

Larry W. Jones
Law Office of Jones & Garber
An Insurance Company Law Division
700 SW Higgins Avenue, Suite 108
Missoula, MT 59803-1489
(406) 543-2433
Attorney for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

JEREMY RUHD,)	WCC No. 2002-0500
)	
Petitioner,)	
)	
vs.)	BRIEF OF RESPONDENT
)	ON REMAND
LIBERTY NORTHWEST INSURANCE CORP.,)	
)	
Respondent/Insurer.)	

COMES NOW the above-named Respondent pursuant to this Court's Order for Briefing filed January 2, 2003.

PETITION TO AMEND.

Ruhd filed his Petition to Amend on or about June 17, 2002 and Liberty opposed it in its Respondent's Brief in Opposition to Petitioner's Motion to Amend filed on or about June 21, 2002. Liberty continues to oppose the motion to amend for the reasons set forth in its earlier pleading.

COMMON FUND.

Attached is the Affidavit of the undersigned establishing that the attached correspondence was either transmitted or received in the normal course of business.

On September 10, 2002 the undersigned sent Exhibit "A" to the attorneys representing the claimants in Rausch to ask if they claimed the common fund created by the Rausch Court extended to Ruhd's case or any other Liberty Northwest or Liberty Mutual cases with similar facts.

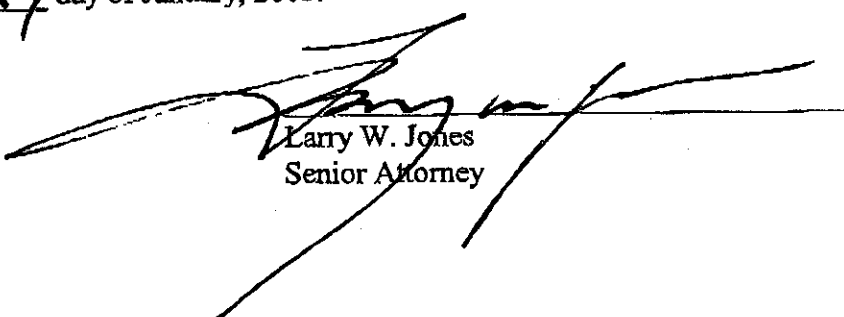
TRANSMITTED TO
CLAIMS DIV.
1-29-03

Attached as Exhibit "B" is the September 12, 2002 letter from Lon Dale, on behalf of the Rausch attorneys, setting forth their claim to common fund attorney fees in Ruhd's case as well as all claims of Liberty Northwest or Liberty Mutual to which the Rausch decision may apply.

Attached as Exhibit "C" is the September 23, 2002 letter from the undersigned to Lon Dale acknowledging his earlier letter and notifying him, in paragraph 2 of that letter, "By acknowledging the claim of a lien Liberty does not agree that you have perfected it or otherwise [are] entitled to the attorney fees. I say this simply because Mr. Ruhd's attorney disagrees with your decision."

Liberty takes no position as to the merits of the claims and counterclaims of the attorneys for fees involved in this case. Instead Liberty asks the Court for an order setting forth its liability for attorney fees under the Rausch decision as regard Ruhd's case. Obviously, Liberty only wants to pay once and if any attorney takes the position Liberty should pay more than once, Liberty reserves the right to reply to that as of it yet unarticulated argument.

DATED this 24 day of January, 2003.



