

WORKERS' COMPENSATION COURT

Hearing No. 3607
Volume XVIII

Helena, Montana
May 23, 2005

ALEXIS RAUSCH, et al.

Monte D. Beck and
Stephen D. Roberts

vs.

MONTANA STATE FUND, et al.

and

JEREMY RUHD

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Larry W. Jones and
Carrie L. Garber

WCC No. 9907-8274R1

At the request of Mr. Jones, a telephone conference was held with above counsel. Also participating in the conference call were Mr. Rex Palmer and Mr. Ronald A. Thuesen. The purpose was to discuss review procedures outlined in Ms. Garber's May 19, 2005 letter to Mr. Dale and an accompanying form Liberty proposes to use in its review of claimants' files. Copies of the letter and proposed form are attached to this minute entry for convenience of persons reading this minute entry.

There are four separate lists of claimants whose files will be reviewed. The lists are as follows:

- 1 DLI list of Liberty claimant's receiving temporary total disability benefits for 2 years or longer.
- 2 DLI list of Liberty claimants classified as permanently totally disabled.
- 3 Liberty list of claimants who are classified in its computer database as code 40 (permanently totally disabled).
- 4 Liberty list of claimants who have received temporary total disability benefits for 18 months or longer.

Ms. Garber will be conducting Liberty's review of the files to identify claimants eligible for impairment awards.

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It was agreed that the proposed form with some additions will be used in the review of all files and provided to the FFR (Fisch, Frost and Rausch) attorneys. The additions are items to record each claimant's permanent partial disability rate, the date of any impairment award which has been paid, and if an impairment award has been or is being paid biweekly, the date the payments began and the date they ceased (or whether they are continuing). Line items will be added to the form for each one. The form should be re-circulated to the FFR attorneys to assure they are satisfied with the new form. Any dispute over the form can be taken up with the court.

There was discussion concerning paragraph 2 of Ms. Garber's letter. All counsel agreed that the "September 5, 2000" date is incorrect and that it should read "September 5, 2002." There was further discussion regarding the statement in the letter that the FFR attorneys would not review files for claims settled after September 5, 2002 so long as Liberty furnishes them with the four items of information noted in the paragraph. At my suggestion, counsel agreed that the FFR attorneys reserve the right to look at the files after they have reviewed the information provided on the previously discussed forms but that they must notify Mr. Jones or Ms. Garber as to which files they wish to review. Non-designated files can then be returned to filing and will not be the subject of further review.

Mr. Jones objected to the FFR attorney review of files for claims settled between September 13, 2000 and September 4, 2002, where the claimants were represented by counsel. A list of settled cases was previously forwarded by the Court to the DLI with a request that settled claims where claimants were represented be identified. Those lists were returned to the Court with the claimants' names highlighted. In turn, the Court scanned the lists and e-mailed them to the FFR counsel and Mr. Jones, but they had not been reviewed. The Court will e-mail them again and also provide counsel with color hard copies so that they can discern the represented claimants.

In any event, I examined the lists during the conference and identified 11 claims settled during the period in question. Mr. Jones requested an opportunity to brief his contention that the settlements are not subject to the common fund lien, however, at my suggestion the parties agreed to defer briefing and obtain the information required by the proposed form. That information may moot the issue raised by Mr. Jones. If it does not, then I will allow briefing and decide the issue.

FFR counsel agreed that claims settled prior to September 13, 2000, are not subject to the common fund and need not be reviewed.

Finally, Mr. Roberts indicated his position that it is Liberty's duty to identify and pay claimants entitled to impairment awards as a result of the *Rausch* decision. I agreed but noted that the Court is responsible for supervising the enforcement of the common fund

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and that it is a good idea to have an agreed-upon process in place so that future disputes over the adequacy of the insurer's efforts can be avoided. I noted that Liberty will be fulfilling its responsibility by undertaking the review contemplated in this conference and making any payments discovered to be owing in that process.

MIKE McCARTER
Judge

Minute Entry e-mailed to Rausch e-mail list on May 31, 2005, with attachments.

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May 19, 2005

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FILED

MAY 20 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

RE: FFR Common Fund

Dear Lon:

I received your letter of May 13, 2005, and have reviewed it with Larry. We are glad that you, Monte and Steve have agreed that as long as Liberty furnishes you with the information listed in your letter, you will not review the files listed in Exhibit 3 (the files in which Code 40 PTD benefits were paid). Attached is a form that I propose using to furnish you with the information listed in your letter.

With regard to Exhibits 1, 2 and 4, Larry and I would like to confirm that you, Monte and Steve also agree that if the claim was settled from September 5, 2000, to present and claimant was represented by an attorney, you will not review those files as long as Liberty furnishes you with the following:

1. claimant's name and date of birth
2. date of injury/OD
3. date of settlement
4. name of attorney involved in settlement.

Regarding claims that were settled between Sept. 13, 2000, and Sept. 4, 2002, it is our understanding that the Court forwarded the list of Liberty claims settled between those dates to ERD to determine whether those claimants were represented by attorneys. It is Liberty's position that these claims are not part of the common fund.

Regarding claims settled prior to Sept. 13, 2000, we want to confirm that you will not review those claims as they are not subject to the common fund.

Larry requests that we set up a quick conference call with the Court on Friday, May 20th, if possible, to discuss the following:

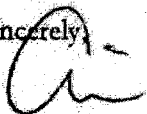
1. the form that I propose using;
2. the information that Liberty will provide you regarding claims settled:
 - a. between Sept. 13, 2000 and Sept. 4, 2002; and
 - b. from Sept. 5, 2002 to present;
3. claims settled prior to Sept. 13, 2000; and

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4. your agreement not review files where we provide the information to you on the proposed form.

I will contact the clerk of Court to see when Judge McCarter is available, and then I will email those times to you, Monte and Steve to see if any will work.

Sincerely,



Carrie L. Garber

cc: Judge McCarter
Monte Beck
Steve Roberts

FFR COMMON FUND REVIEW

CLAIMANT:

CLAIM NO.:

Exhibit			
1	2	3	4

Claimant's Date of Birth: _____

Date of Injury/OD: _____

Was an impairment rating received? YES or NO

Date of Impairment Rating: _____

Impairment Rating _____ %

Was an impairment award paid based upon the impairment rating? YES or NO

Amount of impairment award: \$ _____

Was any amount withheld from payment of the impairment award based upon the common fund lien? YES or NO

Was there a settlement? _____

Date of settlement? _____

Attorney involved in settlement: