IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

FRANK ED HUNT and DEBORAH HUNT, as husband and wife,	)	
	)	**CASE NO. CV-02-01082**
Plaintiffs,	)	
	)	MEMORANDUM OPINION AND ORDER IN RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
vs.	)	
REGENCE BLUESHIELD OF IDAHO, and JOHN DOES' individually, JOHN DOE CORPORATIONS I through X, and JOHN BUSINESS ENTITIES I through X,	)	
Defendants.	)	

Defendant filed a Motion for Summary Judgment on the ground that a third party administrator of an insurance policy cannot be held liable for a bad faith claim brought by an insured. Motion denied.

Kenneth L. Pedersen and Jarom A. Whitehead, PEDERSEN & JACKSON, and Richard Whitehead, WHITEHEAD, AMBERSON & CALDWELL, attorneys for Plaintiffs Hunt.

Richard E. Hall and Kevin J. Scanlon, HALL, FARLEY, OBERRECHT & BLANTON, attorneys for Defendant Regence BlueShield of Idaho.

I

FACTUAL AND PROCEDURAL BACKGROUND

Frank Ed Hunt was employed by the Idaho State Department of Fish and Game. On April 10, 1997, he suffered a work-related injury. After the injury, Mr. Hunt underwent a series of surgeries. Eventually he underwent a surgery in December of 1999. Following that surgery, Mr. Hunt developed a condition that required the use of oxygen. Mr. Hunt's treating physician certified the medical necessity of stationary and portable oxygen for him on July 7, 2000, and on August 2, 2000.

At the time of these events, Mr. Hunt was insured under a health care insurance policy for employees of the State of Idaho. The policy was known as the State of Idaho Module 1 Insurance Policy ("the Policy"). In order to recover under the Policy, an application had to be made through Regence BlueShield of Idaho ("RBSI").

Initially, RBSI granted benefits to Mr. Hunt for oxygen for three months. Then the question became whether such benefits should be continued. RBSI denied continuing benefits related to Mr. Hunt's claim for oxygen. Mr. Hunt appealed pursuant to provisions in the Policy, but his appeals were denied.[1] After Mr. Hunt provided additional information, RBSI reversed its decision and approved payment to him of benefits covering all of the oxygen. That was, however, about one year later. Plaintiffs Hunt allege that they suffered damages as a result of the delay in payment.

On February 8, 2002, Plaintiffs Hunt filed their Complaint in the instant case. They alleged the following causes of action: (1) Bad Faith, (2) Breach of Contract, (3) Fraud, and (4) Intentional Infliction of Emotional Distress. Defendant Regence BlueShield of Idaho filed its Amended Answer on February 18, 2003. Thereafter, RBSI

[1] There were actually three appeals; each of the three appeals was denied.

filed a Motion for Summary Judgment. The Motion is supported by the Affidavit of Thomas Colosimo, who is the Chief Financial Officer for RBSI. In opposition to the Motion, Plaintiffs Hunt filed the Affidavits of Frank Ed Hunt and Jarom A. Whitehead. A copy of the Idaho Module I Insurance Policy was attached to the Affidavit of Clinton S. Coddington, which had been filed earlier. Both parties have submitted memorandums of law.

At a Hearing on the Motion for Summary Judgment, a number of issues were raised. At the conclusion of the Hearing, this Court ruled upon all of the issues except one.[2] The remaining issue is whether RBSI, acting as a third party administrator, can be held liable for a bad faith insurance claim.

In his Affidavit, Mr. Colosimo averred as to the relationship between the State of Idaho, RBSI, and the Idaho Module 1 Insurance Policy. Exhibits consisting of a brochure describing the health care plan and a press release were attached to the Affidavit of Jarom A. Whitehead.

RBSI has had a relationship with the State of Idaho since approximately 1975. Periodically, the State enters into a contract with RBSI. The State has opted to be "self-insured;" RBSI serves as the adminstrator.

The State sponsors various plans to provide health care benefits to its employees. In this case, the plan providing health benefits to Mr. Hunt was the Idaho Module 1 Insurance Policy. Pursuant to the contract between the State and RBSI, RBSI administers the Policy. That includes processing the day-to-day health care benefit claims. RBSI

[2] As alternative grounds for its Motion for Summary Judgment, RBSI had raised issues in addition to the issue addressed in this Memorandum Opinion. This Court concluded that public policy under ERISA was not applicable to justify entry of Summary Judgment. This Court also concluded that failure to exhaust administrative remedies did not apply in this case because RBSI eventually made payment so further review was not required.

formulates the insurance policies for the State, enacts policy guidelines, adjusts claims, makes benefit determinations, and implements the claims appeals procedure.

With certain exceptions for organ transplants, the State reimburses RBSI for any funds it uses to pay health care benefits for the employees of the State up to the annual contingency fund limitation. RBSI retains a fee for its services.

For the benefit year of July 1999 through June 2000, the State of Idaho paid $132.00 per member per month. RBSI retained $3.83 for its services. RBSI pays for claims from the balance of the funds remitted by the State. If the sum exceeds the balance, the State pays RBSI the "deficit;" if the sum of the claims is less than the balance, RBSI refunds the "excess."

The State, through its Department of Administration, has the ultimate authority. There is, however, an appeal process with appeals to RBSI before the insured can appeal to the State.

RBSI is pleased to have the contract with the State and works hard to continue its "partnership" with the State. RBSI continually improves the services provided to ensure that its customers "receive maximum value for their health care dollar." RBSI is described as "the state's leading health insurer, currently providing benefits, services and support to over 300,000 members. . . ." ***See*** Exhibit B to Affidavit of Jarom A. Whitehead.

II

STANDARDS FOR SUMMARY JUDGMENT

Rule 56, Idaho Rules of Civil Procedure, provides for summary judgment only where there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. In order to make that determination, the court must look to "the pleadings, depositions, and admissions on file, together with the affidavits, if any . . . ." ***Smith v. Meridian Joint School District No. 2***, 128 Idaho 714, 918 P.2d 583 (1996).

On a motion for summary judgment, the facts in the record are to be liberally construed in favor of the party opposing the motion. Where a jury has been requested, the party opposing the motion is to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. If the record contains conflicting inferences or if reasonable minds might reach different conclusions, a summary judgment must be denied. ***Idaho State Tax Commission v. Stang***, 135 Idaho 800, 25 P.3d 113 (2001); ***Roell v. City of Boise***, 130 Idaho 197, 938 P.2d 1237 (1997); ***Smith v. Meridian Joint School District No. 2, supra***.

If there are no genuine issues of material fact, the court will determine whether a party is entitled to judgment as a matter of law. ***Zumwalt v. Stephan, Balleisen & Slavin***, 113 Idaho 822, 748 P.2d 406 (Ct.App. 1987), ***rev. denied*** (1988).

III

DISCUSSION

In this case, a determination must be made as to whether or not a bad faith claim should extend to a third party administrator where there is no direct privity of contract between the administrator and the insured. In other words, could a special relationship exist between a third party administrator and an insured which would justify an extension of the duty of good faith and fair dealing owed by an insurer to include the third party administrator? The specific issue here is whether or not a third party administrator of an insurance policy, who acts like an insurance company by adjusting claims, determining

benefits, enacting policy guidelines, and implementing a claims appeal procedure, can be held liable on a bad faith claim by an insured.

On its Motion for Summary Judgment, Defendant Regence BlueShield of Idaho contends that there is no privity of contract nor any special relationship between RBSI and Mr. Hunt; therefore, according to RBSI, it cannot be held liable. RBSI points out that the only contract with RBSI in this case was one between the State of Idaho and RBSI. RBSI argues that the ultimate responsibility rested with the State, both for insurance funds and for payment of benefits.

An action for bad faith against an insurance carrier was first announced in ***White v. Unigard Mutual Insurance***, 112 Idaho 94, 730 P.2d 1014 (1986). In ***White***, the Idaho Supreme Court held that "there is a common law duty on the part of insurers to their insureds to settle first party claims in good faith and that a breach of this duty will give rise to an action in tort." ***White***, 112 Idaho at 96.