Larry W. Jones
Senior Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of January, 2003, I served the original of the foregoing BRIEF OF RESPONDENT ON REMAND, first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

Geoffrey C. Angel
Angel Law Firm
125 West Mendenhall
Bozeman, MT 59715

Lon J. Dale
James T. Towe
Milodragovich, Dale, Steinbrenner & Birney, P.C.
P. O. Box 4947
Missoula, MT 59806-4947

Monte D. Beck
Attorney at Law
1700 West Koch Street, Suite 2
Bozeman, MT 59715-4148

Stephen D. Roberts
Attorney at Law
1700 West Koch Street, Suite 5
Bozeman, MT 59715

Greg E. Overturf
Montana State Fund
P. O. Box 4759
Helena, MT 59604-4759

Bradley J. Luck
Garlington, Lohn & Robinson
P. O. Box 7909
Missoula, MT 59807-7909


Cindy Brown



700 SW Higgins Avenue, Suite 250
Missoula, MT 59803-1429

Tel: 406 543 4933
Fax: 406 549 0468
Toll Free: 800 735 7079
www.libertynorthwest.com

September 10, 2002

FAX 549-7077 (4 pages) & U.S. Mail

Lohn J. Dale
James T. Towe
Milodragovich, Dale, Steinbrenner & Binney, P.C.
P. O. Box 4947
Missoula, MT 59806-4947

FAX (406) 586-8960 (4 pages) & U.S. Mail

Monte D. Beck
Attorney at Law
1700 West Koch Street, Suite 2
Bozeman, MT 59715-4148

FAX (406) 585-0087 (4 pages) & U.S. Mail

Stephen D. Roberts
Attorney at Law
1700 West Koch Street, Suite 5
Bozeman, MT 59715

RE: Rausch et al. v. State Fund, 2002 MT 203 (2002)
Jeremy Ruhd – WC687-036525

Gentlemen:

Congratulations on the decision in the above-captioned case. I am writing to you assuming a petition for rehearing will not be filed or alternatively if filed, that will be denied.

Attached is a copy of the Workers' Compensation Court's Summary Judgment in Ruhd v. Liberty Northwest Ins. Corp., WCC No. 2002-0500, August 7, 2002 in which the Court relied on the holding in your case that the Montana Supreme Court reversed. Please note Mr. Ruhd has a 74% impairment rating.

In holding your efforts created a common fund, it is unclear whether the Supreme Court limited that holding to State Fund claimants. Specifically I refer you to the following sentence: "The attorneys incurred legal costs and fees in the preservation of that right and the common fund will benefit an ascertainable class of workers who were denied immediate payment of an impairment award by the State Fund which they were legally entitled to receive. Slip Op. at p. 24 (emphasis added).

EXHIBIT A

TRANSMITTED TO
COURT

9-17-02

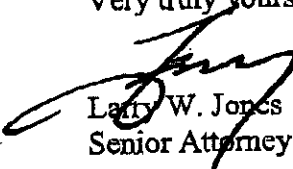
Lohn J. Dale
James T. Towe
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September 10, 2002
Page 2

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Mr. Ruhd is represented by Geoffrey C. Angel, Angel Law Firm, 125 West Mendenhall, Bozeman, Montana 59715, (406) 586-1926. By a copy of this letter to Geoff I am notifying him of this communication with you.

If you have any questions or otherwise would like to discuss the contents of this letter, please contact me at extension 2433 at your convenience. As I am sure you can appreciate, all of us would appreciate a prompt response to this letter. I look forward to hearing from all of you.

Very truly yours,



Larry W. Jones
Senior Attorney

LWJ/cb
Enclosure
c: Geoffrey C. Angel (w/out enc.)

MILODRAGOVICH, DALE, STEINBRENNER & BINNEY, P.C.

ATTORNEYS AT LAW
620 HIGH PARK WAY, P.O. BOX 4947, MISSOULA, MONTANA 59806-4947

TELEPHONE: (406) 728-1455
FAX: (406) 549-7077
Signator's E-Mail Address: lon@blgskylawyers.com

*Ruhd
copy*

M. J. MILODRAGOVICH
LON J. DALE
*JON R. BINNEY
GERALD W. STEINBRENNER
CHRISTIAN T. NYGREN
**J. TIFFIN HALL
G. PATRICK HAGESTAD
ELIZABETH A. O'HALLORAN
***PERRY J. SCHNEIDER

