CASE NO. 6148 CRB-3-16-11 CLAIM NO. 300105369	: COMPENSATION REVIEW BOARD
KONSTANTIN KATSOVICH CLAIMANT-APPELLEE	: WORKERS COMPENSATION COMMISSION
v.	: OCTOBER 4, 2017

HERRICK & COWELL COMPANY, INC.
EMPLOYER

and

CBIA COMP SERVICES/
FUTURECOMP
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by John J. D'Elia, Esq., D'Elia, Gillooly, DePalma, L.L.C., 700 State Street, New Haven, CT 06511.

The respondents were represented by Colette Griffin, Esq., and Ariel MacPherson, Esq., Howd & Ludorf, L.L.C., 65 Wethersfield Avenue, Hartford, CT 06114-1190.

This Petition for Review from the October 20, 2016 Finding and Award of Jack R. Goldberg, the Commissioner acting for the Third District, was heard April 21, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents have appealed from a Finding and Award issued on October 20, 2016, by Commissioner Jack R. Goldberg. The respondents argue that the claimant failed to demonstrate that he met the eligibility requirements for temporary partial disability benefits in accordance with General Statutes § 31-308 (a).[1] The claimant argues that the issue of the adequacy of the claimant's work searches is not dispositive of the determination as to whether permanent partial disability benefits should be awarded because work searches are not a statutory prerequisite to awarding such benefits. On appeal, we generally defer to the discretion of a trial commissioner in determining eligibility for benefits. It is a factual determination as to whether the claimant was ready, willing and able to work within his restrictions. We do not believe, after reviewing the record, that as a matter of law, the trial commissioner could not have awarded General Statutes § 31-308 (a) benefits to the claimant. Accordingly, we affirm the Finding and Award.

[1] General Statutes § 31-308 (a) provides: "(a) If any injury for which compensation is provided under the provisions of this chapter results in partial incapacity, the injured employee shall be paid a weekly compensation equal to seventy-five per cent of the difference between the wages currently earned by an employee in a position comparable to the position held by the injured employee before his injury, after such wages have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act in accordance with section 31-310, and the amount he is able to earn after the injury, after such amount has been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act in accordance with section 31-310, except that when (1) the physician or the advanced practice registered nurse attending an injured employee certifies that the employee is unable to perform his usual work but is able to perform other work, (2) the employee is ready and willing to perform other work in the same locality and (3) no other work is available, the employee shall be paid his full weekly compensation subject to the provisions of this section. Compensation paid under this subsection shall not be more than one hundred per cent, raised to the next even dollar, of the average weekly earnings of production and related workers in manufacturing in the state, as determined in accordance with the provisions of section 31-309, and shall continue during the period of partial incapacity, but no longer than five hundred twenty weeks. If the employer procures employment for an injured employee that is suitable to his capacity, the wages offered in such employment shall be taken as the earning capacity of the injured employee during the period of the employment."

Commissioner Goldberg reached the following factual findings in the Finding and Award. The hearing involved the claimant's entitlement to workers' compensation benefits for an accepted neck injury sustained on March 5, 2014. The claimant appeared with a certified Russian language interpreter. He testified that he was operating a CNC machine when he attempted to push a part into position and felt a sharp pain in his left shoulder blade. The claimant did not report this injury, but called in sick the next day. While the respondents initially contested the claim, they have subsequently accepted the injury but are contesting the extent of injury. The day after the injury, the claimant treated with his personal physician, Karen Brown, M.D., who initially prescribed physical therapy and subsequently referred the claimant to a neurosurgeon, Philip Dickey, M.D.

Dr. Dickey ordered an MRI on March 25, 2014, which showed a C6-C7 protrusion on the left side with lesser changes elsewhere. Dr. Dickey noted the claimant had not worked subsequent to the workplace accident. Dr. Dickey opined that the claimant would be a candidate for an anterior cervical discetomy and fusion if he did not improve. On April 22, 2014, Dr. Dickey's note indicated the claimant had improvement in his cervical radiculopathy but the claimant said he could not work at that time and the doctor instructed the claimant not to return to work until he could perform his job fully. On March 5, 2015, Dr. Dickey said the claimant had not returned to work and was not capable of performing his prior heavy labor job but was probably capable of light duty.

