

WORKERS' COMPENSATION COURT

Hearing No. 3352  
Volume XVI

Helena, Montana  
August 28, 2003

DEBRA STAVENJORD

Thomas J. Murphy

vs.

MONTANA STATE FUND

Bradley J. Luck and  
David A. Hawkins

WCC No. 2000-0207

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CASSANDRA SCHMILL

Laurie Wallace

vs.

LIBERTY NORTHWEST  
INSURANCE CORPORATION

Larry W. Jones

WCC No. 2001-0300

The status conference in the above-entitled matter came on Thursday, August 28, 2003, at 10:30 a.m., in the Workers' Compensation Court, Helena, Montana. The Honorable Mike McCarter, Judge of the Workers' Compensation Court, presided. Petitioner, Debra Stavenjord, was represented by Mr. Thomas J. Murphy. Petitioner, Cassandra Schmill, was represented by Ms. Laurie Wallace. Respondent, Montana State Fund, was represented by Mr. David A. Hawkins and Mr. Bradley J. Luck. Also appearing on behalf of Montana State Fund were Mr. Thomas J. Harrington, Mr. Thomas E. Martello, and Ms. Nancy Butler. Respondent, Liberty Northwest Insurance Corporation, was represented by Mr. Larry W. Jones. Ms. Carol Gleed appeared on behalf of the Department of Labor and Industry. Other interested parties appearing were Mr. William Dean Blackaby, Mr. Charles G. Adams, Mr. Geoffrey C. Angel, and Mr. Lucas J. Foust. The court reporter in this matter was Ms. Laurie Crutcher.

Mr. Luck and Mr. Murphy reported that they are close to working out a stipulation regarding the *Chevron Oil* facts. Ms. Wallace and Mr. Jones are a little farther away on reaching a stipulation and a limited factual hearing may be necessary.

The parties shall file a status report in four weeks which shall include: (1) stipulated facts for resolution of the *Chevron Oil* argument and other issues relating to common fund and retroactivity (excepting affirmative defenses that may be raised, such as statute of limitations, *res judicata*, etc.); (2) suggested briefing schedule; and (3) possible stipulation

to date on which application of decisions becomes prospective, relating to requested stay relating to retroactive application.

Following discussion regarding the scope of common fund fee claims, Ms. Wallace and Mr. Murphy advised that they are discussing an agreement to certain items which will likely include whether Ms. Wallace is entitled to fees on cases where: (1) TTD indemnity benefits were reduced by apportionment; and (2) PTD indemnity benefits were reduced by apportionment. There is a potential overlap of claims in PPD cases, however, Ms. Wallace indicated she will claim only fees on amounts awarded up to \$10,000 in this situation.

Mr. Jones reported on the difficulties in searching computerized data for OD cases. A discussion followed regarding alternatives.

Ms. Wallace and Mr. Murphy now agree not to claim fees on prospective awards based on these decisions. The Supreme Court affirmed the Workers' Compensation Court in these cases, therefore, prospective means from the date of the Workers' Compensation Court decision.

A transcript of the conference is being prepared and will be posted on the Court's WEB page. The transcript shall be controlling if the Court's recollection as reflected in these minutes is inconsistent with it.

Court recessed at 11:30 a.m.

MIKE McCARTER  
Judge