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5-22-2018

### Atkinson v. 2M Company, Inc. Clerk's Record Dckt. 45918

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## EXHIBITS LIST

### REPORTER'S TRANSCRIPT:

Reporter's Transcript taken September 13, 2017, will be lodged with the Supreme Court.

### Claimant's Exhibits:

- A. Letter – Date of Hire;
- B. Performance Review – March 9, 2017;
- C. Meridian Police Department Collision Report;
- D. Ada County Paramedics;
- E. Medical records (Selected) – St. Alphonsus Regional Medical Center;
- F. Medical Bills and Summary;
- G. First Report of Injury;
- H. Notice of claim Status;
- I. Notice of Attorney Fee Lien to Intermountain Claims;
- J. Notice of Attorney Fee Lien to Defense Counsel;
- K. Defendants' Discovery Responses;
- L. Photographs of truck;
- M. Bing Map;
- N. Employee Acknowledgment Forms; and
- O. Hand Drawn Map of Route from Claimant's House to Office.

Defendants' Exhibits:

1. Deposition of Matthew Atkinson for Impeachment Purposes (7-17-17);
2. Recorded Statement and Transcript of Crystal Atkinson (3-29-17);
3. Claimant's Answers and Responses to Interrogatories and Request for Production of Documents (7-11-17);
4. Meridian Police Department Police Report;
5. Pages 37 and 38 of the 2M Company, Inc. Employee Handbook;
6. Claimant's Tax Returns (2012-2016).

Depositions:

1. Deposition of Matthew Atkinson, taken July 17, 2017  
*See Defendants' Exhibit 1*

Additional Documents:

1. Claimant's Brief and Closing Argument, filed October 11, 2017
2. Defendants' Post-Hearing Memorandum, filed October 30, 2017
3. Claimant's Reply Brief, filed November 13, 2017
4. Referee Alan Taylor's Findings of Fact, Conclusions of Law, and Recommendation

**WORKERS' COMPENSATION  
COMPLAINT**  
I.C. No. 2017-008627

**ORIGINAL**

|   |            |   |  |
|---|------------|---|--|
| CLAIMANT'S NAME AND ADDRESS:<br><br>MATTHEW B. ATKINSON<br>2509 N. ARCHERY WAY<br>MERIDIAN, ID 83646<br><br>TELEPHONE NUMBER: 208-703-7112  |            | CLAIMANT'S ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER:<br><br>BRADFORD S. EIDAM<br>BRADFORD S. EIDAM, PLLC<br>P.O. BOX 1677<br>BOISE, IDAHO 83701<br><br>TELEPHONE NUMBER: 208-338-9000 |  |
| EMPLOYER'S NAME AND ADDRESS:<br><br>2M COMPANY, INC.<br>130 E. VICTORY ROAD<br>MERIDIAN, ID 83642   |            | WORKERS' COMPENSATION INSURANCE CARRIER'S NAME AND ADDRESS:<br><br>INTERMOUNTAIN CLAIMS<br>P.O. BOX 4367<br>BOISE, ID 83711   |  |
| [REDACTED]  | [REDACTED] | DATE OF INJURY:<br><br>03-11-17   |  |
| STATE AND COUNTY IN WHICH INJURY OCCURRED:<br><br>ADA COUNTY, IDAHO   |            | WHEN INJURED, CLAIMANT WAS EARNING AN AVERAGE WEEKLY WAGE<br>OF \$1,000.00, PURSUANT TO IDAHO CODE § 72-419   |  |
| DESCRIBE HOW INJURY OR OCCUPATIONAL DISEASE OCCURRED:<br><br>CLAIMANT WAS STANDING BESIDE HIS COMPANY VEHICLE SCRAPING THE WINDSHIELD WHEN HE WAS STRUCK BY ANOTHER VEHICLE.  |            |   |  |
| NATURE OF MEDICAL PROBLEMS ALLEGED AS A RESULT OF ACCIDENT OR OCCUPATIONAL DISEASE:<br><br>RIGHT KNEE INJURIES; RIGHT SHOULDER INJURIES; AND CLOSED HEAD INJURY.  |            |   |  |
| WHAT WORKERS' COMPENSATION BENEFITS ARE YOU CLAIMING AT THIS TIME?<br><br>MEDICAL BENEFITS. ANTICIPATE FUTURE PERMANENT DISABILITY BENEFITS.  |            |   |  |
| DATE ON WHICH NOTICE OF INJURY WAS GIVEN TO EMPLOYER:<br><br>03-11-17   |            | TO WHOM NOTICE WAS GIVEN:<br><br>SUPERVISOR   |  |
| HOW NOTICE WAS GIVEN: <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> OTHER, PLEASE SPECIFY  |            |   |  |
| ISSUE OR ISSUES INVOLVED:<br><br>1. WHETHER CLAIMANT WAS INJURED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT;<br>2. WHETHER CLAIMANT SHOULD RECEIVE MEDICAL BENEFITS AND THE EXTENT OF SUCH BENEFITS; AND<br>3. WHETHER DEFENDANTS ARE RESPONSIBLE FOR CLAIMANT'S ATTORNEY FEES PURSUANT TO IDAHO CODE, §72-804, FOR THE UNREASONABLE DENIAL OF THIS CLAIM. |            |   |  |

RECEIVED  
 INDUSTRIAL COMMISSION  
 2017 MAY 21  
 PH 1:00

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

1

PHYSICIANS WHO TREATED CLAIMANT (NAME AND ADDRESS):

ST. ALPHONSUS REHABILITATION SERVICES, 901 N. CURTIS RD., STE. 204, BOISE, ID 83706-1340  
ADA COUNTY PARAMEDICS, P. O. BOX 140109, BOISE, ID 83714-0209  
DARIN JURGENSMEIER, M.D., SAINT ALPHONSUS MEDICAL GROUP - JOINT PRESERVATION & RECONSTRUCTION, 6165 W EMERALD ST., BOISE, ID 83704  
RICHARD E. MOORE, M.D., ST. ALPHONSUS MEDICAL GROUP - ORTHOPAEDIC, 6165 W. EMERALD, BOISE, ID 83704  
WES JON ARLEIN, M.D., ST. ALPHONSUS MEDICAL GROUP - CARDIOTHORACIC, 6140 W. CURTISIAN AVENUE, BOISE, ID 83704  
DAVID P. ZAMORANO, M.D., SAINT ALPHONSUS - ORTHOPEDIC TRAUMA & FRACTURE CLINIC, 901 CURTIS RD., SUITE 501, BOISE, ID 83706

WHAT MEDICAL COSTS HAVE YOU INCURRED TO DATE? UNKNOWN


WHAT MEDICAL COSTS HAS YOUR EMPLOYER PAID, IF ANY? UNKNOWN

WHAT MEDICAL COSTS HAVE YOU PAID, IF ANY? UNKNOWN

I AM INTERESTED IN MEDIATING THIS CLAIM, IF THE OTHER PARTIES AGREE.

YES  NO

DATE: MAY 24, 2017

  
BRADFORD S. EDAM,  
BRADFORD S. EDAM, PLLC  
ATTORNEY FOR CLAIMANT

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

NAME AND SOCIAL SECURITY NUMBER OF PARTY  
FILING COMPLAINT

DATE OF DEATH

RELATION TO DECEASED CLAIMANT

WAS FILING PARTY DEPENDENT ON DECEASED?

YES  NO

DID FILING PARTY LIVE WITH DECEASED AT TIME OF ACCIDENT?

YES  NO

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

CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of May, 2017, I caused to be served a true and correct copy of the foregoing Complaint upon:


SURETY'S NAME AND ADDRESS:

CINDY DAVIS  
INTERMOUNTAIN CLAIMS  
P.O. BOX 4367  
BOISE, ID 83711

2017 MAY 24 PM 1:00  
RECEIVED  
INDUSTRIAL COMMISSION

via:  regular U.S. Mail

personal service

  
Bradford S. Edam, Attorney for Claimant

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.

2

Patient Name: Matthew Atkinson  
[Redacted]  
Address: 2509 N. Archery Way, Meridian, ID 83646  
Phone Number: (208) 703-7112  
[Redacted]

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

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION

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

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

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

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

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

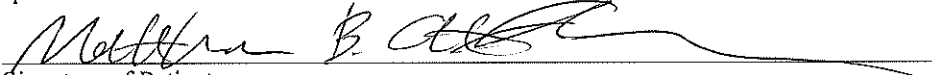
Information to be disclosed: \_\_\_\_\_ Date(s) of Hospitalization/Care: \_\_\_\_\_

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

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

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

I understand that the information to be released may include material that is protected by Federal Law (45 CFR Part 164) and that the information may be subject to re-disclosure 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.