September 12, 2002

Larry W. Jones, Senior Attorney
Liberty Northwest
700 SW Higgins Avenue, Suite 250
Missoula, MT 59803-1429

*ALSO ADMITTED - COLORADO STATE BAR
**ALSO ADMITTED - IOWA STATE BAR
***ALSO ADMITTED - STATE BARS OF CONNECTICUT
AND DISTRICT OF COLUMBIA

Via fax (406) 549-0468 and first-class mail

RE: Rausch et al. v. State Fund
Cause No. 2002 MT 203 (2002)
Our File No. 6654/2 and 6654/5

Dear Larry:

This will acknowledge receipt of your correspondence of September 10, 2002. It is the conclusion of the attorneys involved in the Rausch et al. case that the decision applies to Plan Number One, self-insureds, and Plan Number Two, insurers. Montana Supreme Court decisions involving workers' compensation issues apply universally to workers' compensation issues in Montana and, no matter which Plan is involved in the litigation, the Montana Supreme Court decision applies universally to all Plans. Moreover, our Petition specifically included all claimants similarly situated for purposes of the impairment issue. As you and the claimant's attorney acknowledged in Ruhd, the Rausch, et al. decision specifically controlled whether Mr. Ruhd was entitled to impairment benefits. The lower Court acknowledged the same in its summary judgment decision.

You are further advised that the attorneys involved in the Rausch, Fisch, and Frost litigation before the Montana Supreme Court are claiming common-fund attorneys' fees pursuant to the decision as to any and all payments made for impairment benefits to which the holding of the decision is applicable. Further, the attorneys are claiming a lien pursuant to MCA § 37-61-420 based upon the express holding of the decision creating a common fund as to all claimants similarly situated. Liberty Northwest is hereby specifically advised by this correspondence of the attorneys' lien claim and the applicability of the common-fund attorneys' fees to any and all payments made for impairment benefits to which the holding of the Montana Supreme Court decision is applicable.

EXHIBIT B

9-13-02

Larry W. Jones, Senior Attorney
September 12, 2002
Page 2

We are specifically providing notice of a common-fund fee as to Mr. Ruhd's case based upon the holding of the Montana Supreme Court Rausch, et al. decision. As far as we are concerned, the Ruhd case has, by implication, been decided by the holding in Cause No. 2002 MT 203.

This notice is intended to apply to any and all claims of Liberty Northwest to which the Montana Supreme Court decision in Cause No. 2002 MT 203 may apply. You are hereby requested to begin the task of analyzing your records concerning all permanent totally disabled individuals who may be considered as claimants similarly situated to Rausch, Fisch, and Frost. We expect that there will be further orders from the workers' compensation court pertaining to your required disclosures.

Sincerely,

Monte D. Beck, Esq.
BECK & RICHARDSON
1700 West Koch, Ste. 2
Bozeman, MT 59715-4148

Stephen D. Roberts, Esq.
1700 West Koch, Ste. 5
Bozeman, MT 59715

Lon J. Dale, Esq.
MILODRAGOVICH, DALE,
STEINBRENNER & BINNEY, P.C.
PO Box 4947
Missoula, MT 59806-4947


Lon J. Dale

EWORLD0XIDOC5ICLI ENTFL06854002W00001575.W PD(sah)

cc: Monte D. Beck, Esq.
Stephen D. Roberts, Esq.



Liberty
Northwest.

700 SW Higgins Avenue, Suite 250
Missoula, MT 59803-1429

Tel: 406 543 4933
Fax: 406 549 0468
Toll Free: 800 735 7079
www.libertynorthwest.com

September 23, 2002

FAX 549-7077 & U.S. Mail

Lon J. Dale
Milodragovich, Dale, Steinbrenner & Binney, P.C.
P. O. Box 4947
Missoula, MT 59806-4947

RE: Rausch et al. v. State Fund, 2002 MT 203 (2002)
Jeremy Ruhd – WC687-036525

Dear Lon:

This is a letter acknowledging your letter of 9-12-02 in which you Monty and Steve, pursuant to the Supreme Court decision in Rausch, claim a common fund attorney fee lien against the Ruhd as well as all other similar cases Liberty Northwest claims.

