1995 MTWCC 39

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

JACK MURER, et al.,

Petitioners,

vs.

MONTANA STATE COMPENSATION INSURANCE FUND, et al.,

Defendants,

and

BEVERLY HARDY, et al.,

Intervenors.

WCC No. 9206-6487

FILED

JUN - 1 1995

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

ORDER SCHEDULING CASE FOR TRIAL

On March 24, 1995, the Court met with various counsel involved in this matter to determine how to proceed. The discussion is reported and transcribed.

During the March 24th meeting, I determined that the issues to be decided on remand are (1) the petitioners' attorneys' entitlement to attorney fees; (2) the amounts due each petitioner in this case; (3) costs; and (4) penalty. I denied a renewed motion for class certification and indicated that I would not expand the issues beyond those which are presented with respect to the particular petitioners in this case.

I also discussed with counsel how other issues related to this case might be resolved. Ultimately the discussion focused on the filing of a separate petition on behalf of other claimants who allege that they have been denied benefits due them pursuant to *Murer v. State Compensation Insurance Fund,* 51 St.Rptr. 11145 (1994). Counsel for petitioners (Mr. Allan M. McGarvey) and the State Fund (Mr. Bradley J. Luck) agreed to consult with each other in an attempt to identify *Murer* related issues which will not be resolved by the current case. To the extent that Mr. McGarvey represents other claimants whose cases involve those additional issues, counsel agreed that they would mediate the issues on an expedited basis, after which (assuming the mediator's recommendation was rejected) a second petition would be filed on behalf of those other claimants. On its part, the Court agreed that if this process were followed, it would consolidate the second case with this one. It granted counsel sixty (60) days to engage in this process and for Mr. McGarvey to file a second petition.

It now appears that the process envisioned at the March 24th meeting has broken down. The State Fund has filed a request that the Court clarify how it wishes the parties to proceed. ENTITLED [sic] REQUEST FOR CLARIFICATION. The request states that the Court *directed* counsel "to work out a second set of issues for another action" (*Id.* at 2), and goes on to indicate that the parties cannot agree on what issues might be raised by a second action. Thus, it appears that the discussions between counsel have not advanced beyond a discussion of issues, and the sixty (60) days granted by the Court has already expired.

On March 24th, it appeared to me that further discussion between counsel might result in the indentification, consolidation and mediation of the issues unresolved by *Murer*, and thus avoid unnecessary and prolonged litigation. I did not intend to force unwilling counsel or unwilling parties to develop or file follow-on litigation. Rather, it appeared that further litigation was inevitable and that both counsel would be willing to talk to each other in an attempt to focus and control that litigation. My intent was not to order them to do so, only to give them the opportunity to do so.

In the March 24th discussion, I stated, "It is my intention to confront the remaining issues as expeditiously as possible. I tell all counsel that. I don't want that to be strung out and lingering, ... " (TRANSCRIPT OF PROCEEDINGS (March 24, 1995) at 18.) It is still my intent to resolve the issues remaining in *this* case as expeditiously as possible. Therefore, this case will be placed on the July 10, 1995 Missoula trial docket. A separate scheduling order will be issued.

Any other claimant who believes that the *Murer* decision entitles her/him to additional benefits which an insurer refuses to pay may petition the Court for relief.

DATED in Helena, Montana, this 1st day of June, 1995.

(SEAL)

JUDGE

c: Mr. Allan M. McGarvey
Mr. Roger M. Sullivan
Mr. James H. Goetz
Mr. Bradley J. Luck
Mr. Ira Eakin
Mr. Larry W. Jones
Mr. Charles G. Adams (Courtesy Copy)
Mr. Mark E. Cadwallader (Courtesy Copy)
Mr. Chuck Edquest (Courtesy Copy)
Mr. Thomas M. Keegan (Courtesy Copy)
Ms. Janice S. VanRiper (Courtesy Copy)