

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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.

SUMMONS

The State of Montana to the following Insurers and Self-Insureds:

ASARCO INC; BENEFIS HEALTH CARE; CHAMPION INTERNATIONAL CORP; CONOCO INC; CONSOLIDATED FREIGHTWAYS CORP; F H STOLTZE LAND & LUMBER CO; GOLDEN SUNLIGHT MINES INC; HOLLY SUGAR CORP; J C PENNEY CORP INC; K MART CORP; MACO WORKERS' COMP TRUST; MHA WORKERS' COMP TRUST; MONTANA CONTRACTOR COMP FUND; MONTANA MUNICIPAL INS AUTHORITY; MONTANA POWER CO; MONTANA SCHOOLS GROUP INS AUTHORITY; NORTHWEST HEALTHCARE CORP; PLUM CREEK TIMBER CO LP; SISTERS OF CHAR OF PROV OF MT; STAN WATKINS TRUCKING INC; TARGET CORP; TOWN PUMP INC; AMERICAN ECONOMY INS CO; AMERICAN HOME ASSURANCE CO; AMERICAN INTERSTATE INS CO;

ASSOCIATED INDEMNITY CORP; AUTOMOBILE INS CO OF HARTFORD; BANKERS STANDARD INSURANCE CO; CONTINENTAL CASUALTY CO; CREDIT GENERAL INSURANCE CO; EMPLOYERS INS OF WAUSAU MUTUAL CO; FAIRMONT INSURANCE CO; FIREMANS FUND INS CO; FREMONT IND CO OF THE NORTHWEST; FREMONT INDEMNITY CO; INSURANCE COMPANY OF STATE OF PA; LEGION INSURANCE CO; LIBERTY INSURANCE CORP; LIBERTY MUTUAL FIRE INSURANCE CO; LIBERTY NORTHWEST INS CORP; LM INSURANCE CORPORATION; NATIONAL UNION FIRE INS OF PITTSBURGH; NATIONWIDE MUTUAL FIRE INSURANCE CO; OLD REPUBLIC INSURANCE CO; PENNSYLVANIA MANUFACTURERS ASSOC; RELIANCE NATIONAL INDEMNITY CO; SAFECO INSURANCE COMPANY OF AMERICA; STANDARD FIRE INSURANCE CO; TRAVELERS CASUALTY & SURETY CO; TRAVELERS IND CO OF AMERICA; TRAVELERS INDEMNITY CO; TRAVELERS INDEMNITY CO OF CT; TRAVELERS PROPERTY CASUALTY COMP OF AMERICA; VALOR INSURANCE COMPANY INC; WAUSAU UNDERWRITERS INS CO; and ZURICH AMERICAN INSURANCE CO

¶1 On January 23, 2003, each of you named in this Summons was sent a Lien Notice notifying you of the attorney fee lien claimed by the petitioners' attorneys in *Rausch, et al., v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, with respect to impairment awards due permanently totally disabled claimants pursuant to the decision in that case. In *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478 (*Ruhd II*), decided August 31, 2004, the Montana Supreme Court confirmed that lien, holding that a common fund exists with respect to **all** impairment awards due permanently totally disabled claimants irrespective of the insurers liable for the awards and that the *Rausch* attorneys are entitled to common fund attorney fees with respect to those awards. The Supreme Court specifically directed the Workers' Compensation Court to "supervise enforcement of the common fund pursuant to *Rausch*, and all court-approved agreements stemming from it, **from all insurers involved.**" 2004 MT 236, ¶ 25 (emphasis added).

¶2 Each of you named in this Summons has been identified by the Department of Labor and Industry (DLI) as paying permanent total disability (PTD) benefits to one or more claimants injured or suffering from an occupational disease (OD) since June 30, 1991, which is the time-frame covered by the *Rausch* decision. Pursuant to *Ruhd II*, this Court must determine which of those claimants are due impairment awards. The Court must also determine what attorney fees are due with respect to the impairment awards.

¶3 Accordingly, each of you named in this Summons is **ordered** to continue to withhold the attorney fees claimed in the January 23, 2003 Lien Notice previously served on you in this case.

¶4 Further, each of you is **ordered** to file a **response** to this Summons. In that response you shall provide the Court with the following information:

1. The names and last-known addresses of all claimants injured or suffering occupational diseases since June 30, 1991, to whom you have paid PTD benefits at any time.
2. The date of injury or OD for each of the claimants identified in response to paragraph 1.
3. The date and amount of any impairment awards paid to each claimant identified in answer to paragraph 1. With respect to any award paid after September 5, 2002, state the amount you withheld for attorney fees on account of the Lien Notice.
4. With respect to each claimant identified in paragraph 1 who has not been paid an impairment award, state whether an impairment rating has been rendered and the rating given.
5. The names and last-known addresses of all claimants injured or suffering occupational diseases since June 30, 1991, who were paid temporary total disability (TTD) benefits for eighteen (18) months or longer.
6. With respect to each claimant identified in response to paragraph 5, state the nature of the injury the claimant suffered, the inclusive dates he or she was paid TTD benefits, and the current status of indemnity benefits still being paid or the date and nature of the disposition of the claim if benefits are no longer being paid.
7. The names and addresses of each claimant whose claim was settled by you after September 5, 2002, and who was receiving TTD benefits at the time of the settlement.
8. As to each claimant identified in response to paragraph 7, provide a copy of the settlement agreement.

¶5 In the event you are presently unable to provide the information requested, object to the furnishing of any of the information, or wish to furnish the information or provide access to the information by other means than responding to the above requests, you may respond by so stating. If you respond that you are presently unable to provide the information, you must additionally state why you are unable to do so and state whether you

can provide it at a future date; if able to provide the information at a future date, you must provide an estimate of the time you need to assemble the information and the steps required to do so; and, if you believe you cannot provide the information at all, you must explain the reasons you cannot do so. In the event you object to the furnishing of the information, you must state your specific objections. If you wish to furnish the information by other means than specifically responding to the Court's requests, you must state what means you propose to provide or allow access to the information.

¶6 You may mail your response to the Workers' Compensation Court, P.O. Box 537, Helena, Montana 59624-0537, or send it via Federal Express or other delivery method to the Court at its offices on 1625 11th Avenue, Helena, Montana, 59601. **Your response must be received by the Court by Monday, February 14, 2005.**

¶7 **Since confidential information may be involved in your response, DO NOT send copies of your response to the attorneys in *Rausch, Fisch, Frost, and Ruhd*, or for that matter to anyone else. Your response should be sent only to the Court. The Court will determine at a later date whether the information you provide is protected from disclosure to the attorneys in *Rausch, Fisch, Frost, and Ruhd.***

DATED in Helena, Montana, this 10th day of January, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE