

## **Perkins, Clifford, Dec'd**

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### **COVERAGE AND EXCLUSIONS**

#### **Reciprocity agreements**

Worker hired by an Oregon corporation and transported to Washington where he was killed while harvesting corn, was not covered by Washington's Industrial Insurance Act. Under the terms of the reciprocity agreement permitted by RCW 51.12.120(6) and RCW 51.04.020(9) the worker was an Oregon employee, "temporarily" employed in Washington, and therefore subject to Oregon's Workers' Compensation Law. ...*In re Clifford Perkins, Dec'd, BIIA Dec., 89 2047 (1990)*

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: CLIFFORD A. PERKINS, DEC'D ) DOCKET NO. 89 2047 & 89 2247**  
2 )  
3 )  
4 **CLAIM NO. K-869292 ) DECISION AND ORDER**  
5

6 APPEARANCES:  
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8 Claimant, Clifford A. Perkins, Dec'd., by  
9 Boettcher, LaLonde, Kleweno, Rutledge & Jahn, P.S., per  
10 Todd M. Rutledge  
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12 Employer, Brittany Farming Company, by  
13 Russell Krey, Human Resource Director, and  
14 Rolland, O'Malley, and Williams, P.S., per  
15 Thomas O'Malley  
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17 Department of Labor and Industries, by  
18 The Office of the Attorney General, per  
19 Steve LaVergne, Paralegal and Jeffrey L. Adatto and Margaret M. Bichl, Assistants  
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21 The appeal assigned Docket No. 89 2247 is an appeal filed on behalf of claimant, Clifford  
22 Perkins, deceased, on May 15, 1989 from an order of the Department of Labor and Industries dated  
23 March 28, 1989 which rejected Mr. Perkins' claim for benefits for the reason that Mr. Perkins was an  
24 Oregon worker and was not covered under the industrial insurance laws of the State of Washington at  
25 the time of his injury. **AFFIRMED.**  
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28 The appeal assigned Docket No. 89 2047 is an appeal filed by Mr. Perkins' surviving widow,  
29 Julie M. Perkins, on May 15, 1989 from an order of the Department of Labor and Industries dated  
30 March 28, 1989 which rejected her claim for spouse and dependent benefits for the reason that Mr.  
31 Perkins was an Oregon worker and was not covered under the industrial insurance laws of the State  
32 of Washington at the time of his fatal injury. **AFFIRMED.**  
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36 **PROCEDURAL AND EVIDENTIARY MATTERS**  
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38 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
39 and decision on a timely Petition for Review filed by the employer to a Proposed Decision and Order  
40 issued on March 21, 1990 in which both orders dated March 28, 1989 were reversed and the matters  
41 remanded to the Department with direction to accept the claim of Clifford Perkins, deceased, and the  
42 claim of Julie M. Perkins, surviving spouse and of the dependent beneficiaries.  
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1 Under RCW 51.52.104, we extended the time for filing Petitions for Review only to May 7,  
2 1990. The Department of Labor and Industries filed its Petition for Review on May 16, 1990. That  
3 Petition for Review was untimely and is insufficient to establish further jurisdiction of this Board or the  
4 courts. Only the employer's Petition for Review is properly before us.  
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7 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
8 prejudicial error was committed and said rulings are hereby affirmed.  
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### 10 **DECISION**

11 The issues presented by this appeal and the evidence presented by the parties are adequately  
12 set forth in the Proposed Decision and Order. We have granted review because, under the reciprocity  
13 agreement between Oregon and Washington, the record of proceedings requires a finding that Mr.  
14 Perkins was an Oregon worker not covered under the industrial insurance laws of the State of  
15 Washington at the time of his death. Accordingly, the Department orders under appeal must be  
16 affirmed.  
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19 The facts presented in this appeal are not significantly disputed. It has been established that  
20 on or about August 4, 1987 Clifford A. Perkins was hired by Brittany Farms, an Oregon Company  
21 engaged in the business of harvesting crops. Brittany Farms is located in Milton- Freewater, Oregon  
22 which is approximately five to ten miles from the Washington-Oregon border. Brittany Farms does not  
23 own the farmland or the crops harvested; rather, Brittany Farms contracts with farm owners in  
24 Washington and Oregon to harvest and remove the crops from their fields. These harvested crops are  
25 then sold to Brittany Farms' sister company, Smith Foods, for processing.  
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28 Mr. Perkins was hired by Brittany Farms (hereafter "Brittany") during the corn harvest and  
29 began work as a corn loader. The corn loader works in the field directing the harvesting equipment  
30 drivers and picking up any stray corn that falls from the equipment.  
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33 All the harvest workers, including Mr. Perkins, checked into work at the Brittany operation in  
34 Milton-Freewater, Oregon. The workers then took a crew bus to the field to be harvested. During the  
35 1987 corn harvest, all the corn fields were located in the State of Washington. At the end of each shift  
36 the crew bus would return the harvest workers to the plant in Milton-Freewater.  
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39 On the night of September 24, 1987 Clifford Perkins died in an industrial accident. At the time  
40 of the accident he was working for Brittany harvesting a corn field that was located in the State of  
41 Washington. His widow, Julie M. Perkins, has been awarded a widow's pension by the Oregon  
42 Department of Insurance and Finance, Workers' Compensation Division. A claim on behalf of Mr.  
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1 Perkins and a claim for widow's benefits was filed in Washington. The denial of these claims for  
2 benefits by our Department of Labor and Industries prompted the appeals herein.

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4 Our industrial appeals judge determined that Brittany is an employer as defined by RCW  
5 51.08.070 because Brittany was "engaged in this state in any work covered by the provisions of this  
6 title, by way of trade or business". Without further analysis the industrial appeals judge then  
7 determined that Mr. Perkins was a covered worker under RCW 51.08.180 because he was a "person  
8 in this state who is ~~was~~ engaged in the employment of an employer under this title". Although this  
9 reasoning seems correct in the abstract, it does not acknowledge the existence of RCW 51.12.120(6).  
10 If the industrial appeals judge's analysis were correct, RCW 51.12.120(6) would be totally  
11 unnecessary. The legislature is not presumed by the courts of this state to enact unnecessary  
12 legislation. State v. McCullum, 98 Wn.2d 484 (1983).

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18 RCW 51.12.120(6) provides as follows:

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20 The director shall be authorized to enter into agreements with the  
21 appropriate agencies of other states and provinces of Canada which  
22 administer their workers' compensation law with respect to conflicts of  
23 jurisdiction and the assumption of jurisdiction in cases where the contract  
24 of employment arises in one state or province and the injury occurs in  
25 another, and when any such agreement has been executed and  
26 promulgated as a regulation of the department under chapter 34.04 RCW,  
27 it shall bind all employers and workers subject to this title and the  
28 jurisdiction of this title shall be governed by this regulation.

29  
30 (Emphasis added)

31 Likewise, but without detail, RCW 51.04.020(9) describes this power of the director. Such an  
32 agreement was entered into between Oregon and Washington on February 4, 1966. That agreement  
33 has been incorporated by reference by WAC 296-14-010 and is binding on the parties. Clearly, by the  
34 language of RCW 51.12.120(6), the reciprocity agreement entered into between the states of  
35 Washington and Oregon has full force and effect, as any regulation promulgated by the Department.  
36 Although not admitted as an exhibit, an authenticated copy of the agreement is part of the record in  
37 this case.