 \_\_\_\_\_ Date 5/22/17

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

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

## ANSWER TO COMPLAINT

I.C. NO.: 2017-008627

INJURY DATE: 03-11-17 2017 JUN -2 PM 2:43

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:

RECEIVED  
INDUSTRIAL COMMISSION

|   |  |
|---|--|
| CLAIMANT'S NAME AND ADDRESS<br><br>Matthew B. Atkinson<br>2509 N. Archery Way<br>Meridian, ID 83646                                       | CLAIMANT'S ATTORNEY'S NAME AND ADDRESS<br><br>Brad S. Eidam<br>P.O. Box 1677<br>Boise, ID 83701  |
| EMPLOYER'S NAME AND ADDRESS<br><br>2M Company, Inc.<br>130 E. Victory Rd.<br>Meridian, ID 83642   | WORKERS' COMPENSATION INSURANCE CARRIER'S (NOT ADJUSTOR'S) NAME AND ADDRESS<br><br>Employers Assurance Company<br>c/o Intermountain Claims<br>P.O. Box 4367<br>Boise, ID 83711 |
| ATTORNEY REPRESENTING EMPLOYER/SURETY (NAME AND ADDRESS)<br><br>Alan R. Gardner<br>GARDNER LAW OFFICE<br>P.O. BOX 2528<br>BOISE, ID 83701 | ATTORNEY REPRESENTING INDUSTRIAL SPECIAL INDEMNITY FUND (NAME AND ADDRESS)   |

| IT IS: (Check One)                   |                                      |   |
|--------------------------------------|--------------------------------------|---|
| Admitted                             | Denied                               |   |
| Investigating via counsel            | Investigating via counsel            | 1. That the accident or occupational exposure alleged in the Complaint actually occurred on or about the time claimed.  |
| X                                    |                                      | 2. That the employer/employee relationship existed.   |
| X                                    |                                      | 3. That the parties were subject to the provisions of the Idaho Workers' Compensation Act.  |
|                                      | X                                    | 4. That the condition for which benefits are claimed was caused partly <input type="checkbox"/> entirely <input type="checkbox"/> by an accident arising out of and in the course of Claimant's employment.   |
| NA                                   | NA                                   | 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. |
| Investigating via counsel, see below | Investigating via counsel, see below | 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.             |
| investigating                        | investigating                        | 7. That the rate of wages claimed is correct. If denied, state the average weekly wage pursuant to Idaho Code, Section 72-419: \$_____.   |
| X                                    |                                      | 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? The issue is whether or not the injury was in the course of employment. Discovery will be undertaken. It is feasible that this issue would be best handled by a bifurcated hearing.

ORIGINAL 4


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

1. Defendants deny all allegations of the Complaint not admitted herein.
2. Defendants state that the issue of course of employment is the primary issue. All other allegations in the complaint are denied unless admitted.

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 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: Defendants will be considering the appropriateness of a bifurcated hearing versus a hearing on the entire case. The hearing would be focused on the course of employment issue.

| Amount of Compensation paid to date |     |         | Dated    | Signature of Defendant or Attorney  |
|-------------------------------------|-----|---------|----------|---|
| PPI/PPD                             | TTD | Medical |          |   |
|                                     |     |         | 06-01-17 |  |

PLEASE COMPLETE CERTIFICATE OF SERVICE

I hereby certify that on the 2 day of June, 2017, I caused to be served a true and correct copy of the foregoing Answer upon:

Brad S. Eidam  
P.O. Box 1677  
Boise, ID 83701

via  personal service of process  
 regular U.S. mail

  
Signature

Answer—Page 2 of 2



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MATTHEW ATKINSON,  
v.  
2M COMPANY, INC.,  
and  
EMPLOYERS ASSURANCE COMPANY,  
Defendants.

Claimant,  
Employer,  
Surety,  
Defendants.

IC 2017-008627

NOTICE OF HEARING

FILED

JUL 26 2017  
INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN that a hearing will be held in the above-entitled matter on **September 13, 2017, at 9:00 a.m., for one half day**, in the Industrial Commission hearing room, 700 S. Clearwater Lane, City of Boise, County of Ada, State of Idaho, on the following issues:

1. Compensability of Claimant's March 11, 2017 accident, including whether Claimant suffered an injury arising out of and in the course of his employment by Employer.
2. Whether Defendants are responsible for providing reasonable and necessary medical care for treatment of the injuries Claimant sustained as a result of the accident of March 11, 2017.
3. Whether, pursuant to Neel v. Western Construction, Inc., 147 Idaho 146, 206 P.3d 852 (2009), Defendants are responsible for payment of the expenses for such medical care at the full invoiced amount through the date the claim is deemed compensable and such payment of medical benefits must be made by Defendants directly to Claimant and his legal counsel.

All other issues are reserved.

The parties shall be ready to proceed at the scheduled time for hearing. Sanctions may be imposed against any party not prepared or not attending.

DATED this 26<sup>th</sup> day of July, 2017.

INDUSTRIAL COMMISSION

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

### CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of July, 2017, a true and correct copy of the foregoing **NOTICE OF HEARING** was served by United States Certified Mail upon each of the following:

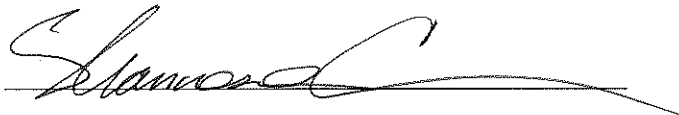
BRADFORD S EIDAM  
PO BOX 1677  
BOISE ID 83701-1677

ALAN R GARDNER  
PO BOX 2528  
BOISE ID 83701

and by e-mail upon the following:

M. DEAN WILLIS, CCR  
mdwillis1@msn.com

sc



BRADFORD S. EIDAM, PLLC  
BRADFORD S. EIDAM, I.S.B. #2931  
300 E Mallard Drive, Suite 145  
Post Office Box 1677  
Boise, ID 83701-1677  
Telephone: (208) 338-9000  
Facsimile: (208) 343-2069

ORIGINAL

2017 AUG 30 PM 4:28  
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INDUSTRIAL COMMISSION

Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

|                       |   |                                |
|-----------------------|---|--------------------------------|
| MATTHEW B. ATKINSON,  | ) | I. C. No. 2017-008627          |
|                       | ) |                                |
| Claimant,             | ) |                                |
| vs.                   | ) |                                |
|                       | ) | CLAIMANT'S RULE 10 DISCLOSURES |
| 2M COMPANY, INC.,     | ) |                                |
|                       | ) |                                |
| Employer,             | ) |                                |
| and                   | ) |                                |
|                       | ) |                                |
| INTERMOUNTAIN CLAIMS, | ) |                                |
|                       | ) |                                |
| Surety,               | ) |                                |
|                       | ) |                                |
| Defendants.           | ) |                                |
|                       | ) |                                |

---

COMES NOW Claimant, by and through his attorney of record, Bradford S. Eidam, of Bradford S. Eidam, PLLC, and pursuant to Rule 10 gives notice of the following proposed witnesses and hearing exhibits.

**I. WITNESSES:**

- A.) Matthew B. Atkinson, Claimant; and
- B.) Crystal Atkinson.

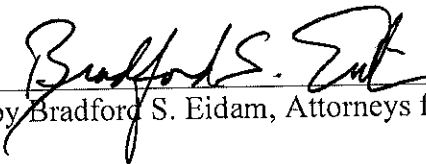
Claimant also reserves the right to call as a witness any individual identified by Defendants as witnesses, at hearing or by post hearing deposition.

II. **EXHIBITS:** Claimant intends to utilize the following and any or all exhibits disclosed by Defendants in their Rule 10 Disclosures and/or discovery responses.

- A.) Letter – Date of Hire;
- B.) Performance Review – March 9, 2017;
- C.) Meridian Police Department Collision Report;
- D.) Ada County Paramedics;
- E.) Medical Records (Selected) – St. Alphonsus Regional Medical Center;
- F.) Medical Bills and Summary;
- G.) First Report of Injury;
- H.) Notice of Claim Status;
- I.) Notice of Attorney Fee Lien to Intermountain Claims;
- J.) Notice of Attorney Fee Lien to Defense Counsel;
- K.) Defendants’ Discovery Responses; and
- L.) Photographs of truck.

