

1 A P P E A R A N C E S (CONTINUED):

2 ALSO PRESENT:

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16 MR. JAY DUFRECHOU

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TRANSCRIPT OF PROCEEDINGS

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1 Whereupon, the following proceedings were
 2 had:
 3 * * * * *
 4 (Ms. Butler not present)
 5 THE COURT: We are now on Debra
 6 Stavenjord versus State Fund, and Cassandra
 7 Schmill versus Liberty Northwest Insurance
 8 Corporation. We have basically most of the same
 9 set of players, but we have a few different
 10 players in the case, so we're going to start out
 11 and have everybody identify themselves, starting
 12 with Tom.
 13 MR. MURPHY: Hi. My name is Tom Murphy.
 14 I'm representing Deb Stavenjord and the common
 15 fund. I'm from Great Falls.
 16 MR. JONES: Larry Jones, Liberty
 17 Northwest.
 18 MS. WALLACE: Laurie Wallace,
 19 representing Cassandra Schmill.
 20 MR. LUCK: Brad Luck, State Fund.
 21 MR. HARRINGTON: Tom Harrington, State
 22 Fund.
 23 MR. ADAMS: Charlie Adams, appearing on
 24 behalf of nobody in particular, Keller Law Firm,
 25 Helena.

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1 for a factual hearing, although there are two
 2 additional provisions that we need to talk to Mr.
 3 Murphy about that might give rise to that, but I
 4 don't think that that would be the case. So I
 5 think we'll probably be able to work that out.
 6 THE COURT: Since we're on that topic,
 7 let me go to Laurie and Larry. Where are you guys
 8 at?
 9 MS. WALLACE: Larry just provided me
 10 with some basically information that Liberty can't
 11 come up with anything that I want. So we're a
 12 little farther away from where we need to be then
 13 on any kind of stipulated facts.
 14 THE COURT: Are you at the point where
 15 you're anticipating some sort of evidentiary
 16 hearing?
 17 MR. JONES: We may be there, or going
 18 there, Your Honor, but I believe we would
 19 have the same issues -- and I think Laurie was
 20 here for most, if not all, of the last hearing
 21 about briefing whether there is a common fund,
 22 whether she's proceeding under a common fund or a
 23 class action.
 24 THE COURT: What they're working on in
 25 the Stavenjord case is basically a factual

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1 MR. ANGEL: Geoffrey Angel of the Angel
 2 Law Firm.
 3 MR. FAUST: Luke Faust, Faust Law
 4 Office.
 5 MR. HUNT: Jim Hunt.
 6 MR. BLACKABY: Dean Blackaby.
 7 MR. MARTELLO: Tom Martello, State
 8 Fund.
 9 MR. HAWKINS: Dave Hawkins, seeking the
 10 truth.
 11 THE COURT: On behalf of the State
 12 Fund. Where are we at on these cases?
 13 MR. LUCK: Your Honor, we've worked
 14 extensively with Mr. Murphy on a stipulation, and
 15 we're within another discussion or two, I think,
 16 of finalizing that. Along with the proposed
 17 stipulation, we have just two or three elements
 18 that we are still trying to work out, and there
 19 are a couple of the additional provisions we need
 20 to draft and agree on, but I think we're within a
 21 couple of weeks of getting that done. In relation
 22 -- do you want to just stay on that?
 23 THE COURT: Sure.
 24 MR. LUCK: And we anticipate that we
 25 will have a stipulation, and we won't have a need

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1 foundation for an argument on whether there's a
 2 common fund, and also on retroactivity? You're
 3 still --
 4 MR. LUCK: Yes. We've actually also --
 5 just so you know, Judge, we've proposed a set of
 6 facts for Laurie, and she's responded, and we
 7 just haven't gotten together for that as many
 8 rounds as we have with Mr. Murphy, so we're
 9 working with both of them on a document already.
 10 THE COURT: So Laurie and Larry have
 11 that draft?
 12 MR. JONES: No.
 13 THE COURT: You were going to say
 14 something.
 15 MR. HARRINGTON: Larry was shaking his
 16 head no, but we should have mailed a letter and
 17 proposed stipulation the same day we mailed it.
 18 MS. WALLACE: I don't believe Larry has
 19 ever gotten it.
 20 MR. LUCK: We'll get that to Larry then.
 21 THE COURT: You might take a look at
 22 that, and see how much in common you have, and
 23 actually might use that to spring off if there are
 24 differences, so that I know what the differences
 25 are between the two insurers.

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1 MR. JONES: Since I sent Laurie the
 2 letter with that information, I've pressed our IT
 3 people, and I've got a bit more detail on it. And
 4 I have to get that to Laurie and press them some
 5 more, to see if I can find out just exactly what
 6 we can do with our computer system.
 7 MS. WALLACE: I've got some suggestions.
 8 MR. JONES: I will give you the number
 9 of our IT people in Portland.
 10 MR. LUCK: Larry, did you not get this
 11 letter on August 11?
 12 MR. JONES: I can't say one way or the
 13 other, simply because of what's on my desk and
 14 where I've been. So it may actually be there.
 15 MR. LUCK: Let us know if you didn't get
 16 it. Our proposed facts relate specifically to the
 17 State Fund, though. We'll make sure we keep Larry
 18 in the loop, but we'll work separately with Laurie
 19 and get those agreed to. I think we can do that.
 20 I think there might be -- we just have to go
 21 through the process. There might be a need with
 22 some of her expressed concerns for some sort of an
 23 evidentiary hearing, but we'll try to avoid that
 24 if we can.
 25 THE COURT: It would be helpful if all

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1 Counsel worked together, and then we can identify
 2 the common things, and if there are differences
 3 between insurers, it would be helpful to know that
 4 there are those differences, and focus on those a
 5 little bit.
 6 Tom, are you in agreement that you're
 7 getting pretty close as far as your stipulation in
 8 Stavenjord?
 9 MR. MURPHY: Yes, it's dangerously
 10 close, the kind of danger where you wake up in the
 11 morning and go, "Should I be stipulating to all
 12 those things that I didn't discover?"
 13 MR. LUCK: He's given in to two out of
 14 84, so he's feeling pretty guilty about that.
 15 MR. MURPHY: They're saying all sorts of
 16 stuff that I've never heard about before, but I've
 17 got the one protection of the first footnote, and
 18 the only footnote, in the proposed stipulation so
 19 far, which says, "Stavenjord's Counsel didn't
 20 discover any of this stuff, but for purposes of
 21 these motions, we're stipulating," because I don't
 22 think Chevron Oil applies, as you just stated in
 23 Flynn again. And so we're putting in a lot of
 24 facts, they're not discovered facts, but they're
 25 stipulated for the purposes of your consideration.

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1 THE COURT: The one thing I learned this
 2 morning is Flynn is probably going to get settled,
 3 and so we're not going to get a Supreme Court
 4 decision yea or nay in that case.
 5 But I would also indicate to you that
 6 I'm fairly consistent, so I would expect to say
 7 the same thing about the Chevron test. I think
 8 I've pretty much made up my mind about that. And
 9 I don't think it is going to apply, but if it
 10 does, I'm not going to go through in each of these
 11 cases, and do exactly what I did in Flynn, and say
 12 probably the same thing, "I don't think Chevron
 13 applies," once the Supreme Court looks at it, "But
 14 if it does, here's my analysis."
 15 The interesting thing is that the cases
 16 are different, and I could reach different results
 17 in these cases than I reached in Flynn. The
 18 greatest danger of that happening probably is in
 19 the Wild case, rather than this case. This case
 20 is probably a little bit closer to Flynn than the
 21 Wild case. The Wild and Matthews cases are
 22 probably the furthest away.
 23 MR. MURPHY: This case, Judge, as you
 24 recall, not only -- I don't even think it's close
 25 to Flynn, I think it's way above Flynn, because in

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1 Stavenjord and Schmill, we have a Supreme Court
 2 decision saying that these statutes are
 3 unconstitutional. And with regard to
 4 retroactivity, I don't even know of any case where
 5 they didn't retroactively apply a decision when
 6 they found the statute in question
 7 unconstitutional.
 8 So Flynn wasn't premised on
 9 unconstitutionality, as I recall, so I think --
 10 MS. WALLACE: Statutory interpretation.
 11 MR. LUCK: That's an interesting twist,
 12 too, maybe because of Henry, of only going back to
 13 Henry, in terms of what's reasonably foreseeable.
 14 There's a middle ground retroactivity issue that
 15 would be involved in Stavenjord.
 16 THE COURT: That you apply Chevron
 17 before Henry, and --
 18 MR. LUCK: You apply it, and it was not
 19 reasonably foreseeable until after the Henry
 20 decision.
 21 THE COURT: That's an interesting
 22 argument. Jim Hunt thinks that that's a bad
 23 argument.
 24 MR. LUCK: We're going to trying to make
 25 the best arguments we can, and not incur the ire

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1 of the Court.
 2 MR. MURPHY: So we agree with the Court
 3 in terms of Chevron Oil, but I think even the
 4 Stavenjord and Schmill cases with the
 5 unconstitutional findings of the statute.
 6 THE COURT: There's an interesting line
 7 of Montana Supreme Court cases dealing with
 8 unconstitutional statutes, and whether or not
 9 their decisions are retroactive. But in criminal
 10 cases, then they have to do with the appellate
 11 process more than anything else, whether or not
 12 they're barred because of the failure to exhaust
 13 remedies, or the exhaustion of remedies, post
 14 conviction relief and things like that. So I
 15 don't think those apply.
 16 And I didn't look at the civil cases. I
 17 just determined -- I'm fully aware of the
 18 unconstitutional issues in the criminal cases, but
 19 they're sort of on a different plane than what
 20 we're dealing with here.
 21 So I wondered if that might play into
 22 this case and we need to address that separately,
 23 whether there's some sort of different rule. We
 24 might want to address that in Chevron days, was
 25 there a different rule in Chevron days. Why can't

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1 it be Texaco or Mobil?
 2 MR. MURPHY: Well, it's hard because
 3 it's Chevron and Chevron Oil. Those are two
 4 different cases, and they get confusing in there.
 5 THE COURT: So we're working on that.
 6 Shall we put a report back, status report-back
 7 date, so that we have some sort of fixed date? Do
 8 we want to do that for about four weeks from now?
 9 MR. LUCK: That would be fine.
 10 MR. MURPHY: I think he said two weeks.
 11 We can get this done in two weeks. We're three
 12 stipulations out of 85.
 13 MR. LUCK: We've got, as a result of
 14 your last suggestion of incorporating that report,
 15 we needed to do some things to present that relate
 16 to that report. So it might take a little bit
 17 more than that. We're happy to work with you
 18 quickly, but I'd like to have the four, like we do
 19 in the other case, to work against, and then if we
 20 can do it sooner, we'll certainly do it sooner.
 21 THE COURT: I'm thinking of coordinating
 22 Larry and Laurie, too. I want to try to keep the
 23 two together.
 24 MR. MURPHY: I think they're going to
 25 lag behind. Laurie, I don't mean to speak for

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1 you -- but my understanding is that she wants to
 2 do some discovery. Is that true?
 3 MS. WALLACE: We haven't gotten to that
 4 yet. We're just starting our discussions on what
 5 I can and can't agree to, but there may be some
 6 discovery.
 7 MR. MURPHY: I'm more of the "Fools rush
 8 in where angels fear to tread." She's the angel,
 9 and I'm the fool jumping and kind of agreeing to
 10 facts so we can get the case decided. I think
 11 that I'm taking a risk in terms of stipulating to
 12 a number of things that we did not discover, like:
 13 How did they get their number? Why does it differ
 14 from the ERD, who commissioned a study, this New
 15 Jersey organization. They said the effect of it
 16 is about .4 percent, four-tenths of one percent.
 17 The State Fund is staying 1.1 percent. So I'm not
 18 discovering that.
 19 MR. LUCK: That's one of the reasons we
 20 need a little extra time, is we'll explain why
 21 that doesn't necessarily apply to us.
 22 THE COURT: Also one thing to keep in
 23 mind is whether or not it's really significant.
 24 Is .4 versus 1.1 significant? If it's .4 versus
 25 40, obviously that's significant. But ask

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1 yourself whether or not that is going to be really
 2 meaningful to me. It sounds to me like that's
 3 probably not real meaningful, although if you
 4 apply it over a huge number of cases, .4 percent
 5 out of 100 isn't very -- or out of 1000 is four
 6 cases, but --
 7 MR. LUCK: It's actually more pervasive
 8 than that, though, in terms of the report. But
 9 we'll work on that.
 10 THE COURT: Just keep those things in
 11 mind. I don't know the answer to that. I also
 12 know things compound sometimes, too.
 13 MR. MURPHY: The point I was making
 14 there is that I get the impression -- and like I
 15 said, I don't want to speak for Laurie -- but I
 16 get the impression that Larry and Laurie will
 17 maybe follow the path of discovery, and maybe even
 18 an evidentiary hearing, and I get the impression
 19 we're trying to work out a stipulation of facts,
 20 and I'm giving them most of the facts that they
 21 want, so that they can have their Chevron Oil
 22 argument. And I don't think they'll be here for
 23 awhile. That's my impression.
 24 THE COURT: Okay. Well, I'm going to
 25 put it on a four week track because I'd like --

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1 I'm going to have you guys report back on four
 2 weeks insofar as what you can agree to as part of
 3 their facts, so at least we have that solidified;
 4 and then whether you diverge from there, I'll
 5 leave that up to you, and we'll see how much we
 6 diverge.
 7 But in four weeks, let's either get
 8 stipulated facts to me; and Larry and Laurie,
 9 insofar as you can stipulate to those facts, let's
 10 get that done. That doesn't mean that that's all
 11 of the facts, just that those are the ones that
 12 you can stipulate to; or if there's a problem, let
 13 me know what the problem is.
 14 And then if there's a need for an
 15 evidentiary hearing, let me know that, and the
 16 sorts of stuff that you need the evidentiary
 17 hearing regarding.
 18 And for Laurie and Larry, if you're
 19 contemplating some discovery, I need to know that,
 20 and we need to sit down and talk about that, and
 21 see if there's a way that we can streamline that,
 22 so that we can do it without going through all of
 23 the formal hoops, and get the information that's
 24 necessary exchanged expeditiously.
 25 What's next on our agenda?

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1 MR. LUCK: I have a question. This is
 2 the first time that these two cases have been
 3 discussed together. One of the things that I
 4 pondered that I don't know that I fully understand
 5 is to what extent for common fund and attorney
 6 fees purposes is Schmill consumed by Stavenjord.
 7 Stavenjord occurred ten days before Schmill, and
 8 said that permanent partial disability benefits
 9 payable to occupational disease claimants is the
 10 same as the OD Act.
 11 Schmill comes along, and gets rid of
 12 apportionment, and to some extent, or to a great
 13 extent, Laurie needs to tell me about what she
 14 anticipates here. But to the extent that we have
 15 permanent partial disability benefits that are
 16 related to this apportionment issue, I think those
 17 are consumed by the previous decision, and
 18 wouldn't be part, I don't think, of a second
 19 common fund, because the entitlement to the full
 20 703 benefit was determined in Stavenjord.
 21 And maybe the answer is: To the extent
 22 that there's apportionment in total disability
 23 benefits, that there's a common fund. I don't
 24 know the answer to that, but I think it's
 25 something we need to talk about, and get some

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1 guidance. And maybe you can clarify that, Laurie.
 2 MS. WALLACE: I think I can. As I see
 3 it, Schmill applies to TTD benefits that were
 4 reduced pursuant to apportionment, and the
 5 diminishment of the ten grand that was reduced
 6 pursuant to apportionment, because the Court ruled
 7 specifically that that apportionment applied -- I
 8 don't know what case it was, but I know you did --
 9 because claimants' arguments had been that the
 10 apportionment applies to the total value of the
 11 case, and you said, no, it applies to the ten
 12 grand.
 13 So up to the ten grand in PPD would be
 14 Schmill. Beyond the ten grand would be
 15 Stavenjord.
 16 MR. LUCK: But it seems like that ten
 17 grand was basically a permanent partial disability
 18 benefit that's consumed by a 703 entitlement once
 19 the law was changed in Stavenjord.
 20 MS. WALLACE: It was once, but this is
 21 being applied retroactively. Retroactivity, there
 22 was a ten grand limit.
 23 MR. LUCK: The same dollars, is my
 24 concern.
 25 THE COURT: I may be on a completely

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1 different wave length than both of you.
 2 Stavenjord, really the issue in
 3 Stavenjord was if you could get a more liberal
 4 benefit under the Workers Compensation Act,
 5 whether you were entitled to that more liberal
 6 benefit, and the Supreme Court said you were; but
 7 the apportionment issue wasn't raised at all in
 8 that case, as I recall. There just wasn't the
 9 apportionment issue. There was no argument for
 10 apportionment in that issue. So that wasn't even
 11 addressed.
 12 So you've got the potential, until
 13 Schmill comes along, that you could argue that
 14 even though you were entitled to more liberal
 15 benefits, it would still be apportioned, just like
 16 you would apportion the \$10,000 benefit under the
 17 Occupational Disease Act.
 18 MR. LUCK: The way I would phrase it is
 19 Stavenjord decided that workers compensation
 20 permanent partial disability benefits are
 21 available to occupational disease claimants; and
 22 to the extent that occupational disease claimants
 23 were getting a quasi partial disability benefit,
 24 \$10,000 apportioned something less than the total
 25 disability benefit, that is consumed by 703. All

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1 those entitlements, I think, are consumed by the
 2 elements of 703.
 3 THE COURT: I don't think the Supreme
 4 Court addressed the apportionment at all. You
 5 could have an entitlement to \$20,000 under 703, an
 6 entitlement to \$10,000 under 405, and both of
 7 those could be apportioned, and you'd still be
 8 entitled.
 9 MR. LUCK: Let me try to be a little bit
 10 more clear. Once the Supreme Court said on April
 11 1st, occupational disease claimants are entitled
 12 to 703 benefits, they were entitled to all partial
 13 disability benefits under the Workers Compensation
 14 Act without any kind of apportionment.
 15 THE COURT: Where did they say that?
 16 Where did they address the apportionment issue?
 17 MR. LUCK: What I'm saying is if you're
 18 entitled to 703 benefits under the Workers
 19 Compensation Act, there's no apportionment in the
 20 Workers Compensation Act, so you are entitled to
 21 the full permanent partial disability benefit if
 22 you're an OD claimant. And I'm wondering --
 23 THE COURT: I don't think they addressed
 24 that, though. They addressed that in the context
 25 of \$10,000 versus 703, which was, what, \$23,000.