Initially, the ***White*** court recognized a duty of good faith and fair dealing, explaining that it is a duty independent of the insurance contract and independent of statute. It is a duty beyond that which the policy imposes; it is a duty imposed by law on an insurer to act fairly and in good faith in discharging its contractual duties. The question then became whether a breach of the duty would give rise to an independent action in tort. The ***White*** court distinguished the tort of bad faith from a tortuous breach of contract. The tort of bad faith is "a separate intentional wrong, which results from a breach of a duty imposed as a consequence of the relationship which is established by contract." ***White***, 112 Idaho at 97. The tort of bad faith provides a remedy for harm done to insureds even though there has been no breach of express contractual terms and where

contract damages would fail to adequately compensate the insureds. If an action in tort were not available, insurers would be encouraged to delay settlement. The action in tort provides an incentive for insurers to settle valid claims. Noting the disparity in bargaining power, the ***White*** court held that a claimant can bring an action in tort to recover for harm suffered when an insurer intentionally and unreasonably denies or delays payment on a claim. The ***White*** court went on to recognize the special relationship between the insurer and the insured, which has elements of public interest, adhesion, and fiduciary responsibility.

In conclusion, the Idaho Supreme Court stated as follows:

> The tort of bad faith of insurance contract . . . has its foundations in the common law covenant of good faith and fair dealing and is founded upon the unique relationship of the insurer and the insured, the adhesionary nature of the insurance contract including the potential for overreaching on the part of the insurer, and the unique, 'non-commercial' aspect of the insurance contract. Accordingly, we hold that there exists a common law tort action, distinct from an action on the contract, for an insurer's bad faith in settling the first party claims of its insured.

White v. Unigard Mutual Insurance, 112 Idaho at 100.

Since ***White*** was decided, a number of Idaho cases have addressed the issue of the tort of bad faith in the insurance context. In ***Hettwer v. Farmers Insurance Company of Idaho***, 118 Idaho 373, 797 P.2d 81 (1990), an injured motorist and his spouse brought an action against an allegedly negligent motorist and also the allegedly negligent motorist's automobile liability insurer as a party. The plaintiffs alleged a bad faith claim against Farmers Insurance. Thus, there was a third-party claim by an injured party against the insurer of the allegedly negligent party. The ***Hettwer*** court held that, absent explicit authorization, a party cannot bring a third-party claim against an insurer.

In ***Idaho State Insurance Fund v. Van Tine***, 132 Idaho 902, 908, 980 P.2d 566 (1999), an employee of the Idaho Department of Transportation sued the Department's surety, SIF, for bad faith in dealing with Van Tine's injuries. In workers' compensation matters, Van Tine was a third party to the relationship between the insured, which was the Idaho Department of Transportation, and its insurer, which was the SIF. Because he was a third party claimant, Van Tine could not maintain a bad faith action against the SIF.

In the recent case of ***Graham v. State Farm Mutual Automobile Insurance Company***, ___ Idaho ___, 67 P.3d 90 (April 3, 2003), Graham obtained a judgment against a party who had backed out of her driveway and collided with his vehicle. After he obtained the judgment, he brought an action against the tortfeasor's insurance carrier for breach of good faith and fair dealing because of the carrier's conduct. Graham sought a ruling that he could bring a direct action against the carrier for the tort of bad faith. The ***Graham*** court held that, in Idaho, there is no right for a third party to bring an action for the breach of good faith and fair dealing against the tortfeasor's insurance company.

See also Stonewall Surplus Lines v. Farmers Insurance Company, 132 Idaho 318, 971 P.2d 1142 (1998) (holding that a third party cannot directly sue an insurance company in an attempt to obtain the coverage allegedly due the insurer's policyholder); ***Black Canyon Racquetball v. Idaho First National Bank***, 119 Idaho 171, 804 P.2d 900 (1991) (refusing to extend the tort of bad faith to a debtor-creditor relationship and limiting the action for bad faith to the special relationship which exists between an insurer and the insured).

Relying upon the foregoing cases, RBSI argues that a party cannot maintain a claim for bad faith against an insurance company unless there was a contract between the party and the insurance company. Because there was no privity of contract between RBSI and Mr. Hunt, RBSI contends that it is entitled to Summary Judgment on the bad faith claim.

It must be noted that ***White*** stands for the proposition that first party insured may bring a cause of action for breach of the duty of good faith and fair dealing in an insurance relationship against an insurance company. ***Hettwer, Stonewall Surplus, Van Tine,*** and ***Graham*** all involved situations in which a third party was making a bad faith claim. ***Black Canyon Racquetball*** involved a debtor-creditor relationship rather than a special relationship arising in the context of insurance. In the instant case, Mr. Hunt is a first party claimant in an insurance case – he is not a third party making a bad faith claim in an insurance case nor is he attempting to make a bad faith claim as a debtor in a debtor-creditor situation.