By acknowledging the claim of a lien Liberty does not agree that you have perfected it or otherwise entitled to the attorney fees. I say this simply because Mr. Ruhd's attorney disagrees with your position.

I have sent a letter to Geoff asking that he would consider a joint motion to remand in Ruhd for proceedings consistent with Rausch. It is my intention that if the case is remanded that the issues you raised will be put before the Workers' Compensation Court. To date I have not heard from Geoff. I have made the same request for relief in my Supreme Court reply brief.

As regards cases other than Ruhd being adjusted by Liberty Northwest that you ask that we analyze to find similarly situated claimants, I am now in a similar proceeding, Miller v. Liberty Mutual Fire Insurance Company, WCC No. 2000-0174 wherein Larry Anderson is representing Mr. Miller under the Montana Supreme Court holding in Broeker v. Great Falls Coca-Cola, 275 Mont. 502, 914 P.2d 967 (1996).

We have pending motions about what Liberty will be required to do under a common fund doctrine approach brought by Larry under the Broeker decision. I note this for you to respond to your request that we look at other cases. Pending resolution of such issues as relevant files and time periods, we really are not prepared to do anything else on other cases that Liberty has adjusted or is adjusting.

Again, if the Ruhd case were remanded for proceedings consistent with Rausch, all these issues could be dealt with systematically and I am working on the assumption that the three of you

EXHIBIT C

9-23-02

Lohn J. Dale

RE: Rausch et al. v. State Fund, 2002 MT 203 (2002)
Jeremy Ruhd - WC687-036525

September 23, 2002

Page 2

would participate directly as regards your claims under Rausch in the Ruhd proceeding, again if remanded.

I hope this letter is responsive to yours. If you have any questions or otherwise want to discuss the contents of this letter, please contact me at your convenience.

Very truly yours,



Larry W. Jones
Senior Attorney

LWJ/cb

c: Geoffrey C. Angel
Monte D. Beck
Stephen D. Roberts

Larry W. Jones
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Attorney for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

JEREMY RUHD,) WCC No. 2002-0500
)
Petitioner,)
)
vs.) **AFFIDAVIT OF LARRY W.**
) **JONES**
)
LIBERTY NORTHWEST INSURANCE CORP.,)
)
Respondent/Insurer.)

STATE OF MONTANA)
: ss.
County of Missoula)

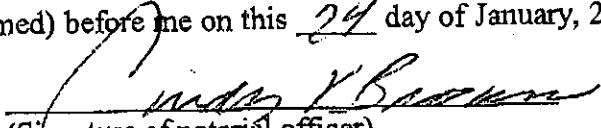
1. That I am the attorney representing the Respondent/Insurer.
2. That I authored the attached letter of September 10, 2002 to the attorneys in the Rausch case in the normal course of business.
3. That I received the attached letter of September 12, 2002 from Lon Dale in the normal course of business.
4. That I authored the attached letter of September 23, 2002 to Lon Dale in the normal course of business.

DATED this 24 day of January, 2003.


Larry W. Jones

STATE OF MONTANA)
 : ss.
County of Missoula)

Signed and sworn to (or affirmed) before me on this 24 day of January, 2003, by Larry W. Jones.