DATED this 30<sup>th</sup> day of August, 2017.

BRADFORD S. EIDAM, PLLC

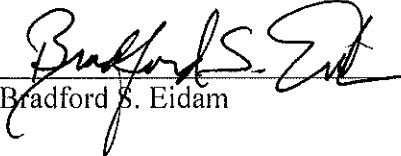
  
by Bradford S. Eidam, Attorneys for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> day of August, 2017, I served a true and correct copy of the foregoing document, upon the person named below, in the manner noted below:

Alan R. Gardner, Esq.  
Gardner Law Office  
P. O. Box 2528  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Facsimile (208) 387-3501

  
\_\_\_\_\_  
Bradford S. Eidam

ALAN R. GARDNER (ISB No. 2342)  
 MICHAEL G. MCPEEK (ISB No. 2436)  
 GARDNER LAW OFFICE  
 1410 W. Washington - 83702  
 Post Office Box 2528  
 Boise, Idaho 83701  
 Telephone: (208) 387-0881  
 Facsimile: (208) 387-3501

2017 SEP -1 AM 9:27  
 RECEIVED  
 INDUSTRIAL COMMISSION

Attorney for **Defendants**

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

|                              |   |                               |
|------------------------------|---|-------------------------------|
| MATTHEW ATKINSON,            | ) | I.C. No. 2017-008627          |
|                              | ) |                               |
| Claimant,                    | ) | <b>DEFENDANTS' RULE 10</b>    |
|                              | ) | <b>DISCLOSURE OF PROPOSED</b> |
| v.                           | ) | <b>EXHIBITS AND WITNESSES</b> |
|                              | ) |                               |
| 2M COMPANY, INC.,            | ) |                               |
|                              | ) |                               |
| Employer,                    | ) |                               |
|                              | ) |                               |
| And                          | ) |                               |
|                              | ) |                               |
| EMPLOYERS ASSURANCE COMPANY, | ) |                               |
|                              | ) |                               |
| Surety,                      | ) |                               |
| Defendants.                  | ) |                               |

COME NOW the above named Defendants and provide the following Rule 10 Disclosures and Proposed Exhibits and Witnesses, according to Rule 10 of the Industrial Commission's Judicial Rules of Practice and Procedure.


- 1) Defendant's numbered exhibits incorporate by reference many of the Claimant's lettered exhibits. Bates numbers of Claimant's are incorporated as to those exhibits.
- 2) Such reference should not be considered a waiver of any objections that might be made by Defendants at the time of the offering of Claimant's exhibits, or Defendant's exhibits.

ORIGINAL 11

This includes such objections as a lack of foundation to the objections on behalf of Claimant, and objections that the exhibit contains a statement of Claimant that is properly used against Claimant, but is not admissible on behalf of Claimant.

- 3) Additional exhibits are included in Defendant's proposed exhibit list.

DATED this 1<sup>st</sup> day of September, 2017.

  
Alan R. Gardner - of the firm  
**GARDNER LAW OFFICE**  
Attorney for Defendants

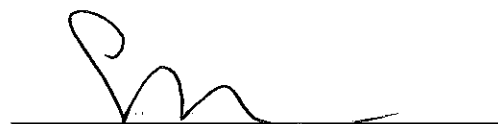
**PROPOSED EXHIBIT LIST**

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 1                  | <b>Deposition of Matthew Atkinson for Impeachment Purposes (7-17-17)</b>                                    |
| 2                  | <b>Recorded Statement and Transcript of Crystal Atkinson (3-29-17)</b>                                      |
| 3                  | <b>Claimants Answers and Responses to Interrogatories and Request for Production of Documents (7-11-17)</b> |
| 4                  | <b>Meridian Police Department Police Report</b>   |
| 5                  | <b>Pages 37 and 38 of the 2M Company, Inc. Employee Handbook</b>  |
| 6                  | <b>Claimants Tax Returns (2012-2016)</b>  |

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of September, 2017, I caused a true and correct copy of the foregoing to be served via hand delivery upon:

Brad S. Eidam  
P.O. Box 1677  
Boise, ID 83701

  
Legal Assistant

BRADFORD S. EIDAM, PLLC  
BRADFORD S. EIDAM, I.S.B. #2931  
300 E Mallard Drive, Suite 145  
Post Office Box 1677  
Boise, ID 83701-1677  
Telephone: (208) 338-9000  
Facsimile: (208) 343-2069

ORIGINAL

2017 SEP -1 PM 4:48  
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INDUSTRIAL COMMISSION

Attorney for Claimant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

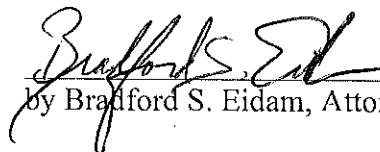
|                       |   |                         |
|-----------------------|---|-------------------------|
| MATTHEW B. ATKINSON,  | ) | I. C. No. 2017-008627   |
|                       | ) |                         |
| Claimant,             | ) |                         |
| vs.                   | ) |                         |
|                       | ) | CLAIMANT'S SUPPLEMENTAL |
| 2M COMPANY, INC.,     | ) | RULE 10 DISCLOSURES     |
|                       | ) |                         |
| Employer,             | ) |                         |
| and                   | ) |                         |
|                       | ) |                         |
| INTERMOUNTAIN CLAIMS, | ) |                         |
|                       | ) |                         |
| Surety,               | ) |                         |
| Defendants.           | ) |                         |
| _____                 | ) |                         |

COMES NOW Claimant, by and through his attorney of record, Bradford S. Eidam, of Bradford S. Eidam, PLLC, and pursuant to Rule 10 gives notice of Claimant's supplemental proposed hearing exhibits:

- M.) Bing Map; and
- N.) Employee Acknowledgment Forms.

DATED this 1<sup>st</sup> day of September, 2017.

BRADFORD S. EIDAM, PLLC

  
by Bradford S. Eidam, Attorneys for Claimant

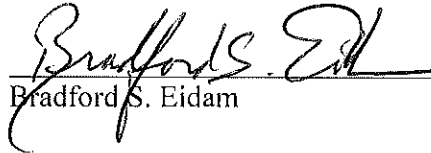


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1<sup>st</sup> day of September, 2017, I served a true and correct copy of the foregoing document, upon the person named below, in the manner noted below:

Alan R. Gardner, Esq.  
Gardner Law Office  
P. O. Box 2528  
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 Hand Delivered  
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Bradford S. Eidam

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

MATTHEW ATKINSON,

Claimant,

v.

2M COMPANY,

Employer,

and

EMPLOYERS ASSURANCE COMPANY,

Surety,  
Defendants.

**IC 2017-008627**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER  
AND DISSENTING OPINION**

**FILED**

**MAR 06 2018**

**INDUSTRIAL COMMISSION**

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on September 13, 2017. Claimant, Matthew Atkinson, was present in person and represented by Bradford S. Eidam, of Boise. Defendant Employer, 2M Company (2M), and Defendant Surety, Employers Assurance Company, were represented by Alan R. Gardner, of Boise. The parties presented oral and documentary evidence. No post-hearing depositions were taken. Briefs were submitted and the matter came under advisement on November 15, 2017. The undersigned majority, while agreeing with the outcome in this case, disagrees with the treatment given by the Referee to certain exceptions to the coming and going rule, and therefore issue this decision in lieu of the proposed decision.

**ISSUES**

The issues to be decided are:

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING  
OPINION- 1**

1. Compensability of Claimant's March 11, 2017 accident, including whether Claimant suffered an injury arising out of and in the course of his employment by Employer.

2. Whether Defendants are responsible for providing reasonable and necessary medical care for treatment of the injuries Claimant sustained as a result of the accident of March 11, 2017.

3. Whether Neel v. Western Construction, Inc., 147 Idaho 146, 206 P.3d 852 (2009), is applicable such that Defendants are responsible for payment of the expenses for such medical care at the full invoiced amount through the date the claim is deemed compensable and such payment of medical benefits must be made by Defendants directly to Claimant and his legal counsel.

All other issues are reserved.

### **CONTENTIONS OF THE PARTIES**

All parties acknowledge that Claimant was struck by a car and suffered severe injuries while on his way to work in a company truck on March 11, 2017. Claimant asserts his injury arose in the course of his employment and is compensable as an exception to the general coming and going rule. Defendants assert no exception is applicable and the coming and going rule bars his claim.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Matthew Atkinson taken July 17, 2017 by Defendants;

3. Claimant's Exhibits A-O, and Defendants' Exhibits 1, 2, 5, and 6, admitted at the hearing.
4. The testimony of Claimant and his wife Crystal Atkinson taken at hearing.