On September 22, 2015, Dr. Dickey said the claimant did not want to consider surgery at that time. He determined the claimant had reached maximum medical improvement and should receive a permanent partial disability rating of the cervical spine of 12 (twelve) percent. He said the claimant could work regularly but with a twenty-five

pound lifting restriction. He believed the claimant was totally disabled for about six weeks from March 25, 2014, through the end of April 2014, but he was not sure as the injury was not treated as a workers' compensation matter.

The respondents had their expert witness, Stephen C. Lange, M.D., examine the claimant on June 17, 2015, and Dr. Lange was subsequently deposed. Dr. Lange said that the claimant's wife assisted him in explaining things during the RME, although the doctor had no difficulty talking with the claimant in English. Dr. Lange described Dr. Dickey's work status opinion as "open ended" given that the claimant was advised to return to work when he felt up to it. Dr. Lange agreed with Dr. Dickey that a cervical discectomy and fusion would be reasonable and necessary medical treatment. Dr. Lange concurred with Dr. Dickey's 12 (twelve) percent permanent partial disability rating and opined that the claimant was at maximum medical improvement as of June 17, 2015. Dr. Lange believed the claimant had a work capacity and was not totally disabled. He further said the MRI report showed severe pinching on the claimant's left side and the claimant's left-sided symptoms correlated with the report.

Two principals of the claimant's employer, David and Margaret Holbrook, also testified at the formal hearing. Ms. Holbrook, the firm's office manager, testified that when the claimant was hired, he was not fluent in English and often called his wife for translations or clarification. The claimant became more at ease with English over the years and conversed with her. She said the claimant had not returned to work at the firm before it closed for economic reasons on April 30, 2015. Prior to that point, Ms. Holbrook said she had not provided the claimant with information regarding a light-duty work policy, although the firm had posted the required workers' compensation

information. Mr. Holbrook, the firm's vice president of manufacturing, testified that the claimant was not offered light duty. Only one prior employee had been offered light-duty work, and that person had to routinely lift forty pounds. Mr. Holbrook said that by April 2015, only two employees were still working for the firm and neither was performing light-duty office work. Commissioner Goldberg also noted that Commissioner Jodi Gregg had previously awarded the claimant benefits under a "§ 31-308a Order" on April 29, 2016, for fourteen weeks at $400 per week.

Based on this record, the trial commissioner found the claimant was a credible witness on the issues of not having been offered light duty by the employer and not being aware that work searches were required to obtain temporary partial disability benefits. The commissioner also found the claimant could speak English, albeit not fluently. The commissioner found Mr. and Mrs. Holbrook credible on the issue that the claimant was not offered light duty after his injury. He further found Dr. Dickey's medical opinions persuasive, as well as the opinion of Dr. Lange that the claimant had reached maximum medical improvement on June 17, 2015. The claimant had a permanent partial disability rating of 12 (twelve) percent of the cervical spine as of that date.

The commissioner found the claimant sustained a compensable cervical spine injury on March 5, 2014, and was temporarily totally disabled due to that injury from March 25, 2014, until April 30, 2014. The commissioner found the claimant was temporarily partially disabled from May 1, 2014, until June 16, 2015. The issue of work searches was discussed, as the commissioner found the claimant did not perform work searches between May 1, 2014, and May 4, 2015 but did perform work searches between May 5, 2015 and September 22, 2015. Conclusion, ¶ l. Given that no evidence was

presented relative to the claimant's wage rate, the commissioner could not establish a compensation rate and he ordered the parties to ascertain this amount and present it to the commission.

The respondents filed a Motion to Correct. The motion sought to add findings that the claimant failed to meet his burden to seek alternative employment in order to qualify for temporary partial disability benefits. It also sought to add findings that the claimant failed to seek light-duty work from the respondent and sought to modify the findings regarding the medical testimony presented. The trial commissioner denied this motion in its entirety and the respondents have pursued this appeal.

