

MONTANA WORKERS' COMPENSATION COURT

Minute Book Hearing No. 4175
Volume XXII

Helena, Montana
July 26, 2010

ROBERT FLYNN and CARL MILLER

Rex Palmer

vs.

MONTANA STATE FUND

Bradley J. Luck
Thomas E. Martello

and

LIBERTY NORTHWEST INSURANCE CORPORATION
(Intervenor)

Larry W. Jones

WCC No. 2000-0222

A telephone conference call came on this date at 10:00 a.m. Rex Palmer participated on behalf of Petitioners Robert Flynn and Carl Miller. Bradley J. Luck and Thomas E. Martello participated on behalf of Respondent Montana State Fund. Steven W. Jennings participated on behalf of Common Fund Insurers.¹ The court reporter was Kim Johnson.

The Court initiated the conference call to discuss Mr. Palmer's request to certify as final the most recent Orders issued by this Court: (1) Order Re: Paid in Full, Docket Item No. 615; (2) Order Denying Common Fund Insurers' General Motion to Dismiss; Docket Item No. 616; and (3) Order Granting Petitioners' Motion to Amend Petition for Hearing, Docket item No. 617.

¹ AIU Ins. Co., American International Pacific Ins. Co., American Home Assurance Co., Birmingham Fire Ins. Co. Commerce & Industry Ins. Co., Granite State Ins. Co., Ins. Co. of the State of Pennsylvania, National Union Fire Ins. Co. of Pittsburgh, Pa, New Hampshire Ins. Co., AIG National Ins. Co., American International Specialty Lines Ins., American International Ins. Co., Illinois National Ins. Co., American General Corp., American Alternative Ins. Corp., American Re-Insurance Co., Bituminous Fire & Marine Ins. Co., Bituminous Casualty Corp, Old Republic Ins. Co., Old Republic Security Assurance Co., Centre Ins. Co., Clarendon National Ins. Co., Everest National Ins. Co., Truck Ins. Exchange, Mid Century Ins. Co., Farmers Insurance Exchange, Federal Express Corporation, Great American Ins. Co., Great American Ins. Co. of NY, Great American Assurance Co., Great American Alliance Ins. Co., Great American Spirit Ins. Co., Republic Indemnity of America, Hartford Accident & Indemnity Co., Hartford Casualty Ins. Co., Hartford Fire Ins. Co., Hartford Ins. Co. of the Midwest, Hartford Underwriters Ins. Co., Property & Casualty Ins. Co. of Hartford, Sentinel Ins. Co. Ltd., Twin City Fire Ins. Co., Trumbull Ins. Co., Markel Ins. Co., Petroleum Casualty Co., SCOR Reinsurance Co., Sentry Ins. Mutual Co., Sentry Select Ins. Co., Middlesex Ins. Co., PPG Industries, Inc., Connie Lee Ins. Co., Fairfield Ins. Co., United States Aviation Underwriters, Universal Underwriters Group, XL Ins. America, Inc., XL Ins. Co. of New York, XL Reinsurance. America, XL Specialty Ins. Co., Greenwich Ins. Co., Zurich North America, American Guarantee & Liability Ins. Co., American Zurich Ins. Co., Assurance Co. of America, Colonial American Casualty & Surety, Fidelity & Deposit Co. of Maryland, Maryland Casualty Co., Northern Ins. Co. of New York, Valiant Ins. Co., Zurich American Ins. Co., and Zurich American Ins. Co. of Illinois.

The "Paid in Full" Order resolves the final issue determining which claims are subject to retroactive application of previous common fund decisions and, therefore, which claimants may be entitled to common fund benefits. As a matter of due process, I believe the parties are entitled to appeal this Order. As to certification, I do not believe Rule 54(b), Mont. R. Civ. P. applies, as there are no unadjudicated issues remaining. Therefore, this matter can be certified as final for purposes of appeal pursuant to ARM 24.5.348(2).

The remaining two Orders may also be certified as final. The motions which underlie these Orders were timely filed pursuant to the general motions deadline, which was specifically set to avoid piecemeal litigation and bring this matter to a conclusion.

Counsel agreed with my analysis, and the Orders shall be certified as final pursuant to ARM 24.5.348(2).

Mr. Luck inquired as to the stay Orders in the *Stavenjord* and *Reesor* cases, now that the "Paid in Full" Order in *Flynn* has been issued. I advised I was not prepared to address those Orders at this juncture and would review the *Stavenjord* and *Reesor* stays pending any appeal of the "Paid in Full" Order.

JAMES JEREMIAH SHEA
Judge