

Monte D. Beck, Esq.  
BECK, AMSDEN & RUGGIERO, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, MT 59715  
Telephone: (406) 586-8700  
Attorneys for Petitioner Fisch

Stephen D. Roberts, Esq.  
1700 W. Koch, Suite 5  
Bozeman, MT 59715  
Telephone: (406)586-3100  
Attorney for Petitioner Frost

Lon J. Dale, Esq.  
MILODRAGOVICH, DALE  
STEINBRENNER & BINNEY, P.C.  
P.O. Box 4947  
Missoula, MT 59806-4947  
Telephone: (406) 728-1455  
Attorneys for Petitioner Rausch

Steven W. Jennings, Esq.  
CROWLEY, HAUGHEY,  
HANSON, TOOLE &  
DIETRICH, PLLP  
490 N. 31<sup>st</sup> St., Suite 500  
P.O. Box 2529  
Billings, MT 59103-2529  
Attorneys for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ALEXIS RAUSCH, et al., )  
Petitioners )  
 )  
-vs- )  
 )  
MONTANA STATE FUND, )  
Respondent/Insurer )  
 )  
and )  
 )  
AMERICAN HOME ASSURANCE )  
COMPANY; INSURANCE COMPANY OF )  
THE STATE OF PENNSYLVANIA; AND )  
NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, PA. )  
 )  
Respondent/Insurer. )  
\_\_\_\_\_ )

WCC No. 9907-8274R1

**SETTLEMENT STIPULATION re  
COMMON FUND ATTORNEYS'  
FEES WITHHELD BY AMERICAN  
HOME ASSURANCE COMPANY;  
INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA; AND  
NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, PA.**

**FILED**

DEC 18 2007

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

DOCKET ITEM NO. 346

This settlement stipulation is made and entered into by and between Lon Dale, Monte Beck and Stephen Roberts ("FFR attorneys") and Steven Jennings, attorney for American Home Assurance Company, Insurance Company of the State of Pennsylvania and National Union Fire Insurance Company of Pittsburgh, PA. ("the insurance carriers"). The insurance carriers do not take a position on the amount of the attorneys' fees, but seek this Court's approval via an authorizing order.

Rather than the maximum fee allowed by statute, the FFR attorneys have agreed to the same fee schedule approved by this Court in its July 10, 2003 Attorney Fee Order and Judgment in Rausch v. Montana State Fund, and to accept a fee of 15% of any impairment award paid to a claimant less than 60 years of age, 10% if the claimant is age 60 or 61, and 5% if the claimant is age 62 or 63. The ages are as of the date of the Supreme Court decision in Rausch, i.e., September 5, 2002.

The following fees have been withheld for a substantial period of time:

1. Attorneys' Fees Withheld

**GLEN GROVER:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid  | Amt. Paid to Claimant | Atty Fees Withheld | Date Declared PTD |
|---------------|----------------------|-------------|------------------|-------------|------------|-----------------------|--------------------|-------------------|
| 8/23/1958     | 44                   | 48%         | 8/1/1998         | \$32,256.00 | 11/19/2002 | \$24,192.00           | \$8,064.00         | 7/3/2002          |

$$\$24,192.00 + \$8,064.00 = \$32,256.00$$

$$\$32,256.00 \div \$8,064.00 = 25\% \text{ Attorney Fee Withheld by Insurer}$$

**JAMES HALL:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid | Amt. Paid to Claimant | Atty Fees Withheld | Date Declared PTD |
|---------------|----------------------|-------------|------------------|-------------|-----------|-----------------------|--------------------|-------------------|
| 3/11/1964     | 38                   | 23%         | 1/2/2001         | \$17,293.01 | 1/3/2003  | \$12,969.76           | \$4,323.23         | 1/22/2003         |

$$\$12,969.76 + \$4,323.25 = \$17,293.01$$

$\$17,293.01 \div \$4,323.25 = 25\%$  Attorney Fee Withheld by Insurer

**LARRY MINDT:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid  | Amt. Paid to Claimant | Atty Fees Withheld | Date Declared PTD |
|---------------|----------------------|-------------|------------------|-------------|------------|-----------------------|--------------------|-------------------|
| 12/1/1944     | 57                   | 21%         | 10/18/2002       | \$17,787.00 | 11/15/2002 | \$15,119.00           | \$2,668.05         | 8/8/2003          |

