

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 9

WCC No. 9907-8274R1

ALEXIS RAUSCH, et al.

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer

and

JEREMY RUHD

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

ORDER DENYING MOTION TO QUASH SUMMONS AND OBJECTIONS,
JOINING PARTIES, AND RETAINING CAPTION

Summary: Upon remand from the Montana Supreme Court decision in *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561, and pursuant to that decision, the Workers' Compensation Court issued summonses to all Montana workers' compensation insurers and self-insurers who have paid permanent total disability benefits to claimants injured since June 30, 1991, requiring them to file responses identifying permanently totally disabled claimants. Some insurers responded by objecting to the summonses and moving to quash them.

Held: The objections are denied and the motions to quash overruled. The summonses make the insurers party respondents. The common fund doctrine obligates the insurers to identify

and pay benefitted claimants and gives the Court jurisdiction and authority to make them parties and enforce the common fund doctrine and lien.

Topics:

Common Fund Litigation: Parties. Where a common fund has been established, the Workers' Compensation Court has jurisdiction and authority to join insurers to enforce payment of benefits to benefitted claimants and also enforce the common fund attorney fee lien.

Common Fund: Jurisdiction. Where a common fund has been established, the Workers' Compensation Court has jurisdiction and authority to join insurers to enforce payment of benefits to benefitted claimants and also enforce the common fund attorney fee lien.

Procedure: Summons. A summons hales the summoned party into court and makes the summoned party a party respondent to the action.

Procedure: Parties. A summons hales the summoned party into court and makes the summoned party a party respondent to the action.

Common Fund Litigation: Insurers. Where a decision creates a common fund, insurers have a duty to identify and pay the benefitted claimants the benefits to which they are entitled.

¶1 The Court has before it responses filed by Crawford and Company and Continental Casualty Company; Plum Creek Timber Company, L.P.; F.H. Stoltze Land & Lumber Company; Benefis; ASARCO, Incorporated; Golden Sunlight Mines; and Northwest Healthcare Corporation. In those responses, the named respondents set out numerous objections to the summonses with which they were served and move to quash the summonses. The objections and motion to quash are without merit.

Discussion

¶2 This case is on remand from the Montana Supreme Court with specific instructions to enforce the entitlements of claimants which arose as a result of the Supreme Court's prior decision in *Rausch v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, as well as to enforce the *Rausch* attorneys' common fund attorney lien. *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561. In *Ruhd*, the Supreme Court held that the *Rausch* attorneys, "via active litigation, are directly responsible for securing the right of all permanently totally disabled claimants to receive an impairment award, regardless of their insurer," and said, "[t]he Workers' Compensation Court shall supervise

enforcement of the common fund pursuant to *Rausch*, and all court-approved agreements stemming from it, from all insurers involved.” *Ruhd*, ¶¶19, 25. To that end, this Court caused summonses to be served on all Montana workers’ compensation insurers and self-insurers who have paid permanent total disability benefits to claimants injured since June 30, 1991. The summonses require them to file responses identifying all permanently totally disabled claimants and to provide information concerning impairment ratings and impairment awards for those claimants.

¶3 Respondents initially argue that they are not parties to this case and that this Court therefore has no jurisdiction to issue a summons to them. They are wrong. The intent of the summons is to join each of them **as parties**. If that is not clear from the summons, then this order makes that clear.

¶4 Second, respondents argue that the Court lacks jurisdiction because no dispute exists. Again, they are wrong. The Supreme Court’s decision in *Murer v. State Compensation Mut. Ins. Fund*, 283 Mont. 210, 223, 942 P.2d 69, 77 (1997), expressly held that in common fund cases, claimants have a vested right to benefits which flow from the decision-in-chief. The Court said, “[a]dditionally, claimants established a vested right on behalf of the absent claimants to directly receive immediate monetary payments of past due benefits underpayments; and based on the establishment of those vested rights, the State Fund became legally obligated to make the increased benefits payments.” *Murer* at 223, 942 P.2d at 77. As noted in paragraph 2 of this order, the Supreme Court in this case held that the *Rausch* decision secured “the right of all permanently totally disabled claimants to receive an impairment award.” *Ruhd*, ¶19. Since this Court is charged with enforcing the rights of the common fund claimants, individual claimants are not required to file individual complaints against respondents. Claimants benefitted in a common fund case have a right to benefits; insurers have a corresponding duty to pay those benefits. Moreover, in light of the lien of the *Rausch* attorneys, and the notice of that lien, the respondents must account for common fund attorney fees for any impairment awards paid to permanently totally disabled claimants since the date of the lien notice.

¶5 The respondents argue, thirdly, that they cannot be made parties in this action because it is not a class action. They are correct that this is not a class action, however, it is a common fund action and this Court’s powers in common fund cases include the authority to join parties necessary to enforce the common fund and the common fund attorney lien.

¶6 Fourth, they assert that they have “no duty to solicit claims or to advise claimant’s of their legal rights in regard to said claims.” (Brief in Support of [Respondents’] Objections to Summons and Motion to Quash Summons, ¶D.) This case does not involve a solicitation of claims or the providing of legal advice to claimants. Rather, *Rausch* and *Murer* created a duty obligating them to pay the benefits to which claimants in accepted liability cases are entitled. Moreover, to reiterate, this Court has a duty to enforce the common fund created by *Rausch*.

That duty requires it to compel each insurer and self-insurer to identify the claimants entitled to impairment awards and pay them those awards, as well as enforce the common fund attorney lien.

¶7 In a fifth, separately asserted ground, respondents reiterate their assertion that they are not parties and cannot be properly joined because this is not a class action. Those assertions have already been addressed.

¶8 Finally, I note that Crawford and Company is neither a self-insurer or insurer. Its interest in this matter is as a third-party adjuster for the responding insurers. As such, it is not a party in this action and is not required to file a response. Any duties it has are to the insurers for which it works and are therefore derivative of the insurers' duties.

ORDER

¶9 For the reasons set forth in the above discussion, IT IS ORDERED AS FOLLOWS:

¶10 The motion to quash and objections filed by Crawford and Company and Respondents Continental Casualty Company; Plum Creek Timber Company, L.P.; F.H. Stoltze Land & Lumber Company; Benefis; ASARCO, Incorporated; Golden Sunlight Mines; and Northwest Healthcare Corporation, are **denied**.

¶11 The summons haling the said respondents into Court renders Continental Casualty Company; Plum Creek Timber Company, L.P.; F.H. Stoltze Land & Lumber Company; Benefis; ASARCO, Incorporated; Golden Sunlight Mines; and Northwest Healthcare, as well as all other insurers and self-insurers summoned or filing responses, party respondents in the present action.

¶12 To preserve continuity with respect to the caption in this case, and because of the large number of respondent insurers and self-insurers, the current caption will be retained. The names of the additional respondents will not be added to it.

¶13 Respondents Continental Casualty Company; Plum Creek Timber Company, L.P.; F.H. Stoltze Land & Lumber Company; Benefis; ASARCO, Incorporated; Golden Sunlight Mines; and Northwest Healthcare Corporation are given until April 18, 2005, in which to file responses providing the information required by the summonses.

DATED in Helena, Montana, this 22nd day of February, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Order e-mailed to Rausch Distribution List (see attached) on February 22nd, 2005.