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1 There was no apportionment in that case, so they
 2 didn't address whether or not you would then graft
 3 the apportionment on to --
 4 MR. LUCK: But I think it just follows
 5 as a matter of course. This is just my thought.
 6 It makes sense to me that if you are entitled to
 7 Section 703 benefits, you're entitled to whatever
 8 partial disability benefits the Workers
 9 Compensation Act allows. The Workers Compensation
 10 Act doesn't allow any kind of apportionment.
 11 So by being entitled to 703 benefits,
 12 you're entitled to that full bore benefit, which I
 13 think in practice consumes at least a good number
 14 of people. That was clarified ten days later that
 15 there's no apportionment. It wasn't necessary,
 16 that decision wasn't necessary once Stavenjord was
 17 made.
 18 THE COURT: I agree with you if you just
 19 read the language in Stavenjord. The problem is
 20 that wasn't an issue, so you're going to get --
 21 any Court is going to look at that and say,
 22 "That wasn't an issue. It wasn't raised." So I'm
 23 not sure that it really addresses it.
 24 MR. LUCK: But if we look at it this
 25 way, if Stavenjord was decided, and Schmill didn't

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1 exist, OD claimants would get full unapportioned
 2 703 benefits.
 3 THE COURT: I don't think Stavenjord
 4 says that. Stavenjord does not address the
 5 apportionment issue. Nobody made the apportion
 6 issue. They did not argue that you apportioned
 7 703 benefits.
 8 MR. LUCK: But if you are entitled to
 9 the same benefit, the unconstitutional aspect of
 10 it was you weren't entitled -- you've got the OD
 11 benefits, and you've got the comp benefits.
 12 Stavenjord said you're entitled to the comp
 13 benefits under 703, which carry with it no
 14 apportionment.
 15 THE COURT: But read Flynn. The Flynn
 16 case is the answer to your argument. The
 17 argument, the apportion argument wasn't at issue
 18 in the case, so they didn't decide the
 19 apportionment argument. They were deciding the
 20 full entitlement issue in a case where there
 21 was full entitlement under the Occupational
 22 Disease Act. There was no apportionment. They
 23 didn't decide the apportionment issue.
 24 The two cases together certainly I think
 25 establish that there is no apportionment of the

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1 PPD benefits.
 2 But in any event, the question, it seems
 3 to me, is whether or not there's an overlapping
 4 claim, and that's a question for Laurie, and
 5 Laurie --
 6 MS. WALLACE: I'm trying to separate it
 7 out so that there isn't one, and I'm willing to
 8 forego any claim on PPD beyond the ten grand --
 9 THE COURT: So the only common fund --
 10 MS. WALLACE: -- to avoid the conflict
 11 with Stavenjord.
 12 THE COURT: So you're not claiming
 13 common fund on PPD benefits.
 14 MS. WALLACE: Beyond the ten grand,
 15 because for example, if an apportionment was
 16 imposed so somebody got six grand, now you go back
 17 and figure out their full entitlement to TTD, to
 18 the extent it goes beyond ten grand, I'm saying
 19 Stavenjord allowed the claimant to beyond the ten
 20 grand, but I get up to the ten grand because that
 21 was apportionment.
 22 THE COURT: So there is an overlapping.
 23 MR. MURPHY: I think there might be.
 24 But Laurie and I are in basic agreement about the
 25 main thing she just said: TTD reduced pursuant to

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1 apportionment is a Schmill issue, not Stavenjord.
 2 MR. LUCK: We would agree with that.
 3 MR. MURPHY: PPD reduced pursuant to
 4 apportionment is a Schmill issue, not Stavenjord.
 5 The only potential for overlap is the potential
 6 that there was an apportioned \$10,000, and she's
 7 considering a lien on that portion that was
 8 reduced from ten to whatever was paid.
 9 She and I have not talked about that.
 10 Perhaps we could report to you in four weeks about
 11 working that out, because I don't anticipate any
 12 problem with Laurie in terms of working out a
 13 solution there.
 14 THE COURT: So we need a report in four
 15 weeks as to the extent of the claim lien in
 16 Schmill, specifically with regard to --
 17 MR. MURPHY: -- previous reductions of
 18 the ten grand.
 19 THE COURT: So if they hadn't been --
 20 Laurie, if they hadn't been paid anything, and it
 21 turns out they're entitled to five, ten, \$20,000
 22 in PPD benefits, then you're not making a claim on
 23 that?
 24 MS. WALLACE: Right.
 25 THE COURT: You're only making a claim

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1 on the amounts that have been paid.
 2 MS. WALLACE: (Nods head).
 3 THE COURT: That's what I need to know.
 4 You need to get that in writing and get that
 5 filed.
 6 MS. WALLACE: Sure.
 7 MR. JONES: Your Honor, if I could ask
 8 Laurie. We're trying to get more information to
 9 identify relevant files. If we could identify in
 10 Liberty Northwest files in which permanent partial
 11 was paid, is that something Laurie thinks is
 12 relevant, and she would like to have that
 13 information?
 14 MS. WALLACE: I believe so, because my
 15 thought was that you could eliminate all PPD cases
 16 where there was a lump sum paid in excess of ten
 17 grand, because you're saying you can't
 18 differentiate between OD and injury on your
 19 system. But clearly an OD wouldn't have paid a
 20 lump sum in excess of ten grand, except maybe
 21 under some weird circumstance that I'm not going
 22 to worry about.
 23 So if you have something on the system
 24 that identifies lump sum payments of PPD benefits,
 25 and the lump sum payment is in excess of ten

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1 grand, I think that would eliminate the OD cases
 2 that we're dealing with.
 3 THE COURT: Back up for me just a
 4 second, because Liberty is saying that you can't
 5 identify occupational disease claims?
 6 MR. JONES: There apparently isn't a
 7 specific entry, "This is an OD," or "This is an
 8 injury."
 9 THE COURT: Don't we have that
 10 identification issue in Miller after --
 11 MR. JONES: No, I don't think we do,
 12 because we were just trying to identify perm total
 13 in that case.
 14 THE COURT: That's right.
 15 MR. JONES: Your Honor, I have a
 16 preliminary indication of how I might get some
 17 more precision to otherwise general denial, I
 18 guess it was. We may be able to identify
 19 permanent partial payments, permanent total, and
 20 temp total. There may be a field that we can
 21 identify those files. And I think if Laurie would
 22 like, if possible for us to clarify that and
 23 actually make a --
 24 THE COURT: Have you got a
 25 confidentiality agreement in place where you can

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1 give her the fields? I think we did that in
 2 Miller.
 3 MR. JONES: We did, and we can certainly
 4 do that in this case.
 5 THE COURT: Why don't you do that,
 6 because sometimes there's more than one way to
 7 skin a cat, as we learned in Murer and Broeker.
 8 MR. JONES: I did, in the information I
 9 provided Laurie, indicate that we have a program,
 10 identified it, and that there are 2,640 separate
 11 fields, not all of which were used.
 12 THE COURT: Get a confidentiality
 13 agreement, and then give her that information,
 14 because that's what you're going to want to look
 15 at to see if you can come up with some ideas,
 16 Laurie, to identify occupational disease cases.
 17 MR. JONES: So Your Honor, I take it
 18 Laurie would like us to explain, if we can
 19 identify, permanent partial, perm total, temp
 20 total, and Section 405 claims, if there's a way to
 21 do that; is that correct?
 22 MS. WALLACE: Yes. I can refine that
 23 further for you, though. I think that would give
 24 us more precise numbers.
 25 THE COURT: But if you give her the

1 fields, then she can look at it herself and
 2 satisfy herself -- assuming she has some computer
 3 literacy or she has an expert. So we need to do
 4 that.

