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April 22, 2005

**FILED**

FAX (406) 444-7798 & U.S. Mail

**APR 22 2005**

Honorable Mike McCarter  
Workers' Compensation Court  
P. O. Box 537  
Helena, MT 59624

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

RE: Rausch, et al. v. Montana State Fund and Ruhd v. Liberty Northwest Insurance Corporation, WCC No. 9907-8274R1

Dear Judge McCarter:

I asked for the conference call now set for April 28, 2005, at 2:00 p.m. for three reasons. The first is to set a date for the review of the files at the Liberty Northwest Missoula office previously identified under the four categories established during earlier proceedings.

The second reason is to finalize the terms of the Amended Confidentiality Agreement. I sent a revised Amended Confidentiality Agreement to the attorneys involved on April 8, 2005. A copy of the transmittal letter and revised agreement is attached. I have not heard from them and do not know whether they agree or disagree with the revised agreement. Perhaps this can be clarified during the conference call.

The third reason is on April 12, 2005, I sent you a letter attached to which was a draft letter that I propose sending to treating physicians under the circumstances outlined in my letter to you. I have not received from the FFR attorneys any response. Whether they have proposed changes could be clarified during this conference call.

We have pulled most of the Liberty Northwest claim files in the four categories you previously identified for inclusion in the review by the FFR attorneys. We plan to begin on our review of those files on Monday, April 25, 2005, but we cannot contact the treating physician to request the information you instructed us to ask for until we have an agreed upon letter to send to the treating physician.

Thank you for agreeing to hold the conference call now set for April 28, 2005, at 2:00 p.m. By a copy of this letter to the FFR attorneys and Rex Palmer I am notifying them of this communication with you.

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Honorable Mike McCarter  
RE: Rausch, et al. v. Montana State Fund  
Ruhd v. Liberty Northwest Insurance Corporation  
WCC No. 9907-8274R1

April 22, 2005  
Page 2

If you have any questions, please contact me.

Very truly yours,

  
Larry W. Jones

LWJ/cb

c: Lon J. Dale (w/ enc.) (FAX 549-7077 & U.S. Mail)  
Stephen D. Roberts (w/ enc.) (FAX 406-585-0087 & U.S. Mail)  
Monte D. Beck (w/ enc.) (FAX 408-586-8960 & U.S. Mail)  
Rex Palmer (w/out enc.) (courtesy copy) (FAX 728-5601 & U.S. Mail)

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April 8, 2005

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RE: Rausch et al. v. Montana State Fund and Ruhd v. Liberty Northwest Ins. Corp., WCC No. 9907-8274R1

Gentlemen:

Attached is the revised Amended Confidentiality Agreement I drafted pursuant to our discussion with Judge McCarter at the April 1, 2005, hearing. I have deleted the reference to "Plan I" in the last WHEREAS paragraph.

In the same paragraph I have added the reference to a certified rehabilitation counselor and I have changed the word "insurers" to "insurer."

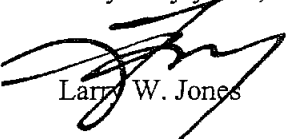
In ¶ 1 I have added certified rehabilitation counselor twice. In ¶ 2 I have made the same addition once.

I have drafted a new paragraph 5 and 6 in compliance with Judge McCarter's directive.

These are the only changes I have made.

Please let me know if I may submit this redrafted agreement to you for signature and transmittal to the Court. I look forward to hearing from you.

Very truly yours,

  
Larry W. Jones

LWJ/cb  
Enclosure

AMENDED CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is entered into this \_\_\_ day of \_\_\_\_\_, 2005, and shall amend and be controlling in place of the Confidentiality Agreement dated the 18<sup>th</sup> day of February, by MONTE BECK, LON DALE, and STEPHEN ROBERTS (hereinafter Claimants' attorneys), for purposes of maintaining and insuring the confidentiality of information revealed to Claimants' attorneys during the course of litigation in *Ruhd v. Liberty Northwest Ins. Corp.*, (hereinafter "Ruhd"), and *Rausch, et. al v. Montana State Fund* (hereinafter "Rausch"), WCC No. 9907-8274R1.

WHEREAS, various insurers and self insurers operate as Plan I and Plan II workers' compensation insurers pursuant to Montana Code Annotated § 39-71-2101, et seq., and Claimants' attorneys are attorneys licensed to practice law in the State of Montana and who maintain offices in Bozeman, Montana and Missoula, Montana; and

WHEREAS, pursuant to the procedure followed in similar common fund cases, the parties wish to follow the Court's directive to enter into a confidentiality agreement, subject to Court approval, to protect the privacy interests of those persons who may be affected by the Workers' Compensation Court's decision in *Ruhd* and *Rausch*; and

WHEREAS, as part of the implementation process, Claimants' attorneys and their designated agents and health care providers or certified rehabilitation counselors are requesting permission to examine and review confidential information maintained by the above referenced Plan II workers' compensation insurer;

NOW, THEREFORE, in consideration of the foregoing premises, the parties agree as follows

1. The term "confidential information" includes the names of claimants, claim numbers, medical records, as well as other personal information which is protected from public disclosure. The parties agree that any confidential information revealed to Claimants' attorneys, and their designated agents, health care providers and certified rehabilitation counselors during the course of this litigation shall not be reproduced, disseminated or otherwise communicated by Claimants' attorneys and their designated agents and health care providers and certified rehabilitation counselors or by any person acting on behalf of Claimants' attorneys except as provided in this agreement or pursuant to an Order of the Workers' Compensation Court.
2. The confidential information shall be available only to Claimants' attorneys, their agents and health care providers, certified rehabilitation counselors or members of their law firms, and used by them solely for the purposes of enforcing the common fund created in *Rausch* and *Ruhd*.
3. All other information in the file that does not fall under the definition of confidential information is nevertheless subject to the terms and conditions of this amended confidentiality agreement. This information will be made available only to claimants attorneys and their agents as part of the file review process and may not be copied, in whole or in part, in any form and may not be disseminated to anyone through any media by them.
4. It is understood that the term "health care providers" referenced in this agreement includes medical experts who can review impairment determinations and, further, that a Court order is not necessary to have confidential documents obtained pursuant to this agreement to be reviewed by health care providers.

5. Pursuant to the Court's direction during the hearing on April 1, 2005, the claimants' attorneys will have the health care providers sign an agreement incorporating the confidentiality, privacy and non-disclosure requirements as set forth in this Amended Confidentiality Agreement.

6. Pursuant to the Court's direction during the hearing on April 1, 2005, the claimants' attorneys will have the certified rehabilitation counselors sign an agreement incorporating the confidentiality, privacy and non-disclosure requirements as set forth in this Amended Confidentiality Agreement.

7. At the conclusion of this litigation and the implementation process, whether by trial, settlement or otherwise, the confidential information subject to this agreement, as well as copies thereof, shall be returned to the insurers for disposal. However, Claimants' attorneys may retain documents which they deem necessary to protect themselves against potential claims for professional negligence or misconduct. Any and all documents retained by Claimants' attorneys shall be placed under seal and shall not be reproduced, disseminated or otherwise communicated to any person except in connection with a defense to a claim for professional negligence or misconduct. Even when defending against such a claim, Claimants' attorneys shall prudently guard against the unwarranted dissemination of the confidential information. Further, any and all documents retained by Claimants' attorneys shall be destroyed after a reasonable period of time.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Stephen Roberts

\_\_\_\_\_  
Monte Beck

\_\_\_\_\_  
Lon J. Dale

APPROVED as to form and content and SO ORDERED on this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Hon. Mike McCarter  
Workers' Compensation Judge