

WORKERS' COMPENSATION COURT

Hearing No. 3645
Volume XVIII

Helena, Montana
December 1, 2005

ROBERT FLYNN and CARL MILLER

Rex Palmer

vs.

MONTANA STATE FUND

Bradley J. Luck
Thomas E. Martello

WCC No. 2000-0222

A conference call was held this date to discuss payment of attorney's fees as they relate to the State Fund. Counsel participating in the call were Mr. Rex Palmer, Mr. Bradley J. Luck, and Mr. Thomas E. Martello. The Court's Hearing Examiner, Jay Dufrechou, was also present.

Mr. Palmer provided a summary of the attorney fee issue. Just over 800 notifications were sent to possible benefitted claimants. Of those, around 350 were immediately determined inapplicable, leaving around 461. There were approximately 242 claimants that provided proof of benefits paid. Of the remaining, 18 were given until February 16, 2006, to respond. The rest, about 201, either did not respond or they responded and Mr. Palmer has not received notice of that. There are some that cannot be accounted for. The State Fund has been making payments to the claimants and has been withholding 25% for attorney's fees, pending final decision by the Court. Some claimants have not been paid their benefit. The average recovery is \$14,000; the average fee is \$367. Mr. Martello stated that Cris McCoy at the State Fund is the one who is conducting the reviews and involved with this part of the process, so he would defer to Ms. McCoy as to the actual figures Mr. Palmer has provided.

Mr. Palmer referred the Court to paragraphs 13 and 14 of the signed settlement agreement and noted the parties were in agreement with regard to attorney's fees set at 25%. The remaining issue is the method of notifying benefitted claimants of the attorney's fees being paid and who is responsible for the costs of notification and any hearing costs.

The Court has determined that it is not necessary to have a separate proceeding for the 18 possible claimants who have an extended time to respond to the notification of benefits. Those 18 claimants will be allowed to participate with the other claimants at the attorney fee hearing. The Court has asked counsel to confer and agree regarding the scope of mailing, following *Murer*, *FFR*, and *Broeker* as templates. Counsel were asked to agree on the hearing notification form and who will be responsible for the costs associated with the mailing and the hearing, including court reporter fees, or submit to the Court their respective positions for final decision. The parties are to provide the proposed notice to be sent to the claimants to the Court for approval. A thirty-day notice from the mailing of the notice to the date of the hearing was agreed upon.

James Jeremiah Shea
JUDGE

Minute Entry e-mailed to Flynn Distribution List on December 6, 2005.