5 MR. JONES: We will do that, Your Honor.
 6 We'll get the confidentiality form redrafted and
 7 appropriate names and send it to Laurie, and if
 8 signed, as we did in Miller, we will provide a
 9 printout that shows these 2600 fields.

10 THE COURT: This raises another issue,
 11 folks. When we're talking about retroactivity,
 12 and we're talking about things like this impacting
 13 whether or not it should be retroactive, does that
 14 figure into your argument at all?

15 MR. JONES: The burdensomeness, I would
 16 think, of hand audits is a relevant fact.

17 THE COURT: What are factors under
 18 Chevron?

19 MR. JONES: I think they use the phrase
 20 "inequitable," but I think it also goes to the
 21 imposition on a party to do certain things. If it
 22 would be inequitable to require a party to do
 23 those things.

24 THE COURT: One of the questions that we
 25 need to address in these cases is whether or not

1 defendant's burden for having a bad system.

2 THE COURT: The question is whether it
 3 can be done at all, too. That's why I'm asking
 4 that Larry provide Laurie with the fields, because
 5 a lot of times there's other information, you can
 6 put several fields together and figure it out.
 7 And that's a question of ingenuity as well as some
 8 computer savvy.

9 MR. MARTELLO: I think the other thing
 10 that comes into this, from my recollection from
 11 Murer, is you have the issue I think of the
 12 Chevron test as to the equities in the burdens,
 13 but I think you can also -- In order to have some
 14 consistency, you look at each system, and if, for
 15 example, the difficulty or the inability at all to
 16 have those records to go back, that may be solved
 17 potentially by a different manner of contacting,
 18 or a different burden upon the insurer. For
 19 example, an insurer going and actually pulling
 20 files or looking for them, as opposed to more of a
 21 class action type of a -- someone has to make
 22 claim by way of maybe notice, publication,
 23 something of that nature.

24 THE COURT: Larry doesn't want to hear
 25 this.

1 a decision can be retroactive to one insurer and
 2 not retroactive to another insurer because of such
 3 factors, and if not, whether I can consider that
 4 or how I can consider that; because the other
 5 thing is we only have two insurers in this case.
 6 We have all these other insurers out there.

7 And I'm not sure in any retroactivity
 8 case that I've read where it's got an effect on
 9 lots of people, whether all those people have been
 10 dragged in to figure out what their unique
 11 problems are. So I think we need to address what
 12 kinds of things I can consider and how they should
 13 be considered.

14 Geoff, you had your hand raised, so you
 15 have a comment.

16 MR. ANGEL: I just wanted -- In the new
 17 age of this electronic discovery, there's actually
 18 some guiding federal decisions where they've
 19 weighed the burdens on the defendant, and the idea
 20 of having to -- when you have a system that's
 21 inadequate to help administer a claim, and
 22 they've pretty consistently held that that's just
 23 an -- In one case, it was more than \$100,000 to go
 24 through the system because of the way it was
 25 maintained, and they just said that's the

1 MR. MARTELLO: So that you could
 2 potentially decide the issue of retroactivity, and
 3 then apply it, depending upon the capabilities of
 4 the insurer for records. There may be a different
 5 means in which you solicit or obtain the people
 6 that are part of that group.

7 THE COURT: Talk about that when you do
 8 your briefs, talk about that sort of thing,
 9 because the thing that concerns me is it's either
 10 retroactive for everybody, it seems to me, or it's
 11 retroactive for nobody. I don't think you can say
 12 it's retroactive for some and not retroactive for
 13 others. I don't think that's in the cards.

14 So if it's retroactive versus
 15 nonretroactivity, how deep do I get in determining
 16 what kind of specific problems a specific
 17 individual out there, a specific insurer in our
 18 case, has in complying. And maybe the answer in
 19 part is somewhat along the lines that Tom
 20 suggested, but at least I think we ought to
 21 address whether or not that is the answer to that,
 22 or at least a partial answer.

23 MR. MURPHY: You have quite a bit of
 24 latitude. As you list in Flynn, the third leg of
 25 Chevron is the equity of retroactive application

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1 must be considered. You just wrote this, and a
 2 very good analysis. You go through the whole
 3 thing, and you talk about administrative
 4 difficulties. You're well aware of these same
 5 issues. I'm sure that they're every time going to
 6 say that it's very difficult and it's very
 7 expensive.
 8 THE COURT: But in this particular case
 9 is how far do I have to throw the net in making
 10 the consideration, because it's either all are in
 11 or all are out. And how far do I consider each
 12 individual insurer's uniqueness and the uniqueness
 13 of their computer system. I think we need to talk
 14 about that a little bit.
 15 MR. MURPHY: I think your analysis
 16 should differ definitely between the
 17 unconstitutional statutes and the constitutional,
 18 or the statutory construction cases.
 19 THE COURT: You need to cite me some
 20 cases on that, because I wonder if there is a
 21 difference in the constitutional things. As I
 22 said, I'm aware of the criminal line in cases, but
 23 those are real different.
 24 MR. LUCK: We haven't found them. We
 25 keep talking that, but we don't find any cases

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1 that say that. Tom keeps talking about that, but
 2 we don't find any cases that say that.
 3 THE COURT: There may not be any in
 4 Montana, but there may be some out there.
 5 MR. MURPHY: Basically the equity goes
 6 like this. What is the equity of forcing people
 7 to live under an unconstitutional statute to the
 8 betterment, the financial betterment of an
 9 insurance company, so that they can keep the money
 10 that they should have paid under the
 11 unconstitutional statute. The equities there are
 12 pretty clear.
 13 MR. LUCK: I understand the argument.
 14 Just wondering about the authority.
 15 THE COURT: If there is a different --
 16 What I'm wondering is if there are any -- is there
 17 any law out there saying, "We apply a different
 18 rule," "Even if we apply Chevron, we apply a
 19 different rule," it's a constitutional issue.
 20 MR. LUCK: I hope so, because we've sure
 21 had the discussions as though there was a lot of
 22 it.
 23 THE COURT: That gives us a good idea
 24 what we need to talk about in these briefs. What
 25 else? Where do we go now?

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1 MR. JONES: Point of clarification on
 2 the Schmill case. Is Laurie waiving any
 3 prospective application?
 4 MS. WALLACE: Yes.
 5 THE COURT: Do you agree what
 6 prospective is?
 7 MS. WALLACE: No.
 8 MR. JONES: No, Your Honor, and I assume
 9 there'll be kind of a global discussion.
 10 THE COURT: So we have the same problem
 11 in this case as to what is in the Wild and the
 12 Matthews case, and that is: What does prospective
 13 mean? So we need to brief that, too.
 14 MR. HARRINGTON: Like in Wild, Your
 15 Honor, we filed a motion for stay and direction on
 16 implementation yesterday. I think we faxed it to
 17 you, but it appears that this was mailed to
 18 everybody else.
 19 THE COURT: And it is probably sitting
 20 in the box out there. So I have it, it's just not
 21 made it to the file.
 22 MR. LUCK: So maybe we could do the same
 23 thing there that we were doing in Wild.
 24 THE COURT: So why don't you report back
 25 four weeks as to whether or not as you agree as

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1 what prospective means, at least for purposes of
 2 this case.
 3 MR. MURPHY: What are the issues with
 4 that? I've been trying to get at that slippery
 5 word down myself.
 6 MS. WALLACE: For occupational disease
 7 cases, the issue is: When did it become an
 8 occupational disease, the last day of work, the
 9 day they filed the claim, the day they knew or
 10 should have known that their condition was work
 11 related, as I understand it.
 12 MR. LUCK: And then whether it applies
 13 to the Comp Court decision or the Supreme Court
 14 decision.
 15 MS. WALLACE: The Court has already
 16 indicated its intention to apply its decision.
 17 I'm not going to bug --
 18 THE COURT: It depends on which one,
 19 whether I was reversed or affirmed.
 20 MS. WALLACE: In our cases, you were
 21 affirmed.
 22 THE COURT: So it definitely applies
 23 prospective from the date of my decision. There's
 24 no question about that, I don't think. At least I
 25 don't have any question.

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1 MS. WALLACE: So the question is as of
 2 that date, did the claim exist, by reason of the
 3 claimant knew or should have known, there was a
 4 claim already filed, it was the last day of
 5 employment. Right? That's where we're going with
 6 this? That's your issue, right, Brad?
 7 MR. LUCK: Yes.
 8 MR. HARRINGTON: There is a slight issue
 9 of the Work Comp dates versus the Supreme Court
 10 dates, because I think Tom Murphy's lien extends
 11 to the date of the Supreme Court decision; but
 12 from what I hear you saying, it should only go to
 13 the date of your decision.
 14 THE COURT: Which is actually before.
 15 My decision is before the Supreme Court decision.
 16 MR. HARRINGTON: Right.
 17 MR. MURPHY: I think Laurie has kind of
 18 convinced me, and I think you deserve that credit,
 19 that in Stavenjord, you found that statute on
 20 unconstitutional. So for prospectivity purposes,
 21 we're going to move back to the date of your
 22 decision.
 23 When I first filed that, that was before
 24 I knew any of this stuff. I hadn't thought of
 25 that. I just filed the lien. But I think it's

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1 proper to say your decision created the law; that
 2 law was the law until the Supreme Court affirmed
 3 you, so it remained the law. So that's our
 4 analysis, too. So Schmill and Stavenjord are in
 5 accord with regard to when prospective starts:
 6 The date of your decision.
 7 MR. LUCK: We just have to agree to what
 8 claims --
 9 THE COURT: Right. Actually one of the
 10 nice things about putting those cases together,
 11 and having all Counsel involved, is it will get
 12 more of the issues fleshed out, more of the
 13 arguments fleshed out quicker, I think.
 14 Next?
 15 MR. LUCK: You don't want to hear
 16 anything more from us. We don't have anything
 17 further.
 18 THE COURT: Laurie?
 19 MS. WALLACE: I don't think we have
 20 anything.
 21 MR. JONES: No, Your Honor.
 22 THE COURT: Tom.
 23 MR. MURPHY: I think those are the
 24 things.
 25 THE COURT: So report back in four weeks

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1 with all respecting --
 2 MR. LUCK: Your Honor, Tom has a
 3 question he asked me to ask you for him. Are we,
 4 like in Wild, only focusing now on the existence
 5 of the common fund and the retroactivity, and all
 6 other entitlement issues that might arise will
 7 wait until we get through those threshold issues?
 8 THE COURT: I think that's correct.
 9 MR. MURPHY: We're hoping that all
 10 threshold issues are raised at this time, and that
 11 that will be your --
 12 THE COURT: What other threshold issues
 13 are we talking about? Affirmative defenses may be
 14 a different matter.
 15 MR. LUCK: I think that's probably the
 16 bulk of them. We've got settlements; death
 17 claims; at least a potential application of
 18 statutes of limitation, which you've spoken to
 19 before, and may or may not be issues.
 20 MR. HARRINGTON: Res judicata.
 21 MR. LUCK: Res judicata, which you've
 22 spoken to before.
 23 THE COURT: The same sorts of issues
 24 that arose in Broecker and arose in Murer and that
 25 sort of thing.