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39 Coverage in Washington is not, then, solely determined by whether Mr. Perkins is a  
40 Washington worker as defined by RCW 51.08.070 and RCW 51.08.180. Instead, the question is  
41 whether he, as a worker injured in this state, but employed by an employer domiciled in another state,  
42 is covered under Washington's Workers' Compensation Act. Mr. Perkins is covered by the  
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1 Washington Workers' Compensation Act unless excluded by the reciprocal agreement entered into  
2 between the two states in accordance with RCW 51.12.120(6) and RCW 51.04.020(9).  
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4 The reciprocity agreement provides a uniform means of predicting coverage when a worker is  
5 injured in a state other than the state where he was hired. The agreement states that "the Workmens'  
6 (sic, now "Workers") Compensation Board of the State of Oregon in keeping with the provisions of the  
7 Oregon Workmen's (sic) Compensation Law will extend protection for any Oregon employer under its  
8 jurisdiction, and benefits to any of his Oregon workmen who may be injured in the course of  
9 employment while working temporarily in the State of Washington." Reciprocal Agreement, February  
10 1, 1966, at 2 (Emphasis added). This agreement further specifically makes Oregon Workers'  
11 Compensation Law the sole remedy for a worker employed by an Oregon employer to work in the  
12 State of Oregon who is injured while working temporarily in the State of Washington. The key  
13 question, therefore, is whether Mr. Perkins was "working temporarily" in Washington at the time of his  
14 death.  
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16 Mr. Perkins was hired by Brittany, an Oregon company located in Milton-Freewater, Oregon.  
17 The contract of employment was made in the State of Oregon. Mr. Perkins reported to work in  
18 Milton-Freewater, Oregon, was transported to the field being harvested, and at shift's end he returned  
19 to the Brittany operation in Milton-Freewater to check out. He went to work in Oregon, performed  
20 temporary work in Washington, and then returned to Oregon to end his shift. Brittany provided  
21 industrial insurance coverage under the Oregon Workers' Compensation Law.  
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23 Under these circumstances we find that Mr. Perkins was "working temporarily" in the State of  
24 Washington at the time of his injury, even though all the physical work he performed for Brittany was  
25 within the State of Washington. Our finding is based on our interpretation of the term "working  
26 temporarily" as used in the reciprocity agreement. Some guidance for determining the meaning of that  
27 term can be gleaned from RCW 51.12.120(4). Section (4) provides:  
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- 29 (a) A person's employment is principally localized in this or another state  
30 when (i) his or her employer has a place of business in this or such other  
31 state and he or she regularly works at or from such place of business, or  
32 (ii) if clause (i) foregoing is not applicable, he or she is domiciled in and  
33 spends a substantial part of his or her working time in the service of his or  
34 her employer in this or such other state; ... (Emphasis added)  
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1 That section, when read with RCW 51. 12. 120(1)<sup>1</sup>, defines those workers injured out of state to  
2 whom the Washington Act will apply. RCW 51.12.120(4) defines what is meant by "permanently"  
3 working in Washington (or another state for that matter) and therefore assists in defining what is meant  
4 by working "temporarily" in the State of Washington. The statute and the reciprocal agreement, read  
5 in tandem, extend coverage of the Washington Act to Washington workers temporarily in Oregon and  
6 withdraw coverage of the Washington Act from Oregon workers temporarily within Washington.  
7 Because Mr. Perkins reported to Brittany's place of business in Oregon and worked "from such place  
8 of business", Section (4)(a)(i) would apply to indicate that Mr. Perkins' employment for jurisdictional  
9 purposes was "principally localized" in Oregon. There is a strong inference, then, that he was  
10 "working temporarily" in Washington at the time of his death.  
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12 Additional assistance in interpreting the term "working temporarily" as used in the reciprocity  
13 agreement can be found in the case law which existed prior to the enactment of RCW 51.12.120 in  
14 1971. The case law implicitly makes a distinction between temporary and permanent workers.  
15 Basically the courts held that recovery would be permitted under the Washington Workers'  
16 Compensation Act for workers employed by Washington employers who are temporarily out of state  
17 on their employer's business: Hilding v. Dep't of Labor & Indus., 162 Wash. 168 (1931) (recovery  
18 under Washington Workers' Compensation Act allowed for beneficiaries of worker killed in Idaho while  
19 traveling between Asotin and Spokane, Washington on his employer's business); Gustavson v. Dep't  
20 of Labor & Indus., 187 Wash. 296 (1936) (recovery under Washington Workers' Compensation Act  
21 allowed for Washington resident employed by Washington employer and injured in Idaho while  
22 working on a temporary job installing an elevator); Sherk v. Dep't of Labor & Indus., 189 Wash. 460  
23 (1937) (recovery under Washington Workers' Compensation Act denied to a Washington resident  
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<sup>1</sup>If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had such injury occurred within this state, such worker, or his or her beneficiaries, shall be entitled to compensation under this title: Provided, That if at the time of such injury:

- (a) His or her employment is principally localized in this state; or
- (b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or
- (c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or
- (d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

1 hired in Washington by an Oregon employer to work exclusively in Oregon); and Thompson v. Dep't of  
2 Labor & Indus., 192 Wash. 501 (1937) (recovery allowed under the Washington Workers'  
3 Compensation Act to the beneficiaries of a worker killed in Idaho).  
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6 A further source of assistance in defining the term "temporary" in the reciprocity agreement  
7 between Washington and Oregon is the case law under the Oregon conflict of laws statute. That  
8 statute provides:  
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10 If a worker employed in this state and subject to ORS 656.001 to 656.794  
11 temporarily leaves the state incidental to that employment and receives an  
12 accidental injury arising out of and in the course of employment, the  
13 worker, or beneficiaries of the worker, if the injury results in death, is  
14 entitled to the benefits of ORS 656.001 to 656.794 as though the worker  
15 were injured within this state.  
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17 ORS 656.126(1).  
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19 Perhaps the most useful concept to come out of the Oregon case law is the idea that a worker  
20 is only temporarily working out of state if he intends to return to work in his home state for the same  
21 employer. Langston v. K-Mart, 56 Or. App. 709, 642 P.2d 1205 (1982) rev. denied 293 Or. 235, 648  
22 P.2d 852. In determining whether a claimant was working temporarily in Washington, the Oregon  
23 court considered the following factors: the claimant was hired in Oregon to work for an Oregon  
24 employer, the claimant did some of the work for the Oregon employer before being transferred to a  
25 project in Washington, and that claimant would have been returned to work on Oregon projects upon  
26 the completion of the Washington project. See also, Kolar v. B & C Contractors, 36 Or. App. 65, 583  
27 P.2d 562 (1978).  
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29 In another Oregon case, a worker was employed by a Washington logging company, reported  
30 to work in Washington, rode with co-workers to an Oregon logging site, was paid in Washington and  
31 the employer paid Washington industrial insurance premiums, and, although the worker never worked  
32 in Washington before his injury, it was likely he would work in Washington after the Oregon work was  
33 completed. The Oregon court concluded that, under these circumstances, he was a Washington  
34 worker temporarily working in the State of Oregon when he was injured. Phelan v. H.S.C. Logging  
35 Inc., 84 Or.App. 632, 735 P.2d 22 (1987). Rationally the same analysis applies to the converse  
36 situation, i.e. an Oregon worker working temporarily in Washington. When these same factors are  
37 applied to the present case it is clear that Mr. Perkins was an Oregon worker temporarily out of the  
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1 state of Oregon on his employer's business and, therefore, under the reciprocity agreement he was  
2 covered exclusively by the Oregon Workers' Compensation Law.  
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4 Mr. Perkins was hired by the Oregon employer, was required to report to work each day in  
5 Oregon, and began his course of employment while still in Oregon, traveling to the State of  
6 Washington for the purpose of harvesting corn existing in Washington, and then returning to Oregon  
7 while still in the course of employment. Although there was testimony that all the corn to be harvested  
8 during 1987 was to be harvested in Washington, there was additional un rebutted testimony that Mr.  
9 Perkins would have likely worked on the later lima bean harvest in both Oregon and Washington, after  
10 the corn harvest was over. Based on these considerations, Mr. Perkins, like the worker in Kolar, was  
11 working temporarily outside Oregon at the time of his death. He had maintained his family residence  
12 in Oregon as well as all other indicia of his intention to live and work permanently in Oregon. Clifford  
13 A. Perkins was an Oregon employee temporarily working in the State of Washington and therefore  
14 subject to the interstate reciprocity agreement. His exclusive remedy, and that of any beneficiaries is  
15 provided by the Workers' Compensation Law of the State of Oregon. Therefore the Department  
16 orders under appeal must be affirmed.  
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#### 24 **FINDINGS OF FACT**

- 25 1. On September 16, 1988, the Department of Labor and Industries received  
26 an accident report in which it was alleged that Clifford Perkins suffered an  
27 industrial injury on September 24, 1987 during the course of his  
28 employment with Brittany Farming Company.  
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30 On September 20, 1988, the Department received a request for benefits  
31 from Clifford Perkins' widow and/or his children. Their request alleged that  
32 Clifford Perkins was fatally injured during the course of employment with  
33 Brittany Farming Company.  
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35 On March 28, 1989, the Department issued two separate orders. The first  
36 order rejected Mr. Perkins' claim for the reason that he was an Oregon  
37 worker at the time of his industrial injury and was not covered under the  
38 industrial insurance laws of the state of Washington. The second order  
39 rejected Mrs. Perkins' and/or her children's claim for the same reason.

40 On May 15, 1989, the Board of Industrial Insurance Appeals received two  
41 Notices of Appeal. The first is an appeal by Mr. Perkins from the  
42 Department's March 28, 1989 order denying his claim for benefits. The  
43 Board issued an order granting this appeal, assigning it Docket No. 89  
44 2247, and ordering that proceedings be held on the issues raised by the  
45 appeal. The second is an appeal by Mrs. Perkins and/or her children from  
46 the Department's March 28, 1989 order denying their claim for benefits.  
47 The Board issued an order granting this appeal, assigning it Docket No. 89



1 2047, and ordering that proceedings be held on the issues raised in the  
2 appeal.

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- 4 2. In August 1987, Clifford Perkins was hired in Oregon by Brittany Farming  
5 Company for the corn harvest season. All of the corn to be harvested by  
6 Brittany Farming Company in 1987 was grown in the State of Washington.
- 7 3. On September 24, 1987, while harvesting corn on a farm in Washington,  
8 Clifford Perkins was run over by a truck and died as a result of his injuries.
- 9
- 10 4. Brittany Farms is an Oregon domiciled employer which contracted to work  
11 temporarily in Washington, harvesting corn crops located in Washington.  
12 Brittany also harvested other crops located in both Oregon and  
13 Washington.
- 14 5. Mr. Perkins was required to report to work with Brittany Farms each day at  
15 the Brittany Farm facility located in Milton-Freewater, Oregon. Each day  
16 of work during the 1987 corn harvest he was then transported to work  
17 within the State of Washington, after which he was transported back to  
18 Milton-Freewater, Oregon to check out from Brittany Farms.
- 19 6. After the corn harvest was completed in 1987 Mr. Perkins would have  
20 been kept on as an employee of Brittany Farms to participate in the lima  
21 bean harvest in both Washington and Oregon.
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#### CONCLUSIONS OF LAW

- 23
- 24 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
25 and the subject matter of the appeals in Docket Nos. 89 2047 and 89  
26 2247.
- 27
- 28 2. Brittany Farms is an Oregon employer. Clifford Perkins, an employee of  
29 that company, died in the course of employment while working temporarily  
30 in the State of Washington within the meaning of RCW 51.12.120, WAC  
31 296-14-010, and the reciprocity agreement between Washington and  
32 Oregon thereunder. Mr. Perkins' and his surviving beneficiaries' exclusive  
33 remedy for Mr. Perkins' injury and death is provided by the Workers'  
34 Compensation Law of the State of Oregon pursuant to RCW 51.12.120,  
35 RCW 51.04.020(9), WAC 296-14-010 and the reciprocity agreement  
36 thereunder.
- 37 3. In the appeal assigned Docket No. 89 2247 the order of the Department of  
38 Labor and Industries dated March 28, 1989 which rejected claimant's  
39 claim for benefits for the reason that he was an Oregon worker at the time  
40 of his injury and was not covered by the Industrial Insurance Laws of the  
41 State of Washington, is correct and is affirmed.
- 42
- 43 4. In the appeal assigned Docket No. 89 2047, the order of the Department  
44 of Labor and Industries dated March 28, 1989 which rejected Clifford  
45 Perkins' widow's and dependent beneficiaries' claim for benefits for the  
46 reason that Mr. Perkins was an Oregon worker at the time of his injury and  
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1 not covered by the Industrial Insurance Laws of the State of Washington,  
2 is correct and is affirmed.

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4 It is so ORDERED.

5 Dated this 30th day of October, 1990.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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9  
10 /s/  
11 SARA T. HARMON Chairperson

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13 /s/  
14 PHILLIP T. BORK Member  
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