The respondents' appeal focuses on their position that the claimant failed to prove he was entitled to temporary partial disability benefits pursuant to General Statutes § 31-308 (a). The respondents also challenge the trial commissioner's reliance on Dr. Dickey's medical opinion as a basis for awarding the claimant temporary total disability benefits pursuant to General Statues § 31-307. The claimant believes that the record at the formal hearing was sufficient to support the trial commissioner's decision to award these benefits. We find the claimant's argument more persuasive.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the

law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing & Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We will deal first with the respondents' averment that the commissioner's decision to award the claimant temporary total disability benefits pursuant to General Statutes § 31-307 for any period constitutes reversible error. The respondents argue that Dr. Dickey offered inconsistent opinions as to the claimant's level of disability and the doctor's opinion that the claimant was totally disabled was not contemporaneous with the period of disability. Therefore, they argue Dr. Dickey's opinion "lacks credibility." Respondents' Brief, p. 24. We are not persuaded by this argument, in part because the respondents themselves pointed out that Dr. Dickey had offered credible opinions on a variety of other issues. See Respondents' Herrick & Cowell Company, Inc. and CBIA Comp Services/FutureComp's Proposed Findings of Fact and Dismissal, ¶¶ AA and CC, dated September 9, 2016.

We also note that the respondents offered no objection to the admission of Dr. Dickey's reports, see May 2, 2016 Transcript, p. 5, and did not avail themselves of the opportunity to depose Dr. Dickey. Under these circumstances, the trial commissioner could rely on Dr. Dickey's reports and draw whatever conclusions were reasonable from his opinions. See Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007). This

board has not been supportive of litigants who, on appeal, have attempted to "cherry pick" from an expert's opinion to reach a conclusion differing from that of the trial commissioner. See Stackpole v. Stamford, 6062 CRB-7-15-12 (November 17, 2016), appeal pending, A.C. 39872, and Williams v. Bantam Supply Co., Inc., 5132 CRB-5-06-9 (August 30, 2007).

As we pointed out in Stackpole, our role on appeal is to determine whether the medical evidence, when viewed in its totality, supports the outcome reached by the trial commissioner. We note that Dr. Dickey first examined the claimant within three weeks of his initial injury. In his March 25, 2014 report, Dr. Dickey states that the claimant "has not worked since the date of the injury" and does not suggest he had a work capacity. Claimant's Exhibit B. The April 22, 2014 report indicates that Dr. Dickey told the claimant not to return to work until he felt he could perform his job fully. The May 5, 2015 report contains the first reference by Dr. Dickey to the claimant's light-duty capacity, in that the doctor indicated that the claimant "probably has been capable of light activity." Id. Viewed in conjunction with the prior reports, Dr. Dickey's September 22, 2015 report opining the claimant "was probably completely temporarily disabled" through the end of April 2014 supports a finding that the claimant was totally disabled within the meaning of General Statutes § 31-307, particularly as, despite the contention of the respondents, Dr. Dickey opined "to a reasonable degree of medical certainty." Id. To reach a differing conclusion would constitute a return to the "magic words" standard rejected in Struckman v. Burns, 205 Conn. 542 (1987).

We find that appellate precedent concerning the standards for awarding benefits pursuant to General Statutes § 31-307 supports the result in this case. We note that in

O'Connor v. Med-Center Home Health Care, Inc., 140 Conn. App. 542 (2013), the respondents argued that the medical evidence in that case did not warrant the award of temporary total disability benefits and the Appellate Court actually found this argument meritorious. Id., at 549-550. Nonetheless, in O'Connor, the Appellate Court affirmed the award of temporary total disability benefits to the claimant, citing Bode v. Connecticut Mason Contractors, The Learning Corridor, 130 Conn. App. 672 (2011) as authority for the proposition that a trial commissioner is permitted to weigh both medical evidence and lay testimony in determining whether a claimant was totally disabled.