$$\$15,119.00 + \$2,668.00 = \$17,787.00$$

$$\$17,787.00 \div \$2,668.00 = 15\% \text{ Attorney Fee Withheld by Insurer}$$

**RICHARD MILLER:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid | Amt. Paid to Claimant | Atty Fees Withheld | Date Declared PTD |
|---------------|----------------------|-------------|------------------|-------------|-----------|-----------------------|--------------------|-------------------|
| 8/13/1939     | 63                   | 64%         | 1/31/2003        | \$50,848.00 | 7/1/2003  | \$48,306.00           | \$2,542.40         | 5/29/2003         |

$$\$48,306.00 + \$2,542.00 = \$50,848.00$$

$$\$50,848.00 \div \$2,542.00 = 5\% \text{ Attorney Fee Withheld by Insurer}$$

**J. WEISGERBER:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award | Date Paid  | Amt. Paid to Claimant | Atty Fees Withheld             | Date Declared PTD |
|---------------|----------------------|-------------|------------------|------------|------------|-----------------------|--------------------------------|-------------------|
| 9/26/1956     | 45                   | 5%          | 10/21/2003       | \$3,972.50 | 10/31/2003 | \$3,377.50            | \$595.00<br>(recoup bi-weekly) | 10/21/2003        |

$$\$3,377.50 + \$595.00 = \$3,972.50$$

$$\$3,972.50 \div \$595.00 = 15\% \text{ Attorney Fee Withheld by Insurer}$$

**MICHEAL KIDD:**

| Date of Birth | Age on Sept. 5, 2002 | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid | Amt. Paid to Claimant | Atty Fees Withheld | Date Declared PTD |
|---------------|----------------------|-------------|------------------|-------------|-----------|-----------------------|--------------------|-------------------|
| 5/28/1958     | 44                   | 35%         | 2/21/2004        | \$27,807.50 | 2/21/2004 | \$23,636.38           | \$4,171.12         | 7/28/2004         |

$$\$23,636.38 + \$4,171.12 = \$27,807.50$$

$$\$27,807.50 \div \$4,171.12 = 15\% \text{ Attorney Fee Withheld by Insurer}$$

**SUSAN KNOEPFEL:**

| Date of Birth |    | Imp. Rating | Imp. Rating Date | Amt. Award  | Date Paid | Amt. Paid to Claimant | Atty Fees Withheld                | Date Declared PTD |
|---------------|----|-------------|------------------|-------------|-----------|-----------------------|-----------------------------------|-------------------|
| 4/24/1957     | 45 | 100%        | 8/24/2004        | \$91,312.50 | 9/1/2004  | \$77,615.63           | \$13,696.87<br>(recoup bi-weekly) | 12/10/2004        |

$$\$77,615.63 + \$13,696.87 = \$91,312.50$$

$$\$91,312.50 \div \$13,696.87 = 15\% \text{ Attorney Fee Withheld by Insurer}$$

2. **Attorneys' Fees Claimed and Refunds Issued to Claimants**

The FFR attorneys have agreed that no claimant will be required to pay sums out-of-pocket as recouped common fund attorneys' fees. Furthermore, the FFR attorneys agree to waive and refund all or portions of various attorney fees as follows:

| CLAIMANT                | Atty Fees Withheld | Percentage Attorney Fee Based on Age of Claimant | Atty Fees Claimed Based on Age of Claimant <sup>1</sup> | Refund to Claimant |
|-------------------------|--------------------|--|---|--------------------|
| Glen Grover             | \$ 8,064.00        | 15%  | \$ 6,451.20   | \$1,612.80         |
| James Hall <sup>1</sup> | 4,323.25           | 15%  | 0.00  | 4,323.25           |
| Larry Mindt             | 2,668.00           | 15%  | 2,134.44  | 533.56             |
| Richard Miller          | 2,542.00           | 5%   | 2,033.92  | 508.08             |
| J. Weisgerber           | 595.00             | 15%  | 476.00  | 119.00             |

<sup>1</sup> The FFR attorneys have waived all attorney fees withheld for James Hall, deceased, in the amount of \$4,323.25, and this entire amount shall be paid by the insurance carriers to the heirs of James Hall.