In opposition to RBSI's Motion for Summary Judgment, Plaintiffs Hunt cite cases from other jurisdictions in which third party administrators of insurance policies were held liable for breaches of the duty of good faith and fair dealing.

A recent case addressing this issue is ***Cary v. United of Omaha Life Insurance Company***, 68 P.3d 462 (Colo. 2003). In ***Cary***, a city hired third party insurance administrators to run its health insurance program. Initially, the trial court and the Colorado Court of Appeals held that the third party administrators did not owe a duty of good faith and fair dealing to a claimant in the investigation and processing of an insurance claim because there was no contractual relationship between the administrators

and the insurance claimant. Reversing the lower courts' decisions, the Colorado Supreme Court stated as follows:

> the insurance administrators had primary control over benefit determinations, assumed some of the insurance risk of loss, understood many of the obligations and risks of an insurer, and ***had the power, motive, and opportunity*** to act unscrupulously in the investigation and servicing of the insurance claims. Under such circumstances, we hold that a special relationship existed between the administrators and the insured sufficient to establish in the administrator a duty to act in good faith. . . .
>
> Accordingly, we reverse the judgment of the court of appeals and remand this case for trial on the claimant's tort cause of action against the administrators for breach of their duty to act in good faith when investigating and servicing the insurance claims. (Emphasis added.)

Cary v. United of Omaha Life Insurance Company, 68 P.3d at 463-64.

The ***Cary*** court noted that the existence and scope of a tort duty is a matter of law. A number of factors are considered when determining whether a defendant owes a duty to a plaintiff under tort law. According to ***Cary***, the "question of whether a duty should be imposed in a particular case is essentially one of fairness under contemporary standards – whether reasonable people would recognize a duty and agree that it exists." ***Cary v. United of Omaha Life Insurance Company***, 68 P.3d at 465.

The ***Cary*** court also addressed exceptions to the contractual privity requirement. Insurance contracts are not ordinary commercial contracts. Every insurer owes its insured a non-delegable duty of good faith and fair dealing; a breach of that duty gives rise to a separate cause of action for the tort of bad faith. According to ***Cary***, the duty is non-delegable so that insurers cannot escape their duty by delegating tasks to third persons. In a typical insurance case, only the insurer owes the duty of good faith to its insured. When the actions of a third party claims administrator are similar enough to those typically performed by an insurance company, a special relationship exists

sufficient to justify the imposition of a duty of good faith. Thus, tort liability may be imposed for the breach of the duty even though there is no contractual privity between the defendant and the plaintiff. In part, the ***Cary*** court relied upon a previous exception to the privity requirement where the Colorado Supreme Court held that the provider of workers' compensation insurance owed a duty of good faith and fair dealing to an insured employer's employee. The ***Cary*** court also relied upon Colorado's statutory policy.

The ***Cary*** court concluded its review of this issue by stating that

> [w]hen a third-party administrator performs many of the tasks of an insurance company and bears some of the financial risk of loss for the claim, the administrator has a duty of good faith and fair dealing to the insured in the investigation and servicing of the insurance claim.

Cary v. United of Omaha Life Insurance Company, 68 P.3d at 469.

Another case addressing the factual situation involving a third party insurance administrator is ***Wolf v. Prudential Insurance Company***, 50 F.3d 793 (10th Cir. 1995).[3] In ***Wolf***, an insured under a self-funded health benefits plan for a church brought a lawsuit for bad faith against the plan administrator for refusal to pay for the insured's chemotherapy. The trial court ruled that the administrator, which was Prudential, could not be liable in a bad faith action because there was no contractual relationship. Reversing the trial court, the ***Wolf*** court focused upon the factual question of whether the administrator acted like an insurer such that there would be a "special relationship" between the administrator and the insured that could give rise to a duty of good faith.

In ***Wolf***, the administrator looked much like an insurer. One of Prudential's primary obligations was to investigate and service claims – an ordinary role for an

---

[3] In ***Wolf***, the plaintiffs brought suit against both the church annuity board and against the plan administrator. The plan administrator moved for summary judgment and the trial court granted summary judgment.

insurer. Although the church's annuity board had ultimate responsibility for the benefit determination, those determinations had to go through two levels of appeal where Prudential made the decisions. When losses reached a certain level, Prudential underwrote the entire risk, which created an increased liability to Prudential if the loss development was adverse. In ***Wolf***, the administrator had primary control over benefit determinations and assumed some of the risk of those determinations. Thus, the administrator undertook many of the obligations and risks of an insurer.