After having considered the above evidence and the arguments of the parties, the Commission issues the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Claimant was 33 years old and lived in the Boise area at the time of the hearing. He was married and had three children. 2M was a wholesaler of well drilling and irrigating pumps and supplies operating through 15 locations in the western United States, striving to provide "Legendary Service" to its customers.

2. **Background.** Claimant worked briefly for 2M in approximately 2007, left for other employment, and in May 2011 returned to work for 2M as a delivery driver. In approximately 2014, 2M promoted him to inside sales at 2M's Meridian office. In 2015, Claimant was further promoted to the position of territorial sales person. He received a monthly salary of \$4,000.00. Claimant's direct supervisor was Chad Draper, 2M's Meridian office manager.

3. As a territorial sales person Claimant's duties were to provide legendary personal service to customers—most of whom were contractors—throughout the Treasure Valley, southwest Idaho, southeast Oregon, and northeast Nevada. Claimant responded to calls from customers requesting drilling and irrigating supplies and provided help installing parts. As part of 2M's legendary service salaried sales staff, he was on-call 24-7, nights, weekends, and holidays to help customers in his territory. He typically began work Monday morning at the Meridian office completing reports and scheduling appointments with customers and potential

customers for the rest of the week. The balance of the week he traveled his sales territory, responding to customers' needs and calling upon potential customers. Sales to typical customers ranged from \$10,000 to \$500,000 annually. Claimant often spent one or two nights per week out of town.

4. As a territorial sales person, 2M provided Claimant a company pickup and credit card to pay for fuel and maintenance. Claimant always took the company truck to work and on sales and emergency calls. Mr. Draper advised Claimant that he could use the company pickup if he needed to run around town for personal errands. On one occasion Claimant asked Mr. Draper about using the company truck to attend a wedding in north Idaho:

We were going to a wedding in northern Idaho and I asked him if it would be okay if we drove the pickup up there and he said we could use it for whatever we want and if I go over a hundred miles from the branch I have to put my own fuel in it.

Transcript p. 40: ll. 5-9.

5. Claimant received an average of two or three emergency customer calls per week. It was common for Claimant to receive a customer's emergency call, jump in his company truck at 10:30pm, take a new pump to a dairy in Twin Falls, and help install the new pump that same night. Claimant's performance evaluation on March 9, 2017 commended him for always going "the extra mile on nights and weekends to provide Legendary Service." Exhibit B, p. 3.

6. 2M's Meridian office was open each Saturday from 8:00am until noon. Five salaried employees took turns staffing the office, one each Saturday on a rotating basis. Claimant was assigned to staff the office every fifth Saturday.

7. Although not assigned to work at the Meridian office on Saturday, March 11, 2017, Claimant agreed to cover the office that day for another 2M employee. Mr. Draper was advised of the arrangement.

8. **Industrial accident and treatment.** On Friday evening, March 10, 2017, Claimant and his wife enjoyed a “date night” at the Whitewater Saloon in Meridian. At the end of the evening they left their personal vehicle at the Saloon and took a cab home.

9. On Saturday morning, March 11, 2017, the weather was clear and frosty. Claimant warmed up the company pickup in his driveway and then left for work before 8:00am. His wife rode with him. Claimant intended to drop off his wife at the Whitewater Saloon on his way to work so she could retrieve their personal vehicle. The saloon was located along his usual route of travel from his home to 2M’s Meridian office. As Claimant drove east, the morning sun partially obscured his vision and he pulled the company truck to the side of the road to scrape the windshield more completely. While leaning over the hood scraping the windshield, Claimant was struck from behind by a passing vehicle and thrown approximately 25 feet. His right shoulder was dislocated and his right leg fractured and nearly severed. His wife called 911 and paramedics transported Claimant by ambulance to the hospital where he remained hospitalized for approximately five weeks and underwent multiple surgeries.

10. By August 2017, Claimant returned to work at 2M as an inside sales person at the Meridian office. He was only able to work four or five hours per day. He was unable to operate a motor vehicle.

11. **Condition at the time of hearing.** At the time of hearing on September 13, 2017, Claimant continued to experience significant right leg symptoms and limitations. He anticipated further treatment, including additional right leg surgeries. His very

substantial medical bills from the accident remained unpaid. He was unable to drive a motor vehicle. Claimant continued working at 2M approximately four or five hours per day as an inside sales person.

12. From the time of the accident through the date of the hearing, 2M has continued to pay Claimant his full monthly salary.

13. **Credibility.** The Referee observed Claimant and Mrs. Atkinson at hearing, compared their testimony with other evidence in the record and found both to be credible witnesses. The Commission does not disturb this finding.

### **DISCUSSION AND FURTHER FINDINGS**

14. 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).

15. **Course of employment.** The threshold issue is the compensability of Claimant's March 11, 2017 accident, specifically, whether the accident occurred within the course of Claimant's employment by 2M. Generally it is presumed that an employee travelling to or from work is not within the course of employment and thus not covered by workers' compensation protection. Spanbauer v. Peter Kiewit Sons' Co., 93 Idaho 509, 465 P.2d 633 (1970). However, Claimant asserts that his case falls within a recognized exception to the general rule that when the journey to or from work is made via a transportation facility furnished by Employer, the accident falls within the Claimant's course of employment.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION- 6**

16. Commentators have long recognized that where an employee is paid an identifiable amount for time spent in a going or coming trip, injuries incurred while traveling are covered, the rationale being that in such cases the making of the journey is clearly part of the service for which the injured worker is being compensated. 2-14 Larson's Workers' Compensation Law § 14.06 (2017). This rule is also well established in Idaho. Where travel is a part of the employee's work then accidents incurred while traveling are compensable. See Cheung v. Wasatch 136 Idaho 895, 42 P.3d 688 (2002); Kirkpatrick v. Transtector Systems 114 Idaho 559, 759 P.2d 65 (1988).

17. Most jurisdictions also conclude that the deliberate and substantial payment of the expenses of travel, (as opposed to payment for travel time) or the provision of a vehicle under the employee's control, is also sufficient to bring a going-and-coming accident within the course of employment. Idaho, however, is among a minority of jurisdictions that have not followed this general rule. See 2-14 Larson's Workers' Compensation Law § 14.07 (2017).

18. In Matter of Barker, 110 Idaho 871, 719 P.2d 1131 (1986), Barker was traveling from his work site to a dentist appointment when he was killed in a single vehicle car accident. Per his union contract, Barker was paid \$90 per week as a travel allowance. His widow pursued worker's compensation benefits, which the Commission denied, under the holding of Spanbauer v. Peter Kiewit Sons' Company, 93 Idaho 509, 465 P.2d 633 (1970). The Commission found Barker was not in the course of his employment at the time of the accident and that payment of travel expenses was irrelevant to whether or not an exception to the coming and going rule should apply. On appeal, the Idaho Supreme Court reversed the Commission and held that payment of travel expenses "along with other evidence indicating the employer intended to compensate the employee for travel time, will justify expanding the course of employment to



include going to and from work.” The Court instructed the Commission to consider any potential “other evidence” on remand. No additional evidence was presented to the Commission on remand and, after re-examining the record and argument of the parties, the Commission re-affirmed its original decision. The Supreme Court affirmed on appeal.

19. Therefore, in Idaho, where employer covers some of the expenses of travel, as by paying travel expenses or providing a vehicle for the employee’s use, this fact is insufficient to bring a going-and-coming accident within the course of employment without additional evidence indicating that employer intended to compensate the employee for travel time.

20. Claimant argues that the resolution of the instant matter is controlled by the rule discussed in Hansen v. Estate of Harvey, 119 Idaho 357, 806 P.2d 540 (Ct App. 1990), Aff. 119 Idaho 333, 806 P2d 426 (1991). In Hansen, Don Harvey employed his son James, and also Hansen and Lehman in Harvey’s roofing business. The business operated in both Idaho and Washington and Harvey obtained Washington workers’ compensation insurance. While driving a company truck in Washington on the way to a job site, James apparently fell asleep at the wheel. The truck ran off the road killing James and injuring passengers Hansen and Lehman. They applied for and received Washington workers’ compensation benefits based upon the Washington Department of Labor and Industries’ determination that their injuries arose out of the course of their employment in Washington. Hansen and Lehman then sued their employer, Harvey, in Idaho district court, alleging James’ negligence that caused their injuries should be imputed to Harvey. The Idaho district court determined that Hansen and Lehman’s injuries arose out of the course of their employment by Harvey and dismissed their tort claims against Harvey.