The FFR attorneys have also further reduced their common fund attorney fees on the claims of Susan Knoepfel, who suffered a 100% impairment as a result of her work injury, by basing their fee on the \$79,242.58 present value payment of her impairment award, rather than her \$91,312.50 total impairment award before reduction to present value. These additional attorney fee reductions will result in a total attorney fee refund payment by the insurance carriers to Ms. Knoepfel of \$4,187.76.

|                             |              |     |              |             |
|-----------------------------|--------------|-----|--------------|-------------|
| Micheal Kidd                | 4,171.12     | 15% | 3,336.90     | 834.22      |
| Susan Knoepfel <sup>1</sup> | 13,696.87    | 15% | 9,509.11     | 4,187.76    |
| TOTALS                      | \$ 36,060.24 |     | \$ 23,941.57 | \$12,118.67 |

3. Notification to Claimants

Steven Jennings, attorney for American Home Assurance Company, Insurance Company of the State of Pennsylvania and National Union Fire Insurance Company of Pittsburgh, PA., hereby agrees to serve notice by certified mail to each claimant identified above of the attorneys' fees claimed from the attorneys' fees withheld. Said notification shall be mailed to the claimants' address as determined by a reasonable investigation. Each claimant will be given three weeks from the time of mailing within which to object. In the event of an objection, Claimants shall be required to file their written objections with the Workers' Compensation Court and Mr. Jennings. Further, Mr. Jennings shall advise the Court by affidavit at the conclusion of the three weeks, confirming notice to claimants and status of any objections. There being no objections, and upon order from the Workers' Compensation Court, the insurance carriers through their attorney will promptly thereafter shall send equal one-third payments of the aggregate attorney fees to each of the three FFR attorneys.

DATED this 14<sup>th</sup> day of Dec, 2007.

BECK, AMSDEN & RUGGIERO, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, MT 59715

Attorneys for Petitioner Fisch

By: Monte Beck  
Monte D. Beck, Esq.

DATED this 7<sup>th</sup> day of December, 2007.

MILODRAGOVICH, DALE,  
STEINBRENNER & BINNEY, P.C.  
P.O. Box 4947  
Missoula, MT 59806-4947

Attorneys for Petitioner Rausch

By: Lon J. Dale  
Lon J. Dale, Esq.

DATED this 6<sup>th</sup> day of December, 2007.

Stephen D. Roberts, Esq.  
1700 W. Koch, Suite 5  
Bozeman, MT 59715

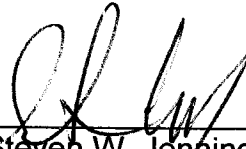
Attorney for Petitioner Frost

By: Stephen D. Roberts  
Stephen D. Roberts, Esq.




DATED this 14<sup>th</sup> day of November, 2007.

CROWLEY, HAUGHEY, HANSON  
TOOLE & DIETRICH, PLLP  
490 N. 31<sup>st</sup> St., Suite 500  
PO Box 2529  
Billings, MT 59103-2529

By:   
\_\_\_\_\_  
Steven W. Jennings, Esq.

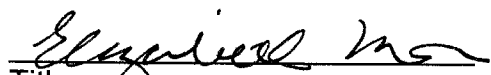
DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

AMERICAN HOME ASSURANCE COMPANY

By:   
\_\_\_\_\_  
Title Corporate Secretary


DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA

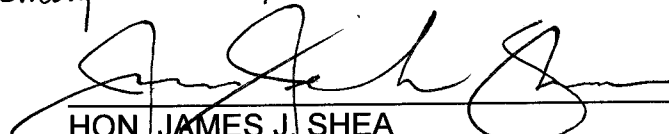
By:   
\_\_\_\_\_  
Title Corporate Secretary

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA

By:   
Title Corporate Secretary

APPROVED AND ORDERED this 26th day of December, 2007.  
*\* As modified by Minute Entry No. 3901, 12/21/07.*

  
HON. JAMES J. SHEA  
Workers' Compensation Court Judge

3: Lon J. Dale, Esq.  
Monte D. Beck, Esq.

Stephen D. Roberts, Esq.  
Steven W. Jennings, Esq.