

WORKERS' COMPENSATION COURT

Hearing No. 3563  
Volume XVII

Helena, Montana  
February 17, 2005

ALEXIS RAUSCH, et al.

Lon J. Dale  
Stephen D. Roberts

vs.

MONTANA STATE FUND

Greg E. Overturf  
Thomas J. Harrington

and

JEREMY RUHD

vs.

LIBERTY NORTHWEST  
INSURANCE CORPORATION

Larry W. Jones

WCC No.9907-8274R1

A telephone conference was held Thursday, February 17, 2005, at 1:00 p.m. in this matter. Counsel participating in the call were Lon J. Dale, Stephen D. Roberts, Greg E. Overturf, Thomas J. Harrington, Kelly M. Wills, and Larry W. Jones.

Discussion was held regarding responses to the Summons which was served on the insurers on January 10, 2005. Of the fifty-seven insurers served, thirty-three have responded providing the requested documentation. Three unsolicited responses were received. A short period of time will be allowed for the remaining twenty-four insurers to appear before issuing another notice. I commented that the list of insurers which was provided by ERD may be an incomplete list. The deputy clerk will send counsel via e-mail a list of the insurers who have responded.

I proposed to disseminate the information provided by the insurers by copying the information in PDF format onto CDs and mailing the CDs to counsel. Counsel agreed to this method of service. It was agreed that the Court would wait until most of the responses were received from the insurers before forwarding to counsel.

Some insurers responded to the Summons by asking for additional time to respond. I will give all parties who request an extension up to and including April 18, 2005.

There was lengthy discussion regarding Kelly Wills' client, Western Guaranty Fund (Guaranty Fund), and the specific difficulties it has in providing the requested information.

Mr. Roberts opined that it is the responsibility of the insurer or Guaranty Fund to identify the claimants and not the claimants' attorneys' responsibility. Mr. Wills believes that the claimants bear the cost of compiling the information. Mr. Dale believes that responsibility falls on the insurer. I noted that the insurers must make reasonable efforts to identify the claimants, but am not sure of the extent of the effort that must be made. I further noted that it may be possible for the ERD to provide a list of claimants for mailing questionnaires to claimants rather than manually reviewing each file.

Mr. Wills stated that the Guaranty Fund pays only claims which were active at the time of insolvency, therefore has records only with respect to those claims. Claims which were closed prior to insolvency were retained by the respective liquidators of the insolvent insurers. Also, files which the Guaranty Fund closes are returned to the liquidators. Thus, these files are not in the Guaranty Fund's possession and requests for those files will have to be made to the liquidators. Mr. Wills advised that getting responses from the liquidators is difficult at best.

With respect to claims paid by the Guaranty Fund, Mr. Wills indicated that he has been advised that the Guaranty Fund's computer system does not record whether the claimant is permanently totally disabled. They may, however, be able to get a list of claims currently in their system.

The DLI generated a list of claimants who were designated as PTD or who received TTD payments for more than eighteen months for Liberty Mutual. It may be possible to have the DLI do the same for the insolvent insurers. Such list should pick up many if not most of the claimants entitled to *Rausch* benefits.

Mr. Wills also indicated the Guaranty Fund can determine which claimants are currently being paid PTD or TTD benefits by surveying its adjusters. He will also obtain further information concerning the computer database and the fields used therein so that we can look into whether some sort of search might be constructed which will identify qualified claimants.

None of us are sure whether the liquidators of the insolvent companies got the Summons. Mr. Wills will therefore obtain a list of the liquidators and their addresses and supply it to the Court so that further notice can be given to them.

Discussion was held on the Confidentiality Agreement drafted by *Rausch* counsel. I indicated that I would like the following language added to the end of paragraph 2: "and used by them solely for purposes of enforcing the common fund created in *Rausch* and *Ruhd*."

Mr. Jones questioned the inclusion of "expert witnesses" in the authorization to the *Rausch* attorneys and we settled on replacing that language with a reference to health care providers so that medical advice can be obtained concerning questioned impairment ratings.

Counsel and myself agreed that paragraph 3 of the draft Confidentiality Agreement can be removed.

Upon receipt of the final, signed Confidentiality Agreement, I will issue an order approving the agreement and authorizing Liberty Mutual to provide *Rausch* counsel with access to the files of claimants identified as possible beneficiaries of *Rausch* impairment awards. The agreement needs to be signed and the order issued prior to any files being reviewed.

Mr. Jones will go through his client's files and remove information that is privileged. His client does have computer information that has not been printed and at present it was agreed that it is unnecessary to do so. I noted that if the files are deficient, the parties can determine whether it is necessary to print and review the computer screens at a later date.

Regarding the issues Todd Hammer raised on behalf of his seven insurer clients, I informed counsel I will be entering an order stating that insurers are parties to the action and overruling Mr. Hammer's objections on their behalf.

I also informed counsel that insurers will not be required to appear by attorney if they are not objecting to furnishing the information required by the Summons.

Following the first conference call, a second conference call was held with Lon J. Dale, Stephen D. Roberts, Mr. Greg Overturf, and Larry W. Jones.

Mr. Roberts was concerned with the removal of attorney-client information from the file. However, Mr. Jones will prepare a privilege log, noting all documents and/or information redacted from the files. If *Rausch* counsel later feel a need for any of the documents, they may advise the Court and I will consider the scope of the privilege.

A third conference call was then held with Lon J. Dale, Stephen D. Roberts, and Robert F. James. After I summarized Mr. James' response to the Summons, Mr. James informed counsel that the only way to identify the claimants was to physically go through the files. His client did access information of what claims were paid out by a computer search. The most that was paid out was \$130,000. The researcher doing the search did not feel it rose to the level of a PTD claim. Mr. James indicated a few claims are still being paid, but they are just for medical payments. His client will attempt to identify *Rausch* claimants. I will issue an order granting an additional 180 days to respond to the Summons.

The conference calls ended at 2:20 p.m.

MIKE McCARTER  
Judge

Minute Entry e-mailed to the *Rausch* Distribution List (see attached) on February 22, 2005.