The ***Wolf*** court stated as follows:

> We therefore do not see Prudential as a 'stranger' to the insurance contracts in this case. It was contractually obligated to administer the plans, and its contractual obligation directly benefited plaintiffs as third-party beneficiaries of its agreements with the Annuity Board. The contractual obligation combines with the fact that Prudential's benefit determinations could at least indirectly affect its profits and losses to create a special relationship between Prudential and plaintiffs. In other words, on the facts as presented by plaintiffs, Prudential ***had the power, motive and opportunity*** to act unscrupulously. We believe that the Oklahoma Supreme Court would impose a duty of good faith on an entity in Prudential's position, for the same reasons it imposed the duty on 'true' insurers. We thus hold that as a matter of law, a plan administrator in Prudential's situation could be subject to the duty of good faith. Whether Prudential should be subject to that duty is a factual question that we leave to the district court. (Emphasis added.)

Wolf v. Prudential Insurance Company, 50 F.3d at 798.

See also Delos v. Farmers Ins. Group, Inc., 93 Cal.App.3d 642, 155 Cal.Rptr. 843 (1979) (management organization formed to render management services could be held liable for breach of the implied covenant of good faith and fair dealing although it was not a party to the insurance contract).

Relying upon these cases, Plaintiffs Hunt claim that they can bring a claim for bad faith against RBSI and that the question of whether or not there was a bad faith claim is a

question of fact that must be decided at a jury trial. The Hunts urge this Court to deny RBSI's Motion for Summary Judgment.

The first determination that must be made is whether or not, as a matter of law, the administrator of an insurance plan can be held liable for bad faith. If so, the next determination is whether or not the plan administrator in this particular case falls within the standards which would allow it to be held liable.

It is undisputed that there is no Idaho case on point. And, as RBSI points out, Idaho has been reluctant to extend liability for bad faith. ***White*** recognized the tort of bad faith in the context of a first party insured bringing an action against the insurer. Idaho cases such as ***Hettwer, Stonewall Surplus, Van Tine,*** and ***Graham*** refuse to recognize the tort, but they can be distinguished from the instant case in that they arose in the context of a third party bringing an action against an insurer. Likewise, ***Black Canyon Racquetball***, which refused to recognize the tort, can be distinguished because it arose in a different context. Here the Hunts are first party insureds who are bringing an action against an insurance plan administrator with regard to the servicing of their insurance policy.

It is also undisputed that there is no case from another jurisdiction that is precisely on point. Both ***Cary*** and ***Wolfe*** rely to a certain extent on law which is applicable in their particular jurisdictions.

After careful consideration, however, this Court finds that ***Cary*** and ***Wolfe*** provide guidance in this factual situation where there is a plan administrator who allegedly breached the duty of good faith and fair by failing to pay benefits under an insurance policy. Even though there is no direct contractual relationship, the

administrator may act like an insurer such that there is a special relationship between the plan administrator and the insured which is sufficient to justify the imposition of a duty of good faith on the administrator when it is investigating and servicing the insurance claims. The duty is imposed only where the plan administrator, however, has "the power, motive, and opportunity" to act unscrupulously. Thus, the administrator may be subject to an action for the tort of bad faith if the administrator undertook many of the obligations and risks of an actual insurer.

In the instant case, RBSI made the determinations as to Mr. Hunt's eligibility for benefits. Benefits were granted for a limited time and then denied. Mr. Hunt appealed to RBSI and RBSI decided the outcome of those appeals. RBSI designed the plan and wrote the policy. Although it did not have ultimate control, RBSI had primary control over benefit determinations. Thus, it could be found that RBSI had the "power" that is required if a duty is to be imposed.

Furthermore, in the instant case, RBSI was pleased to receive the contract to act as the administrator for the State of Idaho's health plans. This contract is valuable to RBSI. RBSI receives the contract when it acts in an effective and economical manner. RBSI works to continually improve the services it provides to ensure that their customers receive maximum value for their health care dollar. There is a financial incentive for RBSI when it is servicing claims. Additionally, the State reimburses RBSI for any funds it uses to pay health care benefits for the employees of the State, but only up to the annual contingency fund limitation. Thus, it could be found that RBSI had the "motive" that is required if a duty is to be imposed.

