

WORKERS' COMPENSATION COURT

Hearing No. 3566
Volume XVII

Helena, Montana
February 23, 2005

ALEXIS RAUSCH, et al.

Lon J. Dale
Monte D. Beck

vs.

MONTANA STATE FUND

and

JEREMY RUHD

vs.

LIBERTY NORTHWEST
INSURANCE CORPORATION

Larry W. Jones
Carrie L. Garber

WCC No.9907-8274R1

At Mr. Jones' request, I held a telephone conference with the above counsel to discuss what files Liberty Northwest and Liberty Mutual should pull for review by the *Rausch* attorneys. Counsel participating in the call were Lon J. Dale, Monte D. Beck, Larry W. Jones, and Carrie L. Garber.

At present we have three lists of claimants which were produced by the Department of Labor and Industry. The first list is of permanently totally disabled claimants injured since March 8, 1979. The second is of claimants receiving temporary total disability benefits longer than one year.** The third is of claimants receiving temporary total disability benefits longer than two years.

I noted that the Department's lists are underinclusive. That observation is based upon my review of replies by some of the insurers. Thus, Liberty will need to query its own computer database to identify claimants classified as permanently totally disabled and also to identify claimants receiving temporary total disability benefits longer than eighteen months. The eighteen-month period is the time frame counsel and I agreed should be used to identify temporary totally disabled claimants who might properly be classified as permanent total. Mr. Jones indicated that there is a disability code in the computer database which can be used to identify permanently totally disabled claimants. A similar code for temporary total disability benefits can be used but will have to be joined with a query identifying such payments over an eighteen month or greater period. Mr. Jones will check with Liberty's IT people about running these queries.

Meanwhile, the *Rausch* attorneys wish to proceed with a review of files for claimants identified in the Department's lists. I suggested, and they agreed, that files for temporary totally disabled claimants be limited to the list of claimants receiving such benefits for over two years, at least for the time being. I suggested Liberty retrieve from the computer bank those permanently totally disabled claimants beginning July 1, 1987, in the event the Montana Supreme Court rules in favor of the claimants on this issue. Therefore, Liberty and its related affiliate companies will retrieve and make available the files on the two-year Department list and the files for claimants on the Department's permanent total disability list. Pending a Supreme Court decision regarding the 1987-1991 provisions regarding impairment awards, the files shall be limited to claimants injured after June 30, 1991.

I further advised counsel that a number of insurers and self-insurers have not responded to the Summons we mailed out. We plan to serve those insurers and self-insurers pursuant to the usual rules of civil procedure. That will require us to identify which insurers are foreign and domestic and also find the names and addresses of the registered agents for the domestic companies and self-insurers. I will be drafting a new Summons and will provide it to counsel for their recommendations and advice.

MIKE McCARTER
Judge

**In a subsequent telephone call from Monte Beck's office, it was discovered that Diana Ferriter of the ERD had provided Mr. Beck with an updated list entitled "TTD Claims With Payments Greater Than One Year." Copies of this updated version have been forwarded to counsel via a February 25, 2005 e-mail.

Minute Entry e-mailed to the *Rausch* Distribution List (see attached) on February 28, 2005.