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1 MR. LUCK: Yes. Those are
 2 implementation issues once we get by the original
 3 hurdles.
 4 MR. MURPHY: I don't know if I agree
 5 with that statement. It seems to me that we would
 6 have to raise all those issues now. If we're
 7 going to go up to the Supreme Court, you should
 8 have them all in one -- in the briefing schedule
 9 that we do, with regard to the real issues, which
 10 are retroactivity, and retroactivity.
 11 THE COURT: The problem is those may
 12 never need to go to the Supreme Court. The first
 13 issue is whether or not we have a common fund or a
 14 class to administer. Once we get beyond that,
 15 there may or may not be an appeal of that.
 16 (Ms. Butler enters)
 17 THE COURT: Once we're beyond that, most
 18 of those other issues tend to fall in place. In
 19 fact, there hasn't been an appeal of my decisions
 20 on any of those issues in Murer or Broecker, I
 21 don't think.
 22 MR. LUCK: We could stipulate that it
 23 doesn't to apply to settlements, death claims, all
 24 those kind of things. There's a pattern that's
 25 developed in all of these cases, but they're still

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1 issues, and everybody may treat them a little bit
 2 differently.
 3 THE COURT: And insofar as you want to
 4 look at those and see if you can agree to them,
 5 and work them out beforehand, I'll willing to do
 6 that. So you may want to try to address those up
 7 front. So why don't you talk about doing that.
 8 MS. WALLACE: Are all your rulings on
 9 those on your website?
 10 THE COURT: Yes, they should be all out
 11 there.
 12 MR. LUCK: Then there's also been
 13 settlements that have been approved, and some of
 14 those issues have been considered by the Court and
 15 approved in settlements, some of the collateral
 16 implementation questions.
 17 THE COURT: Right. So look at Broeker.
 18 Broeker pretty much ended up where I was going
 19 anyway, and I've made that known to Counsel. So
 20 that might be helpful to look at that.
 21 MR. LUCK: There's a real consistency
 22 with Broeker and FFR, and hopefully if we finalize
 23 Flynn, it will be along the same lines, because we
 24 were working off Broeker.
 25 MR. MARTELLO: The other thing, too, the

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1 settlements I believe are addressed in the Murer
 2 Supreme Court decision.
 3 THE COURT: Some of that stuff is
 4 addressed in there, right. So you may be able
 5 to do that. But my primary focus, Tom, is to make
 6 that class determination, because after that,
 7 things tend to fall in place better. There's
 8 going to be some issues that -- not necessarily.
 9 These cases are tending to follow along a
 10 particular path.
 11 MR. MURPHY: My only concern that I'm
 12 raising is that we have Stavenjord 1, and it looks
 13 like Stavenjord 2, not Stavenjord 3, 4, and 5.
 14 THE COURT: I know. You're right. But
 15 let's focus on this other stuff first. Talk about
 16 that, and see what you can resolve out. Or if I
 17 say that there's a class, and there's still a
 18 dispute, we could not certify it until we got
 19 those worked out.
 20 MR. LUCK: Our feeling in Flynn was we
 21 still had some other issues, and we would get them
 22 done; and consistent with your concern, the whole
 23 thing would have gone up at the same time if it
 24 didn't get settled. So my assumption is that's
 25 what we would do here.

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1 THE COURT: We can do that.
 2 MR. MURPHY: My hope is that all issues
 3 will be briefed at once.
 4 THE COURT: Well, see where you're at.
 5 MR. MURPHY: We will report to you on
 6 that.
 7 MR. HUNT: Judge, I thought that in
 8 Wild, we had agreed that what we were going to
 9 address is the common fund/class issue, and we
 10 weren't going to address the retroactive issue
 11 initially, because I asked that specifically. And
 12 it seems to me that Tom is right about there being
 13 a difference between the constitutional question
 14 about a statute or a statute just being incorrect.
 15 You have spoken in Flynn about whether
 16 or not those statutes or the rulings should be
 17 applied retroactively. And my impression from
 18 Flynn is that you're leaning against -- or that
 19 the Chevron test is not going to apply. So if
 20 that's the case, hasn't that issue, at least as
 21 far as retroactivity as far as this Court, been
 22 decided? Because I don't see you, given that
 23 decision, applying the Chevron test in this case
 24 and not the Chevron test in this case.
 25 And then doesn't it have to go to the

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1 Supreme Court at this point and decide whether or
 2 not they're going to use the Chevron test? But it
 3 seems to me that you have spoken about that issue,
 4 and that's why I suggested that we just address
 5 the common fund issue, and not the retroactive
 6 issue, because if I were to address the
 7 retroactive issue, I think I would say, "See
 8 Flynn."
 9 MR. MARTELLO: You can only do that if
 10 Flynn is not settled. The potential as far as the
 11 Supreme Court addressing that won't be there if
 12 Flynn is settled.
 13 MS. WALLACE: No, but there's still a
 14 decision in Flynn.
 15 THE COURT: Let me back up. I guess
 16 maybe I missed something. I did not understand
 17 that we weren't going to address the retroactivity
 18 issue. I've indicated in Flynn that I don't think
 19 Chevron applies. I think the other -- what's the
 20 name of the other case --
 21 MR. JONES: Harper.
 22 THE COURT: Harper.
 23 MR. MURPHY: Porter adopts Harper.
 24 THE COURT: It's Harper. I didn't rule
 25 that way. I said, "This is where I think it's

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1 going to end up." And I didn't rule that way
 2 because of the conflict, and I think the Supreme
 3 Court is the proper place to sort it out. And I'm
 4 not -- Their latest pronouncement, they applied
 5 Chevron, but you saw my analysis. They applied
 6 Chevron without considering Harper and considering
 7 Porter, and I think that was because of the
 8 briefing and the decision of the District Court,
 9 where nobody ever talked about Porter, and nobody
 10 ever talked about Harper, so I don't think they
 11 really focused on that issue.
 12 But I can't reverse a Supreme Court
 13 decision, and I'm not sure whether I would be
 14 reversing their latest pronouncement. I'm just at
 15 a loss on the cases. So I can't really say that
 16 Chevron doesn't apply. So my alternative is to
 17 say, "This is the result if Chevron applies. This
 18 is the result if Harper applies." Obviously
 19 everybody knows what the result is if Harper
 20 applies.
 21 So you know what the result is under
 22 Harper. You know what my thinking is as to what
 23 the Supreme Court is going to do. But I'm not
 24 sure I can come out all the way and say Harper
 25 applies and Chevron doesn't. I think the Supreme

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1 Court has got to say that.
 2 MR. HUNT: I agree with that. That
 3 isn't exactly what I was saying. What I was
 4 saying is that as far as addressing that issue
 5 before this Court, it seems to me you have gone as
 6 far as you can with that.
 7 THE COURT: But I think in each case,
 8 because Chevron may apply, they could say, "We
 9 intend to use Chevron, and our reference to
 10 Harper, we didn't intend it," or I don't know what
 11 they could say about it. But if they say that,
 12 then we still have to go through that Chevron
 13 analysis, and I guess the question is whether or
 14 not you want me to go through that Chevron
 15 analysis now, so that both of those alternatives
 16 are presented to the Supreme Court if it goes up
 17 to the Supreme Court.
 18 MR. HUNT: Probably.
 19 THE COURT: Then we should brief it,
 20 because the Chevron analysis can differ in these
 21 cases. I think the Wild and the Matthews case
 22 have the highest hurdle of all the cases that
 23 we're talking about here.
 24 MR. HUNT: I already briefed it anyway
 25 in my amicus brief.

