

SETTLEMENT AGREEMENT

This Settlement Agreement, made and entered into this 19 day of April, 2004, by and between the State Compensation Insurance Fund ("State Fund") and Howard **FILED** and Lawrence A. Anderson ("Strause and Anderson"):

MAY 27 2004

RECITALS

A. An action was commenced and maintained in the Montana OFFICE OF WORKERS' COMPENSATION JUDGE HELEN MONTANA Compensation Court by Strause and Anderson entitled *Buckley v. State Compensation Mutual Insurance Fund*, Cause No. 2003-0752.

B. The issue in the above-stated cause arises as a result of the State Fund taking a Social Security offset from workers' compensation benefits pursuant to the provisions of §39-71-702 MCA. In addition to offsets for the claimants' Social Security payments, State Fund also took offsets on Social Security payments to auxiliaries for minor children and others. However, when the Social Security auxiliary payments ended, it is alleged the State Fund failed to remove from its Social Security offset calculation, the calculation for the terminated auxiliary benefits.

C. State Fund agrees that when Mr. Buckley's sixteen (16) year old reached age eighteen (18) that the Social Security auxiliary payment ended, the State Fund failed to remove her from its Social Security offset calculation, thereby underpaying Claimant Buckley.

D. It is agreed that other workers' compensation claimants are similarly situated to *Buckley* and may be entitled to additional compensation (*Buckley* benefits). A process was undertaken by the parties hereto to identify the State Fund claimants possibly entitled to *Buckley* benefits and to calculate potential past due compensation;

E. Several issues have arisen in relation to the entitlement for and calculation of *Buckley* benefits. The parties have reached an agreement in relation thereto which they believe addresses such issues. The purpose of this Settlement Agreement is to set forth the terms and conditions under which the State Fund will identify and pay *Buckley* benefits.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties agree as follows:

1. Identity of Claimants

State Fund, working with Strause and Anderson, has identified all claimants potentially entitled to *Buckley* benefits. Attached as Exhibit "A" is a list of all claimants potentially entitled to *Buckley* benefits.

2. Amount of Offset Payments

State Fund, working with Strause and Anderson, has determined the amount of underpayment owed to each claimants identified in Exhibit "A" pursuant to *Buckley*. Exhibit "A" identifies the amount of the underpayment owed to each claimant under the column entitled "UP".

3. Common Fund Attorneys' Fees

The parties agree that Strause and Anderson are entitled to a common fund attorneys' fee and that the Workers' Compensation Court will determine the appropriate contingency fee. The State Fund will not object to a common fund contingency fee of 25%.

4. Notice to Claimants

It is agreed that written notice will be sent via United States Mail, First Class Prepaid Postage, by State Fund, to all claimants identified in Exhibit "A" at the address identified on the State Fund's computer records.

5. Deceased Claimants.

The State Fund has identified certain Claimants who are known to be deceased. Notice of the Claimant's right to benefits pursuant to this agreement shall be sent via United States Mail, First Class Prepaid Postage, by State Fund at the address identified on the State Fund's computer records. The Personal Representative of deceased Claimant's shall have 120 days from the mailing of the notice to contact the State Fund and present proof of a legal claim to the underpayment. Letters to deceased claimants that are returned to the State Fund as undeliverable will not require follow up by the State Fund. However, such letters shall be provided to Strause and Anderson within fourteen (14) days who may, at their own expense, attempt to identify current addresses and notify potential beneficiaries. No claim for *Buckley* benefits by beneficiaries shall be accepted more than 120 days after the mailing of the required notice.

6. Settlements.

Any and all claims that have been settled and the settlement approved by the Department of Labor or the Workers' Compensation Court, and all settlements approved as stipulated judgments in the Workers' Compensation Court will remain closed and any claimants or the beneficiaries of claimants whose claims have been settled are not entitled to any additional benefits pursuant to *Buckley*. The State Fund is not required to send the letters required by Paragraph 4 to claimants whose claims are known to have been settled.

7. Overpayments.

If an entitlement to *Buckley* benefits is identified on a claim in which a benefit overpayment exists, the State Fund may reduce the overpayment by taking credit for the *Buckley* benefits. However, common fund fees shall be paid to Straus and Anderson before any credit is calculated.

8. Waiver of Defenses.

Upon approval of this Agreement by the Court, State Fund agrees to drop all defenses to this action, such as statute of limitations, laches, estoppel and waiver.

9. Court Action.

This document will be presented to the Workers' Compensation Court for its approval. Upon approval, the Workers' Compensation Court shall enter a consent judgment incorporating the terms of this Agreement. However, the Court shall retain jurisdiction in the action to implement and oversee this settlement. The parties shall execute such other documents as are necessary to give full effect to the terms, conditions and spirit of this settlement.

Common fund attorneys' fees shall be awarded by the Court subject to a procedure adopted by it. The parties hereto shall cooperate in the process of considering and awarding common fund fees.

10. Scope of Release.

This settlement shall be submitted to the Workers' Compensation Court for consideration and approval. Upon the approval of this settlement by the Workers' Compensation Court, all claims between the parties based on the adjustment or handling of this matter, including any collateral claims and other claims or issues that could have been raised before the Workers' Compensation Court or any other court of competent jurisdiction including but not limited to claims under §§ 33-18-201 and 242, MCA, and any other Montana statute or regulations and all claims for fraud, misrepresentation, breach of the covenant of good faith and fair dealing and any other common law claim in favor of any party shall be fully and finally settled and resolved with prejudice.

Upon approval of this settlement and entry of the consent judgment, all benefit entitlement and other issues raised in or arising as a result of the *Buckley* case will be considered fully and finally settled upon their merits.

11. Further Actions.

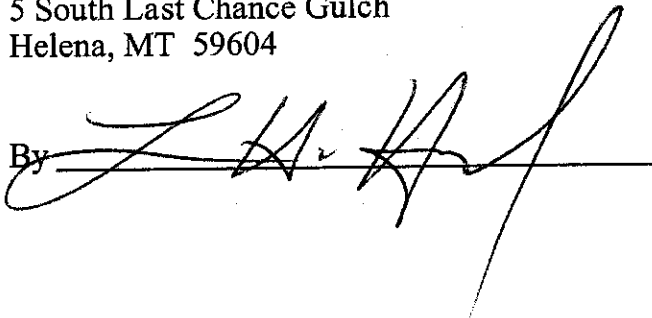
The State Fund will cooperate in the establishment of reasonable deadlines, with Court involvement, for the payment of claims as identified in Exhibit "A" attached hereto.

DATED this 19 day of April, 2004.

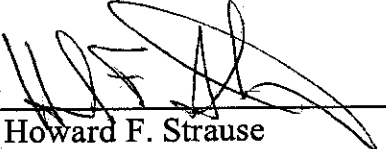
STATE COMPENSATION MUTUAL INSURANCE FUND

By 
Kelly M. Wills, Attorney for State Fund

STATE COMPENSATION INSURANCE FUND
5 South Last Chance Gulch
Helena, MT 59604

By 

LAWRENCE A. ANDERSON
HOWARD F. STRAUSE
Attorneys at Law
P.O. Box 2608
Great Falls, MT 59403

By 
Howard F. Strause