

WORKERS' COMPENSATION COURT
LEWIS AND CLARK COUNTY

ROBERT FLYNN and CARL MILLER,

-vs-

MONTANA STATE FUND.

) WCC No. 2000-0222
)
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)
)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Heard at the Offices of the Workers' Compensation Court
1625 Eleventh Avenue
Helena, Montana
February 16, 2006
9:26 a.m.

LAURIE CRUTCHER, RPR
Lesofski & Walstad Court Reporting
21 North Last Chance Gulch, Suite 201, Placer Center
Helena, Montana 59601 (406) 443-2010

1 A P P E A R A N C E S

2 ATTORNEY APPEARING ON BEHALF OF THE CLAIMANT:

3 MR. REXFORD L. PALMER
4 Attorney at Law
5 301 West Spruce
6 Missoula, MT 59802

7 ATTORNEY APPEARING ON BEHALF OF THE RESPONDENT:

8 MR. THOMAS E. MARTELLO
9 Legal Counsel
10 Montana State Fund
11 5 S. Last Chance Gulch
12 P.O. Box 4759
13 Helena, MT 59604-4759

14 ATTORNEY REPRESENTING OTHER INSURERS:

15 MR. STEVEN W. JENNINGS
16 Attorney at Law
17 Crowley Law Firm
18 490 N. 31st St., Ste 500
19 P.O. Box 2529
20 Billings, MT 59103-2529

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1 Whereupon, the following proceedings were
2 had:

3 * * * * *

4 THE COURT: We're on the record in the
5 matter of Flynn versus Montana State Fund, Cause
6 No. 2000-0222. This is the time that has been set
7 for a hearing regarding attorneys fees pursuant to
8 an order that had been issued by this Court on
9 January 3rd, 2006. It is now about 9:26 a.m. The
10 time set for hearing is 9:00 a.m. for claimants
11 who are affected to appear, and state any
12 objections or state any position they wanted.
13 Nobody has appeared.

14 The attorneys present are Rex Palmer on
15 behalf of the claimants; and on behalf of Montana
16 State Fund is Tom Martello and Steve Jennings. So
17 Rex --

18 MR. JENNINGS: Your Honor, I represent a
19 variety of insurers, and not Montana State Fund.

20 THE COURT: I apologize. So that
21 correction will be noted. Steve is here on behalf
22 the other insurers.

23 Rex, when we were off the record, was
24 going through just some housekeeping matters and
25 kind of an update to the Court, and so I'm just

1 going to ask Rex to kind of give us that update
2 for the record.

3 MR. MILLER: Thank you, Your Honor. I
4 mentioned to begin with that in December, on
5 December 1st, there was a preliminary hearing
6 preparing for this hearing, and the minute entry
7 reflects that our calculations at that time were
8 that an average recovery for the claimants was
9 \$14,000, and that's a typographical error. It was
10 actually an estimate of \$1,400 at that time.

11 Now it appears as though with updated
12 information, about 525 of the 800 claimants that
13 had been notified as possible beneficiaries of
14 this action, 525 were disqualified either because
15 they died before the deadline, or they filed no
16 response, or they had no Social Security fees or
17 costs that would have entitled them to benefits.

18 That left about 273 claimants who
19 provided proof of their attorneys fees and costs.
20 Many of them did not have that proof, and so with
21 the Court's approval, we contacted many of them
22 with information allowing us to contact Social
23 Security on their behalf. When they provided that
24 to us, we provided information and inquiries to
25 the Social Security Administration, and we

1 provided that proof back to the State Fund, and
2 they've entered that into their records.

3 With the new claimants being entered in,
4 it now appears that the average recovery will
5 \$1,304, and the average fee, if the 25 percent fee
6 is approved, will be \$326. Two claimants have
7 responded in writing, and the Court's order
8 permitted claimants to respond in writing or
9 appear today at 9:00 in the morning. It's
10 presently almost 9:30. No one has appeared yet,
11 and we're still waiting.

12 One of the individuals that responded
13 was Virgil Hanson. The information we received
14 from the State Fund indicated that he had a 1986
15 injury, and was represented by James Regnier in
16 the workers compensation and the Social Security
17 matter.

18 Mr. Hanson is suggesting, as I read his
19 note, that a 20 percent fee would be preferable to
20 a 25 percent fee. His Social Security fee paid to
21 Mr. Regnier was \$150, so his entitlement under
22 this common fund action would be \$750. A 25
23 percent fee would be \$187.50, and the balance to
24 him would be \$562.50.

25 That other individual that responded was