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# Workers' Compensation Court

Mike McCarter  
Judge

**FILED**

November 22, 2004

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OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

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

Dear Counsel and Interested Parties:

In reviewing the *Ruhd* file I noted prior motions raising the retroactivity issue. The status of those motions are reflected in a July 14, 2004 minute entry, a copy of which I enclose. As reflected in the minute entry, I was prepared to rule that the *Raush* decision, 2002 MT 2003, is retroactive but did not do so at that time because I had technically lost jurisdiction in light of an appeal to the Supreme Court. Do I need to issue a formal ruling at this time or is the issue dead and buried as far as counsel are concerned?

Sincerely,



Mike McCarter  
Judge

MM/jb  
Enclosure

WORKERS' COMPENSATION COURT

Hearing No. 3478  
Volume XVII

Helena, Montana  
July 14, 2004

JEREMY RUHD

Geoffrey C. Angel

vs.

LIBERTY NORTHWEST  
INSURANCE CORPORATION

Larry W. Jones

WCC No. 2002-0500

A conference in the above-entitled matter came on Wednesday, July 14, 2004, at 9:40 a.m., in the Workers' Compensation Court, Helena, Montana. The Honorable Mike McCarter, Judge of the Workers' Compensation Court, presided. Petitioner was represented by Mr. Geoffrey C. Angel who appeared telephonically. Respondent was represented by Mr. Larry W. Jones. Also present were Mr. Greg E. Overturf, Mr. Bradley J. Luck, and Mr. Thomas J. Harrington. Mr. Lon J. Dale appeared telephonically. The court reporter in this matter was Ms. Debbie Eickhoff.

I informed all counsel that it had reviewed the retroactivity issue and determined that *Rausch v. State Compensation Ins. Fund*, 2002 MT 203, ¶ 45, 311 Mont. 210, 54 P.3d 25, was dispositive of the issue since that case determined that a common fund was created by that litigation. Since a common fund cannot exist unless the decision is applied retroactively, a finding of retroactivity is implicit in the decision. However, I further informed counsel that I had concluded that I did not have jurisdiction to issue a decision in light of the pending appeal in this case. While I certified only the issue concerning the global attorney fee by the attorneys in *Rausch*, I noted that if those attorneys prevail on appeal they, and not the attorney for the claimant in this case, have standing prosecute the retroactivity issue. Mr. Dale indicated that the *Rausch* attorneys prefer resolution of their alleged right to common fund fees in this case before I issue any decision. I will therefore not enter a decision and will await resolution of the appeal.

I did discuss the possibility of proceeding with the identification and payment of claimants insured by Liberty who are benefitted by the decision in this case but indicated that proceeding in that regard would have to be with the agreement of Liberty. I advised counsel that if Liberty chose to proceed in that fashion I will authorized withholding of the claimed attorney fees. Mr. Jones will discuss that possibility with his client.

Court recessed at 10:00 a.m.

MIKE McCARTER  
Judge