Finally, in the instant case, Mr. Hunt made his application to RBSI for medical benefits and appealed to RBSI as instructed. RBSI made the initial determinations on the payment of benefits and also the decisions on appeal. Thus, it could be found that RBSI had the "opportunity" that is required if a duty is to be imposed.

In conclusion, there is a duty on the part of an insurance plan administrator to act in good faith and failure to do so may subject the administrator to an action for the tort of bad faith as a matter of law. As to whether RBSI should be subject to that duty, there is a factual question. Viewing the facts most favorably to the Hunts, it could be found that RBSI was subject to that duty. Those factual questions regarding a special relationship preclude a grant of RBSI's Motion for Summary Judgment.

The determination here is further grounded in the general public policy regarding insurance contracts. First, the rationale behind recognition of a tort of bad faith applies to plan administrators as well as to insurers. As noted in ***White***, the tort of bad faith is founded upon the unique relationship between an insured and the insurer in insurance cases, the adhesionary nature of the insurance contract including the potential for overreaching on the part of the insurer, and the "non-commercial" aspect of the insurance contract. Each of these items applies to an insurance plan administrator – there is a unique relationship between the insured and the plan administrator, the nature of insurance is that it is adhesionary and includes the potential for overreaching on the part of the plan administrator, and there is a "non-commercial" aspect to the relationship between the insured and the plan administrator.. According to ***Idaho Code § 41-113(2)***,

> [t]he business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all

> concerned in insurance transactions, rests the duty of preserving the integrity of insurance.

While there may not be privity of contract, there is a special relationship between the insured and the plan administrator.

Second, an insurance arrangement which includes a plan administrator should be held to the same standards as any other type of insurance relationship. In this case, the State has opted to be self-insured with the assistance of a plan administrator. A strict privity of contract rule would allow an insurance plan administrator to act with impunity in the service of its own self-interest. If a plan administrator is not held to the same standards as any other insurer who acts as its own administrator, there would soon be attempts to avoid responsibility by employing a third party administrator.

Third, insureds may not make the fine distinction between the insurer and the plan administrator. In fact, it is likely that many individuals look to the entity to which they send their claims as their insurer. Reasonable people could recognize that a plan administrator owed an insured a duty to act in good faith in servicing claims and could agree that such a duty exists.

Finally, a duty to act in good faith may be imposed upon a plan adminstrator who conducts business like an insurer, including undertaking many of the obligations and risks of an actual insurer. At the Hearing on RBSI's Motion for Summary Judgment, counsel for Plaintiffs Hunt spoke of this issue in terms which are easy to understand as follows: "If it looks like a duck, walks like a duck, and quacks like a duck, it is a duck." In this case, RBSI conducted business like an insurer – it adjusted claims, determined benefits, enacted policy guidelines, and implemented a claims appeal procedure. It undertook many of the obligations and risks that an actual insurer would take. Therefore,

RBSI should be subject to the same duty to act in good faith and to liability for the tort of bad faith.

V

ORDER

Based on the foregoing discussion, it is hereby ORDERED that the Motion for Summary Judgment by Defendant Regence BlueShield of Idaho be and the same is hereby denied as set forth herein.

DATED this _____ day of June, 2003.

____
John Patrick Luster
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MEMORANDUM OPINION AND ORDER IN RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was mailed, postage prepaid, sent by interoffice mail, or sent by facsimile transmission, on the _____ day of June, 2003, to the following:

Kenneth L. Pedersen and Jarom A. Whitehead
PEDERSEN AND JACKSON
P. O. Box 2349
Twin Falls, ID 83303-2349
FAX: 208-734-2772

Richard Whitehead
WHITEHEAD, AMBERSON & CALDWELL
P. O. Box 1319
Coeur d'Alene, ID 83816-1319
FAX: 208-765-6895

Richard E. Hall and Kevin J. Scanlon
HALL, FARLEY, OBERRECHT & BLANTON
P. O. Box 1271
Boise, ID 83701
FAX: 208-395-8585

ALL FIRST DISTRICT COURT JUDGES

The Honorable Don L. Swanstrom
Trial Court Administrator
Interoffice Mail

DANIEL J. ENGLISH
Clerk of the District Court

By: ________________________
Deputy Clerk