(Signature of notarial officer)
Notary Public for the State of Montana
My Commission Expires: 3-11-2006

(Seal)

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of January, 2003, I served the original of the foregoing AFFIDAVIT OF LARRY W. JONES, first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

Geoffrey C. Angel
Angel Law Firm
125 West Mendenhall
Bozeman, MT 59715

Stephen D. Roberts
Attorney at Law
1700 West Koch Street, Suite 5
Bozeman, MT 59715

Lon J. Dale
James T. Towe
Milodragovich, Dale, Steinbrenner & Binney, P.C.
P. O. Box 4947
Missoula, MT 59806-4947

Bradley J. Luck
Garlington, Lohn & Robinson
P. O. Box 7909
Missoula, MT 59807-7909

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Bozeman, MT 59715-4148

Greg E. Overturf
Montana State Fund
P. O. Box 4759
Helena, MT 59604-4759


Cindy Brown



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Fax: 406 549 0468
Toll Free: 800 735 7079
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September 10, 2002

FAX 549-7077 (4 pages) & U.S. Mail

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Milodragovich, Dale, Steinbrenner & Binney, P.C.
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Missoula, MT 59806-4947

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RECEIVED TO 10
CIT. 101
9-12-02

Lohn J. Dale
James T. Towe
Monte D. Beck
Stephen D. Roberts
RE: Rausch et al. v. State Fund, 2002 MT 203 (2002)
Jeremy Ruhd – WC687-036525

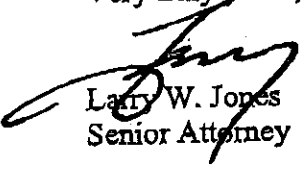
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Very truly yours,



Larry W. Jones
Senior Attorney

LWJ/cb
Enclosure
c: Geoffrey C. Angel (w/out enc.)

MILODRAGOVICH, DALE, STEINBRENNER & BINNEY, P.C.

ATTORNEYS AT LAW

820 HIGH PARK WAY, P.O. BOX 4947, MISSOULA, MONTANA 59806-4947

TELEPHONE: (406) 728-1456

FAX: (406) 549-7077

Signator's E-Mail Address: lon@bigskylawyers.com

September 12, 2002

*Fund
COPY*

M. J. MILODRAGOVICH
LON J. DALE
*JON R. BINNEY
GERALD W. STEINBRENNER
CHRISTIAN T. NYGREN
**J. TIFFIN HALL
G. PATRICK HAGESTAD
ELIZABETH A. O'HALLORAN
***PERRY J. SCHNEIDER

*ALSO ADMITTED - COLORADO STATE BAR
**ALSO ADMITTED - IOWA STATE BAR
***ALSO ADMITTED - STATE BARS OF CONNECTICUT
AND DISTRICT OF COLUMBIA

Larry W. Jones, Senior Attorney
Liberty Northwest
700 SW Higgins Avenue, Suite 250
Missoula, MT 59803-1429

Via fax (406) 549-0468 and first-class mail

RE: Rausch et al. v. State Fund
Cause No. 2002 MT 203 (2002)
Our File No. 6654/2 and 6654/5

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Sincerely,

Monte D. Beck, Esq.
BECK & RICHARDSON
1700 West Koch, Ste. 2
Bozeman, MT 59715-4148

Stephen D. Roberts, Esq.
1700 West Koch, Ste. 5
Bozeman, MT 59715

Lon J. Dale, Esq.
MILODRAGOVICH, DALE,
STEINBRENNER & BINNEY, P.C.
PO Box 4947
Missoula, MT 59806-4947


Lon J. Dale

I:\WORLD\DOCS\CLIENT\ENTFL106654\002\tr\00001575.W PD(sah)

cc: Monte D. Beck, Esq.
Stephen D. Roberts, Esq.



Liberty
Northwest.

700 SW Higgins Avenue, Suite 250
Missoula, MT 59803-1429

Tel: 406 543 4933
Fax: 406 549 0468
Toll Free: 800 735 7079
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September 23, 2002

FAX 549-7077 & U.S. Mail

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P. O. Box 4947
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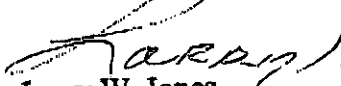
September 23, 2002

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Larry W. Jones
Senior Attorney

LWJ/cb

c: Geoffrey C. Angel
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