

WORKERS' COMPENSATION COURT

Hearing No. 3590  
Volume XVII

Helena, Montana  
April 28, 2005

ALEXIS RAUSCH, et al.

Lon J. Dale  
Monte D. Beck  
Stephen D. Roberts

vs.

MONTANA STATE FUND/  
LIBERTY NORTHWEST INSURANCE CORPORATION

Larry W. Jones  
Carrie L. Garber

WCC No. 9907-8274R1

A conference was held in the above matter. Mr. Beck, Mr. Roberts, and Mr. Jones appeared in person. Mr. Dale, Ms. Garber, and Mr. Rex Palmer participated by telephone.

Initially, we discussed scheduling of file review by Messrs. Dale, Beck, and Roberts (the "FFR attorneys"). Liberty has identified 327 files for review. Ms. Garber has reviewed 32 of them and those 32 are ready for review by the FFR attorneys. Mr. Beck wanted a firm date. Ms. Garber, who will be present for the review on the part of Liberty, indicated she is available much of the time and gave a couple of dates she is not. The FFR attorneys will notify her of a date and work directly with her to set up the review. Mr. Dale will do a preliminary review to size up the files on Friday, April 29, 2005. Mr. Palmer will participate and will sign a confidentiality agreement prior to doing so. That agreement will be provided to the Court for approval.

As to the confidentiality agreement with the FFR attorneys, there was only one remaining issue, and that concerns the use of adjusters to assist the FFR attorneys in the review of particular files. Mr. Jones indicated that Liberty does not want adjusters from its competitors going through its files. I suggested that the agreement state that the FFR attorneys submit the name of any adjuster they propose to use; if Liberty agrees, then the adjuster can be used and will be required to execute a confidentiality agreement. The agreement should provide that if the parties cannot agree as to an adjuster, guidance from the Court will be sought. Counsel agreed to my suggestion.

The FFR attorneys indicated that they will want to review the settlement agreements in cases settled between the time of my original *Rausch* decision and the time of the Supreme Court's decision in the case but only where claimant's were unrepresented. Mr. Beck will provide the Court with the inclusive dates involved. Mr. Jones or Ms. Garber will provide the Court with a list of settled cases and the Court staff will identify the cases involved, then forward the information on to the Department of Labor with a request that they determine from their database whether the claimant's identified were represented by counsel. The resulting information will then be provide to counsel.

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We then discussed the proposed letter to physicians regarding impairment ratings needed for unrated claimants. We went over Mr. Jones' draft and agreed that it should be modified in several respects. Initially, we agreed that the letter should come from a claims adjuster rather than legal counsel. The information regarding litigation should be deleted and the language about what is being requested vis-a-vis a rating needs revision. We conferenced in Ms. Cris McCoy of the State Fund at that point. She was in charge of the letters sent out by the State Fund and agreed to provide me with a draft of that letter. She also indicated that they calendared their cases for a 30-day review to determine whether the doctor had replied and followed up with those who had not. I will review her letter and draft a proposed letter to be used for Liberty claimants. The draft will be circulated to counsel for comment.

We discussed what to do in cases where there are more than one treating physician. I recommended that if it is unclear which doctor should rate the impairment then counsel should confer and agree on which one to ask, then if they cannot agree they can involve the Court. They agreed to the procedure. I further suggested that where a treating physician declines to provide an impairment rating, counsel get together and agree on another physician to do it.

MIKE McCARTER  
Judge

Minute Entry e-mailed to Global Common Fund List on May 3, 2005.