> In Bode, this court explained that a medical determination of total disability is merely one way a claimant can establish total incapacity to work, and one of many types of evidence the commissioner may consider in making this finding. "[I]n order to receive total incapacity benefits … a plaintiff bears the burden to demonstrate a diminished earning capacity by showing either that she has made adequate attempts to secure gainful employment *or* that she is truly unemployable…. Whether the plaintiff makes this showing of unemployability by demonstrating that she actively sought employment but could not secure any, or by demonstrating through nonphysician vocational rehabilitation expert or medical testimony that she is unemployable … as long as there is sufficient evidence before the commissioner that the plaintiff is unemployable, the plaintiff has met her burden…." (Citations omitted; emphasis in the original; internal quotation marks omitted.)

O'Connor, supra, 553-554.

Based on the "totality of the factors" standard delineated in Romanchuk v. Griffin Health Services, 5515 CRB-4-09-12 (October 20, 2010), we believe the trial commissioner clearly could award the claimant temporary total disability benefits for the period immediately subsequent to the March 5, 2014 injury. We therefore turn to the claim for temporary partial disability benefits for the period in which the claimant cannot establish total disability. The respondents challenge the award of benefits pursuant to

General Statutes § 31-308 (a) for periods during which the claimant did not conduct work searches, and further challenge the reliance by the trial commissioner on the work searches which were presented.

The respondents offer a due process challenge to the admission of the job searches presented by the claimant which did not cover the entire period of his disability from work. The job searches were presented as an exhibit to the commissioner and admitted to the record over the objection of respondents' counsel. May 2, 2016 Transcript, pp. 5-6. Counsel objected on the basis that she had not seen the documents prior to the hearing. Id. On appeal, the respondents argue that pursuant to Volmut v. General Electric Company, 5439 CRB-4-09-2 (April 7, 2010), the commissioner's decision to admit the job searches constitutes a due process violation which rises to the level of reversible error. We have reviewed Volmut and do not find that case on point.

In Volmut, this board stated that "although the respondents introduced the surveillance DVD, they did not produce the investigator responsible for filming the footage, apparently because she was recuperating from an automobile accident and was unable to travel to Connecticut from her home in Massachusetts." Id. In the present case, the claimant was available to be cross-examined and to verify the validity of whatever documentary evidence he presented. We also note that in Volmut, "while the admission of the unauthenticated DVD constituted error, it does not rise to the level of reversible error under the particular circumstances of this claim." (Emphasis in the original.) Id.

We find the analysis in Deleon v. Walgreens, 5568 CRB-4-10-6 (May 13, 2011), more cogent than Volmut. In DeLeon, the claimant asserted error when a trial

commissioner relied on an allegedly biased witness. We cited Ghazal v. Cumberland Farms, 5397 CRB-8-08-11 (November 17, 2009), in support of the claimant's right to depose the witness prior to the trial commissioner acting on the witness's opinions. Since the claimant in DeLeon did depose the respondents' expert witness, "the due process concerns we identified in Ghazal were clearly addressed by the trial commissioner and the claimant had a full and fair opportunity to challenge the opinions of the expert witness." DeLeon, supra. We therefore find the respondents' due process arguments unpersuasive.

The respondents also argue that on a substantive basis, it was error to award the claimant benefits pursuant to General Statutes § 31-308 (a). The respondents argue that the trial commissioner applied an incorrect standard in granting this award, noting in part the findings in Conclusions, ¶¶ c and m, which determined that the claimant was unaware of his obligation to seek work within his capacities in order to qualify for benefits. They cite Gelinas v. P & M Mason Contractors, Inc., 5567 CRB-8-10-6 (June 7, 2011) and Shepard v. Wethersfield Offset, Inc., 98 Conn. App. 682 (2006), *cert. denied*, 281 Conn. 911 (2007), for the position that the claimant had the burden of proving his entitlement to temporary partial benefits and the claimant's failure to seek employment after his injury demonstrates that he failed to do so. We acknowledge that this is the applicable legal standard. We are not persuaded, however, that the claimant in this case could have failed to persuade a reasonable fact finder that he was qualified for General Statutes § 31-308 (a) benefits.