21. Relying upon an exception to the coming and going rule mentioned in Eriksen v. Nez Perce County, 72 Idaho 1, 235 P.2d 736 (1951), for employer-provided transportation, the Court of Appeals stated:

[I]t is undisputed that Hansen and Lehman were passengers in a vehicle furnished by their employer, as they traveled to work in Spokane. It is also undisputed that the vehicle was kept and maintained for use in the roofing business. Hansen and Lehman have asserted that they were not paid for commuting and that they did not always ride in the Harvey vehicle. However, these assertions, even if true, do not alter what we deem to be the sole material fact—that they were riding in employer-provided transportation when the accident occurred. At that time, the employer had extended the risks of employment to include transportation, and the course of employment had been extended commensurately.

Hansen and Lehman further argue that the employer-provided transportation exception was mentioned merely as a dictum in Eriksen. This may be so, but we find the exception to be conceptually sound and widely recognized. We adopt it as the basis of our decision today. Accordingly, we conclude, as did the district court, that the accident occurred in the course of employment. Worker's compensation provided the exclusive remedy. A tort suit against the employer and against the fellow employee's estate was barred by I.C. § 72-209.

Hansen, 119 Idaho at 359, 806 P.2d at 452 (emphasis supplied).

22. Upon review the Idaho Supreme Court affirmed the Court of Appeals; first on the basis of collateral estoppels, noting that Hansen and Lerhman were precluded from relitigating in the Idaho tort action the determination of the Washington Industrial Commission that they were injured within the course of their employment. As a second basis for affirmance, the Idaho Supreme Court stated:

We also affirm the district court's dismissal for the additional reason set out in the Court of Appeals' opinion which adopted the exception to the going and coming rule, described in Eriksen v. Nez Perce County, 72 Idaho 1, 235 P.2d 736 (1951), where this Court stated that "*where going [to work] or returning [from work] in some transportation facility furnished by the employer,*" an employee is deemed to be within the course of employment. 72 Idaho at 4, 235 P.2d 736 (emphasis added). This rule has also been described in Larson's treatise on worker's compensation law as follows:

If the trip to and from work is made in a truck, bus, van, car, or other vehicle under the control of the employer, an injury during that trip is incurred in the course of employment.... The reason for the rule in this section depends upon the extension of risks under the employer's control.

1 Larson, Workmen's Compensation Law, § 17.11. A majority of states which have addressed this issue have also adopted this exception in some form. [Citations omitted.]

Under the Larson approach which was adopted by this Court in Eriksen v. Nez Perce County, 72 Idaho 1, 235 P.2d 736 (1951), any time an employee is injured while going to or coming from work in transportation provided by his employer, he is considered to be within the course of employment. The rationale underlying this rule is that "the risks of the employment continue throughout the journey" and since the employer is in control of those risks by providing the transportation, the employee is considered to be within the course of his employment. 1 Larson at § 17.00. As Larson points out, "The distinction between transportation provided by contract and transportation provided without agreement or as a courtesy is being increasingly questioned, since the fundamental reason for extension of liability—the extension of the actual employer-controlled risks of employment—is not affected by the question whether the transportation was furnished because of obligation or out of courtesy." 1 Larson at § 17.30. Furthermore, application of this rule avoids repeated litigation as to whether transportation provided by an employer to an employee was in fact a customary or contractual incident to employment. The Larson rule also promotes a basic policy underlying the concept of worker's compensation that the worker's compensation act is to be construed liberally in favor of worker's compensation coverage of claimants.

Hansen, 119 Idaho at 338, 806 P.2d at 431 (emphasis supplied).

23. Claimant argues that Hansen governs the outcome in this case since here, as in Hansen, Claimant was injured while going to or from work in transportation provided by his employer. However, we conclude that Hansen is inapposite to the facts before us. The rationale for extending the course of employment to travel to and from the work site in Hansen is that by providing a transportation facility to the injured worker, employer extended risks under the employer's control. This rationale necessarily depends on the fact that employer provided not only the vehicle used to accomplish the journey, but also an agent of the employer to operate the same. Such facts explain why, after getting into the transportation business, an employer can be

charged with the risks that attend transportation to and from the work site. As noted in Hansen, commentators in most jurisdictions abide by this rule. 2-14 Larson's Workers' Compensation Law § 15.01 et seq. (2017).

24. The instant case is more like Barker than Hansen. Here, Employer only provided Claimant with a vehicle, and gas and maintenance necessary to operate the same. These allowances do not, standing alone, represent payment of travel time, but they do, as in Barker, constitute evidence of the payment of travel expenses. As in Barker, Claimant must adduce additional evidence “indicating that Employer intended to compensate employee for travel time,” in order to justify the expansion of the course of employment to include a going-to/coming-from trip. What other evidence is there that Employer intended to compensate Claimant for travel time? In our view, the provision of a company vehicle and the payment of expenses associated with its use and two other circumstances support the inference that Employer intended to compensate Claimant for travel time: (1) Claimant’s status as a 24/7 “on-call” employee and; (2) fact that employer enjoyed a significant benefit from this arrangement.

25. First, Claimant is a 24/7 “on-call” employee. Claimant may be called upon to respond to an emergency any time of day, and therefore, it is necessary to his work to have immediate access to a company vehicle at all times. Because Claimant must have a company vehicle at home to respond to the needs of a customer, it follows that he must use Employer’s vehicle going-to and coming-from the workplace. Because of the demands of his employment, Claimant is effectively denied the option of choosing to use his own vehicle in coming/going journeys.

26. Second, even though the provision of a company vehicle to Claimant may be regarded as an inducement to Claimant, it is also clear that the provision of a company vehicle to

Claimant serves the Employer's interests by ensuring that Claimant will always have the means available to immediately respond to emergency calls.

27. Although we consider this to be a close case, pursuant to Barker, we find these additional factors, along with the Employer's payment of the expenses of travel, to be sufficient to bring Claimant's accident within the course of his employment.

28. In addition to the above discussed exception to the coming and going rule, Claimant and Defendants have zealously argued the applicability of several additional recognized exceptions under Idaho law, including among others the traveling employee exception, the special errand exception, and the dual purpose doctrine. However, the Barker case is controlling and dispositive of the instant dispute, rendering discussion of other exceptions to the coming and going rule unnecessary. Only the dual purpose doctrine may warrant further discussion.

29. In Smith v. University of Idaho, 67 Idaho 22, 170 P.2d 404 (1946), Smith was a hostess at a girls' dormitory at the university where she resided and managed all affairs connected with operation of the hall. She was on duty twenty-four hours each day. In December 1943, the residents of the hall were preparing a celebration and a Christmas tree was placed in the hall. On December 8, 1943, Smith left the hall and went to town where she purchased a jar of coffee and some Christmas tree ornaments. On returning toward the hall she fell on the street and fractured her femur. She was hospitalized, underwent surgery, and subsequently died from complications due to her fall. The Commission found the accident arose out of and in the course of her employment. On appeal the Idaho Supreme Court affirmed, stating:

The rule would seem to be well established that an employee does not step aside from his employment and is without the protection of the statute when doing a reasonable and necessary act at the time and place to the end that the business of his employer may be properly conducted. Denials of awards for any period when the employee is actively engaged in working for his employer, or while doing something reasonably incident to his employment, should rarely be based on the proposition that it was not in the course of the employment. These words are construed broadly, and should be so construed, to carry out the intent and purposes of the Workmen's Compensation Act. Nor is the service interrupted when for a brief interval the worker performs a personal errand not forbidden.

Smith, 67 Idaho at 27, 170 P.2d at 407 (emphasis supplied).

30. In Williams v. Knitting Factory Entertainment, 2016 WL 1072695 (Idaho Ind. Com. Feb. 1, 2016), the Commission articulated the dual purpose doctrine, stating:

We recognize that an errand, such as that undertaken by Claimant, can serve both a business and a personal purpose. Such an errand may still be compensable under the dual purpose doctrine, summarized as follows:

If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. If, however, the work had had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been cancelled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk.

See Reinstein v. McGregor Land & Livestock, 126 Idaho 156, 879 P.2d 1089 (1994). The Reinstein court also noted that so long as the service of the employer was at least a concurrent cause of the trip, it need not be a paramount cause of the trip.

Williams, 2016 WL 1072695, at 16–17.

