flight expenses? According to Idaho Workers' Compensation law precedent, the ultimate outcome of the treatment is neither the only nor an infallible indicator of reasonable treatment, but one factor in a more comprehensive analysis. We reiterate the language used in *Campagni v. The Disney Store*, "The evaluation of an injured worker's entitlement to medical treatment should not be made on the basis of retrospective analysis of whether the treatment proved efficacious." 2013 IIC 0029.27 (April 12, 2013).

28. Defendant also claims that "[s]omeone involved in the LifeFlight [sic] operation made a mistake, and that should remain their problem." Defendant's post-hearing brief, p. 15.

There is no evidence in the record that the call for transport was a mistake. The mere fact that Defendant does not want to pay for the service is insufficient to establish that a mistake was made.

29. Paul C. Collins, M.D., an orthopedic surgeon practicing in Boise, opined in an April 9, 2013 letter to Employer's counsel:

> Having reviewed the case and specifically, as an example, the x-ray report of 09/08/12, it is evident that this is a 5th finger crushing/tearing type injury that was not in any way, shape, or form, life critical. For that reason I do not understand why Life Flight was called or addressed in the first place, and why the case was not taken to Holy Rosary. Indeed, it is extremely reasonable that the patient would be taken physically to Holy Rosary Hospital. Had there been an incident which may in some way benefitted from a vascular reconstruction, then the patient could be transferred to St. Alphonsus or St. Lukes. Indeed, this was in no way necessary.

Defendant's Exhibit 6, p.55. According to Defendant's post-hearing brief, "Dr. Collins clearly believes that the LifeFlight [sic] trip to Boise was unreasonable and unnecessary." P. 15. Dr. Collins was not Claimant's physician, nor was he present or involved in Claimant's treatment. Under the particular facts of this case, we find the on-site Payette County Paramedics EMT and Medic 20's emergency treatment decision more persuasive than the opinion of Dr. Collins on the issue of reasonableness of the call for Claimant's transport.

30. The Commission is not unsympathetic to the peculiar facts present in this case. As Defendant points out in his Post-Hearing Brief, "[t]here is no explanation in the record as to why Claimant could not have been taken to St. Alphonsus in Ontario and worked up, and even if it turned out transportation to St. Alphonsus in Boise was necessary in order to attempt revascularization of the finger, why that assessment could not have been made at St. Alphonsus in Ontario." P.16. The Commission agrees that record before us is sparse. However, the statutes that bind the Commission ask if the treatment was "reasonably required by the employee's

physician or needed immediately after an injury." Idaho Code § 72-432(1). Through the record before us, we find that the transport of Claimant was reasonable.

CLAIMANT'S REQUEST TO STAY PROCEEDINGS.

31. In his supplemental brief, Claimant requests the Commission to stay the proceedings and order that Life Flight be brought in as a party. Based on the evidence submitted by the parties, we believe to further stay the proceedings would be inappropriate. We therefore decline to rule on this issue as per our discretionary power to grant a joint hearing "analogous to IRCP 42(a)". *Hipwell v. Challenger Pallet and Supply*, 124 Idaho 294, 299, 859 P.2d 330, 335 (1993).

CONCLUSIONS OF LAW AND ORDER

Based on the forgoing reasons, IT IS HEREBY ORDERED that:

1. The treatment Claimant received from Life Flight following his industrial accident on September 8, 2012 was reasonable under Idaho Code § 72-432(1).

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

Dated this 26th day of September, 2014.

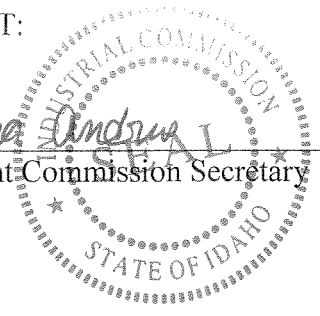
INDUSTRIAL COMMISSION

Thomas P. Baskin, Chairman

R.D. Maynard, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:



Kenna Andrus
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2014, a true and correct copy of the forgoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSON OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant, v. KEVIN STOKES, Defendant.	**I.C. No: 2012-025814** **NOTICE OF APPEAL**

TO: THE ABOVE-NAMED RESPONDENT, Sohar Chavez and counsel of record:

1. The above-named Defendant/Appellant, Kevin Stokes, Employer, appeals against the above-named Claimant/Respondent, Sohar Chavez, to the Idaho Supreme Court from the Industrial Commission Order entered in the above-entitled proceedings on the 26th day of September, 2014, Chairman Thomas P. Baskin presiding.

2. That Defendant/Appellant has a right to appeal to the Idaho Supreme Court, and the Order described in paragraph 1, above, is an appealable Order insomuch as it is an Industrial Commission final Order, including Findings of Fact and Conclusions of Law pursuant to the provisions of I.C. § 72-718. Defendant/Appellant make this appeal pursuant to Rule 11(d) I.A.R., and I.C. §§ 72-718 and 724.