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1 THE COURT: Yes, I know you did, but I
 2 didn't address it because I agreed with it. Flynn
 3 was sort of limited, and you argued, and I think
 4 Laurie argued her case, so it's a matter of just
 5 refileing those and getting those in the record
 6 here.
 7 MR. HUNT: We will do that. That may
 8 change the factual discussion, too, the
 9 stipulation, or it may not.
 10 MR. LUCK: I don't think so, because the
 11 way I was hearing that, it was going to be both
 12 issues, so I was hearing it wrong. I assumed we
 13 were.
 14 THE COURT: Let's make sure we're all on
 15 the same wave length.
 16 MR. MURPHY: Does the Court anticipate
 17 then in four weeks setting briefing schedules?
 18 THE COURT: See if you can't figure that
 19 out, and let me know what your druthers are on
 20 that.
 21 MR. MURPHY: Would you like Counsel for
 22 each of the parties or anybody interested to
 23 identify for you all of the issues that they think
 24 ought to be briefed?
 25 THE COURT: Sure. Absolutely. And

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1 then if there's disagreement, we can talk about
 2 it.
 3 MR. MURPHY: Is that part of our report
 4 then that you want?
 5 THE COURT: Yes. Tell me if you
 6 contemplate evidentiary hearing, what that would
 7 involve, what issues; if Laurie, in Laurie's case,
 8 if she needs discovery, what that involves; and
 9 insofar as you're ready to brief issues, a
 10 briefing schedule; and also identify what issues
 11 you want to brief in addition to. We know the
 12 common fund and the retroactivity issue. Those
 13 are fixed.
 14 MR. MURPHY: Then you can kind of hold
 15 us to it. If we didn't identify it, then will
 16 that be something that we can move past then? So
 17 we list everything for you now or in four weeks
 18 from now?
 19 THE COURT: Try to do that, and then
 20 let's talk about it then. If we can agree that
 21 that will be it, or if one side says, "There may
 22 be some other stuff. Let me think about it,"
 23 okay, we'll meet that. But let's try to identify
 24 all of the other issues.
 25 And maybe what I'll have to do is issue

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1 an order saying, "Identify all issues in this case
 2 or forever hold your peace," as far as affirmative
 3 defenses and things like that.
 4 MR. MURPHY: That's what I'm kind of
 5 angling for.
 6 MR. LUCK: So I'm hearing two things.
 7 I thought first we were talking about focusing on
 8 these threshold issues.
 9 THE COURT: That's what I want you to
 10 do.
 11 MR. LUCK: Then maybe we would keep the
 12 record open for some short time after that if we
 13 need to, and get some other decisions, and we have
 14 a package. What Tom clearly wants to do is
 15 identify everything, and get a briefing schedule
 16 in four weeks, and brief everything, which are two
 17 different considerations.
 18 THE COURT: My primary focus is the
 19 common fund and retroactivity. That's really what
 20 I want to be focusing on now. What I want you to
 21 do is discuss what other issues may arise, and
 22 start working on those, to see if there's
 23 controversy about them. If there's no controversy
 24 about them, we can bury them, and you can tell me
 25 what you agree to.

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1 If there's controversy about them, then
 2 ultimately what Tom wants to do, and I agree with
 3 it, is to have all issues decided so there's only
 4 one appeal. I agree with that. But let's brief,
 5 let's focus the initial round of briefs on the
 6 common fund and retroactivity, to be followed by,
 7 if we have to, briefing on any issues that are out
 8 there that the two sides can't agree to, that are
 9 by way of narrowing who is going to be in any
 10 common fund, and any affirmative defenses.
 11 MR. MURPHY: I think we could identify
 12 those issues for you within four weeks.
 13 THE COURT: Try to do that to the
 14 extent, but I'm not going to write that in sand at
 15 this point. I want you to be working along those
 16 lines, though.
 17 Is this a wrap?
 18 MR. ANGEL: I wanted to offer up the
 19 citation, and maybe everybody could look at that.
 20 Brad was asking about a cite to this idea that
 21 constitutional -- statutes that are overruled on
 22 constitutional grounds must be applied
 23 retroactive, and it's City of Bozeman versus
 24 Peterson, and it quotes a US Supreme Court
 25 decision.

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1 THE COURT: Is that a civil case?
 2 MR. ANGEL: Yes, the City of Bozeman
 3 versus Peterson. And Shea versus Louisiana, which
 4 is a US Supreme Court case, that seems to say if
 5 it's overruled on constitutional grounds, it must
 6 be applied --
 7 THE COURT: City of Bozeman versus --
 8 MR. ANGEL: -- Peterson, 227 Mont 418,
 9 and it cites 470 US 51 1985, a US Supreme Court
 10 case. And it seems to be an exception, or applied
 11 by the US Supreme Court as an exception to the
 12 Chevron case.
 13 THE COURT: And that would be a
 14 pre-Harper case for sure.
 15 MR. ANGEL: Correct.
 16 THE COURT: So everybody take a look at
 17 that one.
 18 MR. MURPHY: That's what we turned up
 19 when we did our first -- Here is the case right
 20 here. And I thought there was another one, too,
 21 but I don't want to -- That's where I was coming
 22 from, too.
 23 THE COURT: We need to look at those
 24 cases. That would make a difference in Schmill,
 25 but not Stavenjord. Okay. Anybody else? Break

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1 for lunch.
 2 (The proceedings were concluded
 3 at 11:30 a.m.)
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1 C E R T I F I C A T E
2 STATE OF MONTANA)
3 : SS.
4 COUNTY OF LEWIS & CLARK)
5 I, LAURIE CRUTCHER, RPR, Court Reporter,
6 Notary Public in and for the County of Lewis
7 & Clark, State of Montana, do hereby certify:
8 That the proceedings were taken before me at
9 the time and place herein named; that the
10 proceedings were reported by me in shorthand and
11 transcribed using computer-aided transcription,
12 and that the foregoing -51- pages contain a true
13 record of the proceedings to the best of my
14 ability.
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal
17 this day of , 2003.
18
19 LAURIE CRUTCHER, RPR
20 Court Reporter - Notary Public
21 My commission expires
22 March 9, 2004.
23
24
25