31. In the present case, it is undisputed that Claimant's route of travel from his home to the Meridian 2M office on the day of the accident was the shortest route to the office and precisely the route and journey he would have taken regardless of whether he planned to stop at the Whitewater Saloon. Moreover, Claimant was not forbidden from taking his wife in the

company truck. He was traveling via the company truck and had not yet arrived at the saloon when he was injured. He made no personal detour prior to his accident.

32. Claimant has proven that his March 11, 2017 accident was sustained in the course of his employment with 2M.

33. **Medical care.** The next issue is Claimant's entitlement to medical care for his industrial injuries. Idaho Code § 72-432 provides in pertinent part:

the employer shall 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 or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

34. Having proven that his March 11, 2017 accident occurred in the course of his employment, Claimant has also proven he is entitled to reasonable medical treatment relating to his industrial accident.

35. **Neel.** Claimant requests payment of full invoiced amounts of his outstanding medical bills be made by Defendants directly to Claimant and his counsel pursuant to Neel v. Western Construction, Inc., 147 Idaho 146, 206 P.3d 852 (2009), and St. Alphonsus Regional Medical Center. v. Edmondson, 130 Idaho 108, 937 P.2d 420 (1997).

36. In Neel, the Idaho Supreme Court held:

when a surety initially denies an industrial accident claim which is later determined to be compensable, it is precluded from reviewing medical bills for reasonableness under the workers' compensation regulations from the time such bills are initially incurred until the claim is deemed compensable, but once the claim is deemed compensable a surety may review a claimant's medical bills incurred thereafter for reasonableness in accordance with the workers' compensation regulatory scheme.

Neel, 147 Idaho at 149, 206 P.3d at 855.

37. Claimant has proven his March 11, 2017 accident arose in the course of his employment with 2M and he is entitled to reasonable medical benefits related thereto. Defendants denied the claim, thus, pursuant to Neel, Claimant is entitled to recover the full invoiced amount of medical bills incurred in connection with medical treatment including but not limited to multiple right leg surgeries and other treatment due to his industrial accident between the date of Defendants' denial and the date of this decision.

38. In St. Alphonsus Regional Medical Center. v. Edmondson, 130 Idaho 108, 937 P.2d 420 (1997), Edmondson was injured and treated at a hospital. The hospital billed Edmondson's employer who denied the claim. Edmondson's attorney pursued a workers' compensation claim seeking compensation from the employer and surety, offering to collect medical expenses for the hospital for a 30% contingency fee plus a pro-rata share of the costs, or in the alternative inviting the hospital to join in the workers' compensation litigation. The hospital declined and instead filed a notice of medical expenses and requested that the Commission order the surety to pay medical expenses directly to the hospital. The Commission concluded Edmondson's injuries were compensable and he was entitled to workers' compensation benefits. The hospital then sought a declaratory ruling that it was entitled to direct payment of the medical expenses from the employer and surety and a determination of whether Edmondson's attorney's fees could be deducted from the medical expenses. The Commission determined that the workers' compensation laws did not require direct payment to the hospital and approved a 30% contingent attorney fee for Edmondson's attorney as a lien against the award of medical expenses.

39. On appeal the Idaho Supreme Court affirmed, declaring:



Because the employer and the surety contended that the worker was not entitled to compensation for his injury, the employer did not pay the medical expenses. When the Commission awarded the worker compensation for his injury, the employer and the surety became obligated to pay the medical expenses. This does not mean, however, that the employer and the surety became directly obligated to the provider. Nothing in I.C. § 72-432(1) requires direct payment to a provider.

The provider is not a party to the workers' compensation proceeding. The Commission's order in that proceeding states: "*Claimant* suffered accidental injuries arising out of the course and scope of this employment with Hansen-Rice Construction Company on July 10, 1993, and *is entitled to appropriate workers compensation benefits.*" (Emphasis added). The Commission awarded benefits to the worker, not payment to the provider.

Edmondson, 130 Idaho at 111, 937 P.2d at 423.

40. The Court concluded the Commission acted within its authority in approving Edmondson's attorney's lien against the award of medical expenses noting that Idaho Code § 72-803 required that the Commission approve claims of attorneys in workers' compensation cases, Idaho Code § 72-508 granted the Commission authority to promulgate and adopt reasonable rules and regulations for effecting the purposes of the workers' compensation act, and IDAPA 17.02.08.033 was duly promulgated authorizing the Commission to approve the lien of a workers' attorney against the award to the worker.

41. Pursuant to Neel and Edmondson, Claimant and his counsel are entitled to receive from Defendants payment of the full invoiced amount of the medical bills related to Claimant's March 11, 2017 industrial accident, from the date of Defendants' denial to the date of this decision.

#### **CONCLUSIONS OF LAW AND ORDER**

1. Claimant has proven his March 11, 2017 accident arose out of and in the course of his employment with 2M.

2. Claimant has proven he is entitled to reasonable medical benefits for his

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING  
OPINION- 16**

March 11, 2017 industrial accident.

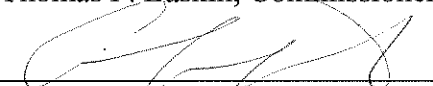
3. Claimant and his counsel are entitled to receive from Defendants payment of the full invoiced amount of the medical bills related to Claimant's March 11, 2017 industrial accident, from the date of Defendants' denial to the date of this decision.

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


DATED this 6<sup>th</sup> day of March, 2018.

INDUSTRIAL COMMISSION

  
Thomas P. Baskin, Commissioner

  
Aaron White, Commissioner

ATTEST

  
Assistant Commission Secretary

**Dissent by Chairman, Thomas E. Limbaugh:**

After reviewing the record and controlling case law in this matter, I respectfully dissent. The majority broadly expands an exception to the "coming and going rule" to transform Claimant's ordinary commute to the main office into a compensable activity covered by workers' compensation protection. In general, the "coming and going" rule states that an employee traveling to or from work is not within the course of employment and not covered by workers' compensation protection. Spanbauer v. Peter Kiewit Sons' Co., 93 Idaho 509, 465 P.2d 633 (1970); See Clark v. Daniel Morine Construction Co., 98 Idaho 114, 559, P.2d 293 (1997). The "coming and going" rule is based on the notion that the Idaho Workers' Compensation Act

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION- 17**

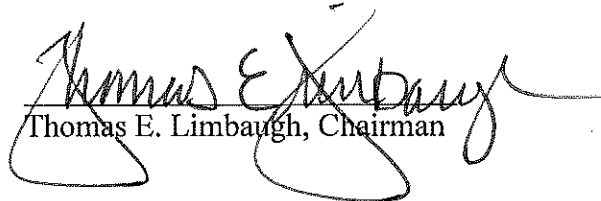
does not protect against the common perils of ordinary commuting on public ways that are common to all who travel.

After finding Hansen v. Estate of Harvey, 119 Idaho 333, 806 P.2d 426 (1991) inapposite to the present facts (Majority, p. 11), and recognizing that Idaho is not a jurisdiction that recognizes that the deliberate and substantial payment of the expenses of travel alone are sufficient to create an exception to the “coming and going” rule (Majority Opinion, pp. 7-8), the majority nevertheless finds support for its expansion of the exception in Matter of Barker, 110 Idaho 871, 719 P.2d 1131 (1986). In Matter of Barker, *supra*, the Court held that payment of travel expenses was not a stand-alone exception to the “coming and going” rule, but remanded the matter for “other evidence” from the parties. No additional evidence was produced to the Commission, and Court found the case remained non-compensable. Because the parties did not provide additional evidence, the Court did not have the opportunity to elaborate, interpret, or apply what they intended with this “other evidence” comment. Notwithstanding the constraints of the Court’s Barker holding, the majority reasons that Claimant has satisfied this additional evidence requirement by showing he was a 24/7 “on-call” employee, and that Claimant’s use of a company vehicle serves Employer’s interests by allowing Claimant to immediately respond to emergency calls. (Majority, p. 12.)