3. The issue for review is whether reasonable and competent evidence exists to support the Industrial Commission's conclusion that transporting a worker's compensation claimant by air ambulance (Life Flight helicopter) at a cost in excess of $20,000.00 where the injury was non-life threatening damage to the pinky finger when the claimant was otherwise within minutes of Holy Rosary, his local hospital, was reasonable and necessary medical treatment under Idaho Code § 72-432.

4. A reporter's transcript is requested in its entirety as to the hearing in this matter, which occurred on October 30, 2013. (Said transcript has previously been prepared).

5. Defendant/Appellant requests the following documents to be included in the Agency's Record in addition to those automatically included under Rule 28, I.A.R.:

a) All exhibits admitted into evidence as a part of the hearing process;

b) All briefing submitted by the parties;

c) Proposed Findings of Fact and Conclusions of Law authored by Referee Michael E. Powers, who conducted the October 30, 2013 hearing and whose proposed Findings of Fact and Conclusions of Law were not utilized by the Industrial Commissioners in making their decision; and

d) The April 7, 2014 letter authored by Chairman Thomas P. Baskin to Claimant's counsel and defense counsel requesting briefing.

6. Undersigned certifies that:

a) The Clerk of the Industrial Commission has been paid the estimated fee of $100.00 for preparation of the Clerk's Record;

b) The appellate filing fee in the amount of $94.00 is being paid herewith;

c) Service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 3rd day of October, 2014.

BOWEN & BAILEY, L.L.P.

R. DANIEL BOWEN - of the Firm
Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of October, 2014, a true and correct copy of the foregoing document was served upon the following party(ies) in the method indicated:

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☒ U.S. MAIL
☐ HAND DELIVERY
☒ FACSIMILE

R. Daniel Bowen

5b

CERTIFICATION

I, DENA K. BURKE, the undersigned Assistant 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 FILED OCTOBER 1, 2014; and THE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ENTERED SEPTEMBER 26, 2014,** herein, and the whole thereof, in IC case number 2012-025814 for Claimant name SOHAR CHAVEZ.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 6TH day of OCTOBER, 2014.

Dena K. Burke
Assistant Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant-Respondent, v. KEVIN STOKES, Defendant-Appellant.	**SUPREME COURT NO.** 42589 **CERTIFICATE OF APPEAL OF SOHAR CHAVEZ**

Appeal From:	Industrial Commission Chairman Thomas E. Limbaugh presiding.
Case Number:	IC 2012-025814
Order Appealed from:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED SEPTEMBER 26, 2014
Attorney for Appellant:	R. DANIEL BOWEN P.O. BOX 1007 BOISE, ID 83701
Attorney for Respondents:	RICHARD S. OWEN P.O. BOX 278 NAMPA, ID 83653
Appealed By:	KEVIN STOKES, Defendant
Appealed Against:	SOHAR CHAVEZ, Claimant
Notice of Appeal Filed:	OCTOBER 3, 2014
Appellate Fee Paid:	$94.00 SC Fee paid & $100 Industrial Commission deposit paid
Name of Reporter:	M. DEAN WILLIS, CSR NO. 95 P.O. BOX 1241 EAGLE, ID 83616
Transcript Requested:	The entire standard transcript has been requested. The standard transcript has been prepared and is on file with the Industrial Commission.
Dated:	OCTOBER 6, 2014

Dena K. Burke
Assistant Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

CERTIFICATION OF RECORD

I, Kenna Andrus, 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. 42589 on appeal by Rule 28(b)(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 List of Exhibits. Said exhibits will be lodged with the Supreme Court upon settlement of the Reporter's Transcript and Agency's Record herein.

DATED this 23rd day of October, 2014.

Kenna Andrus
Assistant Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant-Respondent, v. KEVIN STOKES, Defendant-Respondent.	**SUPREME COURT NO. 42589** **NOTICE OF COMPLETION**

TO: STEPHEN W. KENYON, Clerk of the Courts; and
R. Daniel Bowen for the Appellants; and
Richard S. Owen for the Respondent.

YOU ARE HEREBY NOTIFIED that the Clerk'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:

Attorney for Appellant:

R DANIEL BOWEN
PO BOX 1007
BOISE ID 83701

Attorney for Respondent(s):

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from the date of this Notice in which to file objections to the Clerk's Record or Reporter's Transcript, including requests for corrections, additions or deletions.

In the event no objections to the Clerk's Record or Reporter's Transcript are filed within the twenty-eight day period, the Clerk's Record and Reporter's Transcript shall be deemed settled.

DATED at Boise, Idaho, this 23rd day of October, 2014.

Kenna Andrus
Assistant Commission Secretary