Before examining the substantive elements of this case, we want to specifically note that the legal standard for temporary partial disability benefits pursuant to General

Statutes § 31-308 (a) is **not** based on an "ignorance of the law" standard. Were we to believe that the sole basis for awarding the claimant benefits herein was reliant on such an interpretation of law, we would vacate the award.[2] A claimant cannot excuse away his or her failure to comply with our legal requirements due to an alleged failure to understand our requirements. Such an approach would essentially constitute an impermissible shifting of the burden of persuasion away from the claimant. On the other hand, the primary argument presented by the respondents against the award of General Statutes § 31-308 (a) benefits is based on the failure of the claimant to perform job searches. It has been long-standing precedent that it is not an absolute requirement for a claimant to perform job searches in order to receive temporary partial disability benefits. See Shimko v. Ferro Corp., 40 Conn. App. 409 (1996).

Instead, when a claimant seeks temporary partial disability benefits without having performed a job search, a trial commissioner must conduct a factual determination of the individual situation to determine whether the claimant was unable to obtain work within his restrictions. This board discussed this situation at some length in Jamieson v. State/Military Department, 5888 CRB-1-13-9 (August 15, 2014).

> As the Appellate Court pointed out in Shepard v. Wethersfield Offset, 98 Conn. App. 682 (2006) "[t]he burden of proving entitlement to benefits under § 31-308(a) rests on the claimant . . . ." Id., 687. We note that in Shimko, supra, while the Appellate Court vacated a finding that the claimant failed to qualify for § 31-308(a) G.G.S. benefits, it remanded the case to ascertain if suitable work for the claimant existed in his locality. Id., 414-415. The claimant needed to establish to the trial commissioner's satisfaction that he sought employment that was within his limitations in order to qualify for temporary partial disability benefits. In Findings, ¶ 20, the trial commissioner found that the claimant was not disabled from working as a fire

[2] We take specific issue with elements of Conclusions, ¶¶ c and m, which were inartfully drafted by the trial commissioner.

dispatcher. The trial commissioner further found the claimant did not attempt to find employment as a fire dispatcher, or in any other occupation he could reasonably pursue during the period now under dispute. The commissioner's conclusion that the claimant did not seek employment within his limitations was therefore supported by the subordinate findings on the record.

Notwithstanding the claimant's reliance on the Shimko decision, we find no precedent construing § 31-308(a) C.G.S. that suggests that if a claimant cannot return to his prior occupation for medical reasons that he is not obligated to seek alternative employment within his limitations to qualify for benefits. Nor do we find any precedent that limits an injured employee to seeking only light duty work with his employer in order to qualify for benefits. While the unavailability of light duty work from an employer may weigh on a commissioner's decision, it is not dispositive of the issue. We also do not find any precedent that states that as a matter of law, medical treatment intended to restore a claimant to his prior job is a substitute to seeking alternative employment within a claimant's limitation.

Subsequent to the Appellate Court's decision in Shimko we have reached a number of decisions as to the impact the absence of job searches has on a claimant's bid for § 31-308(a) C.G.S. benefits. We have noted that the specific circumstances of each case govern whether it was reasonable for a claimant to perform job searches, and the vigor and thoroughness of such job searches is an issue to be considered by the trial commissioner. See Fountain v. Coca Cola Bottling Co., 5328 CRB-1-08-3 (February 18, 2009). In Fountain, the respondent appealed an award to the claimant asserting he had not made a reasonable effort to secure employment within his limitations. We affirmed the award as "[w]hether a claimant has satisfied the statutory criteria for § 31-308(a) wage differential benefits is a factual determination for the trial commissioner. Wright v. Institute of Professional Practice, 13 Conn. Workers' Comp. Rev. Op. 262, 1790 CRB-3-93-8 (April 18, 1995)." Id. On the other hand in Gelinas v. P & M Mason Contractors, Inc., 5567 CRB-8-10-6 (June 7, 2011) the trial commissioner did not find the claimant had made sufficient efforts to secure available employment, and we affirmed a denial of § 31-308(a) C.G.S. benefits. The claimant failed to persuade the trial commissioner that he should be excused from job searches in this matter. We do not find the trial commissioner's decision that the claimant failed to prove his entitlement to § 31-308(a) benefits was arbitrary and capricious.