I disagree with the majority’s creation and application of these factors. The “24/7 on call employee” approach is too broad, and without any discussion of the parties’ expectations regarding availability, such as whether Claimant is required to remain in any particular place during on-call time; whether the Claimant is permitted to engage in his own activities during such time; and whether the Claimant’s availability during the on-call time is predominantly for the employee’s or the employer’s benefit. I am not persuaded that Employer expected

unremitting work 24/7, particularly where Claimant and his wife were en route to retrieve their personal vehicle from their date night the previous evening. If Claimant were truly “on call” 24/7, why would he have left his work vehicle at home and used his personal vehicle for a date night with his spouse? The more reasonable inference from these facts is that Claimant is not a “24/7 on call employee.” While Claimant did perform well and promptly when customer issues arose, the focus should be on the employee’s specific activity at the time of injury. Claimant’s accident occurred on the way to retrieve his personal vehicle, which just happens to follow his ordinary route to work. Even if you set aside the personal errand, Claimant’s need to commute to work is like all employees who are required to arrive at his or her work site and leave when their day’s work is done. The routine quality and regularity of this commute should be a textbook “coming and going” non-compensable activity.

While Employer’s interests can be served by providing a company vehicle to Claimant, the company vehicle should not transform *all* driving activities into work-related activities. Although Claimant might have received an urgent call and used his company vehicle, Claimant’s injury did not occur under those circumstances. Claimant was not on any special errand for Employer, nor was he “on call” or acting as a traveling employee, i.e., traveling from the main office to a customer. Given Claimant’s many personal errands and travels in his company vehicle, the lack of specific compensation for his daily commute, an inference of employer control or benefit is tenuous. Therefore, for the foregoing reasons, I respectfully dissent.

  
Thomas E. Limbaugh, Chairman

  
ATTEST  
  
Assistant Commission Secretary

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION-19**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of March, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND DISSENTING OPINION** was served by regular United States Mail upon each of the following:

BRADFORD S EIDAM  
PO BOX 1677  
BOISE ID 83701-1677

ALAN R GARDNER  
PO BOX 2528  
BOISE ID 83701

A handwritten signature in black ink, appearing to read "E. Gardner", written over a horizontal line.

ALAN R. GARDNER (ISB No. 2342)  
MICHAEL G. MCPEEK (ISB No. 2436)  
GARDNER LAW OFFICE  
1410 West Washington - 83702  
Post Office Box 2528  
Boise, Idaho 83701  
Telephone: (208) 387-0881  
Facsimile: (208) 387-3501

ORIGINAL

2018 APR 10 PM 2:17

RECEIVED  
INDUSTRIAL COMMISSION

Attorney for **Defendants**

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

|                        |   |                         |
|------------------------|---|-------------------------|
| MATTHEW ATKINSON,      | ) |                         |
|                        | ) |                         |
| Claimant-Respondent,   | ) | I.C. No. 2017-008627    |
|                        | ) |                         |
| v.                     | ) | <b>NOTICE OF APPEAL</b> |
|                        | ) |                         |
| 2M COMPANY INC.,       | ) |                         |
|                        | ) |                         |
| Employer,              | ) |                         |
|                        | ) |                         |
| and                    | ) |                         |
|                        | ) |                         |
| EMPLOYERS ASSURANCE    | ) |                         |
| COMPANY,               | ) |                         |
|                        | ) |                         |
| Surety,                | ) |                         |
| Defendants-Appellants. | ) |                         |
| _____                  | ) |                         |

TO THE ABOVE-NAMED RESPONDENT, MATTHEW ATKINSON, AND HIS ATTORNEY,

BRADFORD S. EIDAM  
P.O. BOX 1677  
BOISE, IDAHO 83701-1677

AND THE CLERK OF THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, 2M Company and Employers Assurance Company, appeal against the above-named Respondent, Matthew Atkinson, to the Idaho Supreme Court from the Findings of Fact, Conclusions of Law and Order, entered in the above entitled proceeding on the day of March 6, 2018, Chairman Thomas E. Limbaugh presiding.

2. The Appellants have a right to appeal to the Idaho Supreme Court, and the Findings of Fact, Conclusions of Law, and Order described in paragraph 1 above are appealable orders under and pursuant to Rule 11(d) I.A.R.

3. A preliminary statement of the issue on appeal is:

(a) Do injuries sustained by an employee in an automobile accident occurring in the morning while the employee is driving from his home to the employer's place of business in the same city in a company-provided pickup arise out of and in the course of employment when the employee is not performing any service for his employer at the time of the accident?

4. No order has been entered sealing all or a portion of the record.

5. (a) A reporter's transcript is requested.

(b) Appellants request preparation of the following reporter's transcript in hard copy and electronic format: transcript of hearing conducted on September 13, 2017, M. Dean Willis, CSR No. 95, Reporter.

6. Appellants request inclusion of the follow documents as the agency's record:

(a) Complaint;

(b) Answer;

(c) Notice of Hearing;

(d) Findings of Fact, Conclusion of Law and Order and Dissenting Opinion, filed March 6, 2018.

7. Appellants request the following documents, charts, or pictures offered or admitted as exhibits be copied and sent to the Supreme Court:

(a) Claimant's Hearing Exhibits A through O from the September 13, 21017 hearing;

and

(b) Defendants' Hearing Exhibits 1, 2, 5, and 6 from the September 13, 2017 hearing.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

M. Dean Willis  
1695 E. Comisky Street  
Meridian, Idaho 83646

(b) That the clerk of the Industrial Commission has been paid the estimated fee for preparation of the reporter's transcript.

(c) The estimated fee for preparation of the agency's record has been paid.

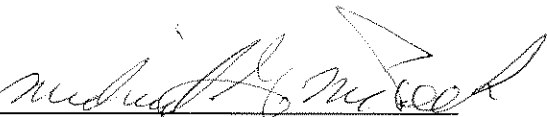
(d) That the appellate filing fee has been paid.

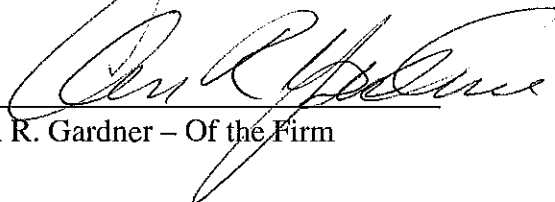
(e) That service has been made upon all the parties required to be served pursuant to Rule 20.



DATED This 9th day of April, 2018.

GARDNER OFFICE

By   
Michael G. McPeck - Of the Firm

By   
Alan R. Gardner - Of the Firm

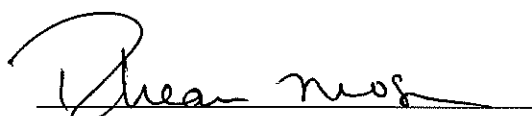
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of April, 2018, I caused a true and correct copy of the foregoing to be served upon:

Brad Eidam  
P.O. Box 1677  
Boise ID 83701-1677

M. Dean Willis  
1695 E. Comisky Street  
Meridian, Idaho 83646

by depositing the same in the United States mail, postage prepaid, addressed to the above-named, the last known address as set forth above.

  
Legal Assistant

2018 APR 12 AM 9:18

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

MATTHEW ATKINSON,  
Claimant-Respondent,

v.

2M COMPANY, INC., Employer, and  
EMPLOYERS ASSURANCE COMPANY,  
Surety,

Defendants-Appellants.

SUPREME COURT NO. 45918

CERTIFICATE OF APPEAL

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

Case Number: IC 2017-008627

Order Appealed from: Findings of Fact, Conclusions of Law, and Order,  
and Dissenting Opinion, filed March 6, 2018.

Attorney for Appellant: Alan R. Gardner  
Michael G. McPeck  
PO BOX 2528  
Boise, ID 83701

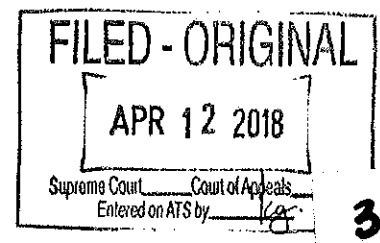
Attorney for Respondents: Bradford D. Eidam  
PO BOX 1677  
Boise, ID 83701-1677

Appealed By: Defendants/Appellants 2M Company, Inc. and  
Employers Assurance Company

Appealed Against: Claimant/Respondent Matthew Atkinson

Notice of Appeal Filed: April 10, 2018

CERTIFICATE OF APPEAL – (MATTHEW ATKINSON) - 1



Appellate Fee Paid:

\$94.00 to Supreme Court and  
\$100.00 to Industrial Commission  
Checks were received.

Name of Reporter:

Dean Willis  
PO BOX 1241  
Eagle, ID 83616-1241  
mdwillis1@msn.com

Transcript Requested:

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

Dated:

April 11, 2018

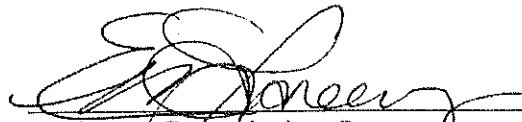


Assistant Commission Secretary

**CERTIFICATION OF APPEAL**

I, Emma Landers, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing are true and correct photocopies of the Notice of Appeal; Findings of Fact, Conclusions of Law, and Order, AND Dissenting Opinion; and the whole thereof, in IC case number 2017-008627 for Matthew Atkinson.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 11<sup>th</sup> day of April, 2018.

  
Assistant Commission Secretary

Supreme Court No. 45918

ORIGINAL

BRADFORD S. EIDAM, I.S.B. #2931  
BRADFORD S. EIDAM, PLLC  
300 E Mallard Drive, Suite 145  
Post Office Box 1677  
Boise, ID 83701-1677  
Telephone: (208) 338-9000  
Facsimile: (208) 343-2069  
Email Address: beidam@eidamlaw.com

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

|                              |   |                        |
|------------------------------|---|------------------------|
| MATTHEW B. ATKINSON,         | ) | I.C. No. 2017-008627   |
|                              | ) |                        |
| Claimant-Respondent,         | ) |                        |
| vs.                          | ) | REQUEST FOR ADDITIONAL |
|                              | ) | RECORD                 |
| 2M COMPANY, INC.,            | ) |                        |
|                              | ) |                        |
| Employer,                    | ) |                        |
| and                          | ) |                        |
|                              | ) |                        |
| EMPLOYERS ASSURANCE COMPANY, | ) |                        |
|                              | ) |                        |
| Surety,                      | ) |                        |
| Defendants-Appellants.       | ) |                        |

2018 APR 19 PM 1:55  
RECEIVED  
INDUSTRIAL COMMISSION

TO: THE ABOVE-NAMED APPELLANTS AND THEIR ATTORNEYS,

ALAN R. GARDNER  
MICHAEL G. MCPEEK  
GARDNER LAW OFFICE  
P.O. BOX 2528  
BOISE, IDAHO 83701

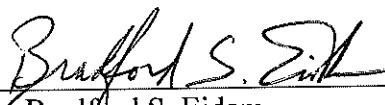
AND THE CLERK OF THE IDAHO INDUSTRIAL COMMISSION.

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the reporter's transcript or the Industrial Commission's record in addition to that required to be included by the I.A.R. and the Notice of Appeal.

1. Additional Reporter's transcript: None.
2. Additional Agency's Record:
  - a. Claimant's Rule 10 Disclosures dated and filed August 30, 2017;
  - b. Claimant's Supplemental Rule 10 Disclosures dated and filed September 1, 2017;
  - c. Defendants' Rule 10 Disclosure of Proposed Exhibits and Witnesses dated September 1, 2017;
  - d. Claimant's Brief and Closing Argument dated and filed October 11, 2017;
  - e. Defendants' Post-Hearing Memorandum dated October 30, 2017;
  - f. Claimant's Reply Brief dated and filed November 13, 2018; and
  - g. Findings of Fact, Conclusions of Law, and Recommendation by Alan Reed Taylor, Industrial Commission Referee, dated January 30, 2018.
3. Additional Exhibits: None.
4. I certify that a copy of this Request for Additional Record has been served upon the clerk of the Idaho Industrial Commission and upon all parties required to be served pursuant to Rule 20, I.A.R.

Dated this 19<sup>th</sup> day of April, 2018.

BRADFORD S. EIDAM, PLLC

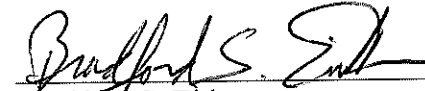
  
\_\_\_\_\_  
by Bradford S. Eidam,  
Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19<sup>th</sup> day of April, 2018, I served a true and correct copy of the foregoing document, upon the person(s) named below, in the manner noted below:

Alan R. Gardner  
Michael G. McPeck  
Gardner Law Office  
P. O. Box 2528  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Facsimile

  
\_\_\_\_\_  
Bradford S. Eidam

**CERTIFICATION OF RECORD**

I, Emma Landers, 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. 45918 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 16<sup>th</sup> day of May, 2018.

  
Assistant Commission Secretary  




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

2M COMPANY, INC., employer, and  
EMPLOYERS ASSURANCE COMPANY, surety,

Defendants/Appellants,

v.

MATTHEW ATKINSON,

Claimant/Respondent.

**SUPREME COURT NO. 45918**

**NOTICE OF COMPLETION**

TO: STEPHEN W. KENYON, Clerk of the Courts;  
Alan R. Gardner & Michael G. McPeck for the Appellant; and  
Bradford D. Eidam for the Respondents.

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 Appellants:  
Alan R. Gardner  
Michael G. McPeck  
PO BOX 2528  
Boise, ID 83701

Attorney for Respondent:  
Bradford D. Eidam  
PO BOX 1677  
Boise, ID 83701-1677

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.

**NOTICE OF COMPLETION (MATTHEW ATKINSON 45918) - 1**

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 16<sup>th</sup> day of May, 2018.



Assistant Commission Secretary

The signature is written in cursive over a circular stamp. The stamp contains the text "INDUSTRIAL COMMISSION" at the top and "STATE OF IDAHO" at the bottom, with a star in the center.

*ORIGINAL*

BRADFORD S. EIDAM, I.S.B. #2931  
BRADFORD S. EIDAM, PLLC  
300 E Mallard Drive, Suite 145  
Post Office Box 1677  
Boise, ID 83701-1677  
Telephone: (208) 338-9000  
Facsimile: (208) 343-2069  
Email Address: beidam@eidamlaw.com

2018 MAY 24 AM 10:14  
RECEIVED  
INDUSTRIAL COMMISSION

Attorneys for Respondent

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

|                              |   |                        |
|------------------------------|---|------------------------|
| MATTHEW B. ATKINSON,         | ) | I.C. No. 2017-008627   |
|                              | ) |                        |
| Claimant-Respondent,         | ) |                        |
| vs.                          | ) | CLAIMANT’S REQUEST FOR |
|                              | ) | ADDITION TO AGENCY’S   |
| 2M COMPANY, INC.,            | ) | RECORD                 |
|                              | ) |                        |
| Employer,                    | ) |                        |
| and                          | ) |                        |
|                              | ) |                        |
| EMPLOYERS ASSURANCE COMPANY, | ) |                        |
|                              | ) |                        |
| Surety,                      | ) |                        |
| Defendants-Appellants.       | ) |                        |
|                              | ) |                        |

TO: THE ABOVE-NAMED APPELLANTS AND THEIR ATTORNEYS,

ALAN R. GARDNER  
MICHAEL G. MCPEEK  
GARDNER LAW OFFICE  
P.O. BOX 2528  
BOISE, IDAHO 83701

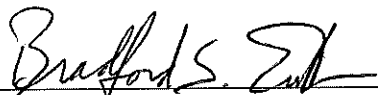
AND THE CLERK OF THE IDAHO INDUSTRIAL COMMISSION.

Counsel for Claimant received the above Agency's record in electronic format on Thursday, May, 17, 2018. Pursuant to Rule 29, Idaho Appellate Rules, Claimant requests the following addition to the record:

1. Claimant's Exhibit O. Pages 49 and 50 of the Reporter's Transcript reflect that an exhibit previously utilized at Mr. Atkinson's deposition was marked as Claimant's Exhibit O, identified and admitted in evidence at the Hearing.

Dated this 22<sup>nd</sup> day of May, 2018.

BRADFORD S. EIDAM, PLLC

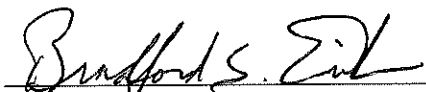
  
\_\_\_\_\_  
by Bradford S. Eidam,  
Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of May, 2018, I served a true and correct copy of the foregoing document, upon the person(s) named below, in the manner noted below:

Alan R. Gardner  
Michael G. McPeck  
Gardner Law Office  
P. O. Box 2528  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Facsimile

  
\_\_\_\_\_  
Bradford S. Eidam

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

2M COMPANY, INC., employer, and  
EMPLOYERS ASSURANCE COMPANY,  
surety,

Defendants/Appellants,

v.

MATTHEW ATKINSON,

Claimant/Respondent.

**SUPREME COURT NO. 45918**

**AGENCY RECORD**

---

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

Attorney for Appellants:

Alan R. Gardner  
Michael G. McPeck  
PO BOX 2528  
Boise, ID 83701

Attorney for Respondent:

Bradford D. Eidam  
PO BOX 1677  
Boise, ID 83701-1677