Id.

In the present case, unlike the situation in Jamieson, the claimant was an older employee who had worked for an extensive amount of time in a manufacturing occupation for which he did not receive medical clearance to return. Unlike the fire dispatcher position identified by the trial commissioner in Jamieson, in the present matter, the trial commissioner did not identify a specific job which the claimant could have performed but chose not to obtain. We also note that the claimant herein had limitations with the English language. A claimant's skill level and fluency in the English language is a relevant consideration in determining employability, Ciaglia v. ITW Anchor Stampings, 5440 CRB-5-09-3 (March 2, 2010), and commissioners cannot avert their eyes from the age of the claimant. Romanchuk, supra. As we noted in Dzamko v. Danbury, 4588 CRB-7-02-11 (November 26, 2003), "[a] commissioner may find that although a claimant has a theoretical light duty capacity, other factors and restrictions may render an employment search futile." Id., *citing* Hidvegi v. Nidec Corp., 3607 CRB-5-97-5 (June 15, 1998). We believe the commissioner, after reviewing the totality of the circumstances, could have reached such a determination in this case.

We reach this decision in part because we can factually distinguish the authority relied upon by the respondents in this case. For instance, in Shepard, supra, the claimant found another job which paid him substantially the same amount as his prior job; hence, there were no lost earnings which would have established a basis to award General Statutes § 31-308 (a) benefits. In Gelinas, supra, the claimant was fired from a light-duty job and then did not find another position. The trial commissioner in that case found that the claimant had not made a sufficient effort to earn money at a job within his limitations.

The respondents also argue that Bennett v. Wal-Mart Stores, 4939 CRB-7-05-5 (May 15, 2006), supports vacating the claimant's award. We note that in Bennett, the claimant gave no notice that she was seeking temporary partial disability benefits in addition to temporary total disability benefits and, accordingly, the trial commissioner made no findings reflecting that the claimant was willing to seek work within her restrictions. As a result, we believed due process required this matter to be remanded for further proceedings. In the present matter, temporary partial disability benefits were always an issue under consideration at the formal hearing and, therefore, we do not believe a remand would be appropriate.

The respondents also argue that the trial commissioner erred on the issue of whether the claimant's employer offered the claimant light duty. They argue that the trial commissioner should have granted corrections supportive of that finding. We may infer that as the trial commissioner denied these proposed findings, he did not find persuasive the testimony in support of these findings. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008). We note that the record contains numerous references to the fact that the claimant's employer was a small manufacturer with limited opportunities for light duty and the firm would soon be winding up its operations. See Findings, ¶¶ 15, 21 and 24. Our tribunal has held that in cases where there is equivocal testimony regarding whether light duty was offered to a claimant, "it is not the place of this board to substitute its own inferences for those of the trial commissioner." Thomas v. Greenwich, 4697 CRB-7-03-7 (August 10, 2004). While the respondents correctly point out that Thomas stands for the principle that the respondents do not need to prove they offered light duty to the claimant, the totality of the circumstances in the present matter supports

the trial commissioner's determination that such work was not a viable option for the claimant.

As we pointed out in Gelinas, supra, whether a claimant has met his burden of proof for an award of benefits pursuant to General Statutes § 31-308 (a) is a "quintessentially factual issue." Id. The determination of whether a claimant should be awarded General Statues § 31-307 benefits is equally driven by the facts. In a case such as the present matter, in which we are not persuaded reversible legal error has occurred, we must defer to the determination of the trial commissioner.

Accordingly, we affirm the Finding and Award.

Commissioners Christine L. Engel and Daniel E. Dilzer concur in this opinion.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 4th day of October 2017 to the following parties:

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