

WORKERS' COMPENSATION COURT

Hearing No. 4054  
Volume XVII

Helena, Montana  
April 22, 2009

ROBERT FLYNN and CARL MILLER

Rex Palmer

vs.

MONTANA STATE FUND

Bradley J. Luck  
Thomas E. Martello

and

LIBERTY NORTHWEST INSURANCE CORPORATION  
(Intervenor)

Larry W. Jones

WCC No. 2000-0222

An in-person conference came on this date at 10:30 a.m. in the Workers' Compensation Court, Helena, Montana, at the initiation of the Court. The Honorable James Jeremiah Shea, Judge of the Workers' Compensation Court, presided. The court reporter was Kim Johnson.

Petitioners were represented by Rex Palmer. Respondent Montana State Fund was represented by Bradley J. Luck and Thomas E. Martello. Intervenor Liberty Northwest Insurance Corporation was represented by Larry W. Jones. Mr. Jones advised that he is also appearing on behalf of the Safeco Insurance Companies. K.D. Feeback was present on behalf of Teck Cominco American, Inc. Mark Cadwallader was present on behalf of the Uninsured Employers' Fund. Steve Jennings was present representing AIU Ins. Co.; American International Pacific Ins. Co.; American Home Assurance Co.; Birmingham Fire Ins. Co.; Commerce & Industry Ins. Co.; Granite State Ins. Co.; Ins. Co. of the State of Pennsylvania; National Union Fire Ins. Co. of Pittsburgh, Pa; New Hampshire Ins. Co.; AIG National Ins. Co.; American International Specialty Lines Ins.; American International Ins. Co.; Illinois National Ins. Co.; American General Corp.; American Alternative Ins. Corp.; American Re-Ins. Co.; Bituminous Fire & Marine Ins. Co.; Bituminous Casualty Corp.; Old Republic Ins. Co.; Old Republic Security Assurance Co.; Centre Ins. Co.; Clarendon National Ins. Co.; Everest National Ins. Co.; Truck Ins. Exchange; Mid Century Ins. Co.; Farmers Ins. Exchange; Federal Express Corporation; Fed Ex Ground Package System, Inc.; Affiliated FM Ins. Co.; Factory Mutual Ins. Co.; Grain Dealers Mutual Ins. Co.; Great American Ins. Co.; Great American Ins. Co. of NY; Great American Assurance Co.; Great American Alliance Ins. Co.; Great American Spirit Ins. Co.; Republic Indemnity of America; Hartford Accident & Indemnity Co.; Hartford Casualty Ins. Co.; Hartford Fire Ins. Co.; Hartford Ins. Co. of The Midwest; Hartford Underwriters Ins. Co.; Property & Casualty Ins. Co. Of Hartford; Sentinel Ins. Co. Ltd.; Twin City Fire Ins. Co.; Trumbull Ins. Co.; L.H.C., Inc.; Markel Ins. Co.; Evanston Ins. Co.; Michigan Millers Mutual Ins. Co.; Millers First Ins. Group; Petroleum Casualty Co.; SCOR Reinsurance Co.; General Security Ins. Co.;

General Security National Ins. Co.; Sentry Ins. Mutual Co.; Sentry Select Ins. Co.; Dairyland Ins. Co.; Middlesex Ins. Co.; PPG Industries, Inc.; Connie Lee Ins. Co.; United National Casualty Ins. Co.; Penn Star Ins. Co.; Fairfield Ins. Co.; General Reinsurance Corp.; Genesis Ins. Co.; North Star Reinsurance Corp.; Universal Underwriters Group; XL Ins. America, Inc.; XL Ins. Co. of New York; XL Reinsurance America; XL Specialty Ins. Co.; Greenwich Ins. Co.; American Guarantee & Liability Ins. Co.; American Zurich Ins. Co.; Assurance Co. of America; Colonial American Casualty & Surety; Fidelity & Deposit Co. of Maryland; Maryland Casualty Co.; Northern Ins. Co. of New York; Valiant Ins. Co.; Zurich American Ins. Co.; and Zurich American Ins. Co. of Illinois.

The purpose of the conference was to identify any outstanding issues and set a briefing schedule on these issues.

After colloquy and hearing argument, the briefing schedule on the definition of "paid in full" as used in the Montana Supreme Court's ruling is as follows:

Simultaneous opening briefs are due Monday, June 8, 2009  
Simultaneous answer briefs are due Thursday, July 23, 2009  
Simultaneous reply briefs are due Monday, August 24, 2009

No argument will be heard on any other motions at this juncture.

Mr. Jennings advised that his clients dispute the attorneys fee award of 25% and noted his clients raised this argument previously. Mr. Jennings also believes his clients have a due process defense as to jurisdiction. Mr. Jennings advised that once the Supreme Court issues its decision in the *Schmill* matter, he may raise additional implementation and substantive arguments. However, his clients will not stipulate to the holding in *Schmill*, as there may be factual distinctions. I advised that Mr. Jennings' arguments are preserved for the record.

Mr. Palmer requested the Court set a general motions deadline to avoid piecemeal litigation of the numerous arguments. A general motions deadline is set as follows:

Initial motions/briefs are due October 19, 2009  
Answer briefs are due November 18, 2009  
Reply briefs are due December 9, 2009

This includes any other motions that can, in good faith, be filed in light of the Supreme Court's rulings. Any party that files a motion that has been previously ruled upon or appears to be filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation may be subject to sanctions under M.R.Civ.P. 11 or § 39-71-2914, MCA.

Mr. Palmer requested an opportunity to conduct Rule 30(b)(6) depositions to determine what the insurers are doing to locate claimants potentially deserving of benefits.

The motion is **denied**. Mr. Palmer will be granted leave to renew this motion contingent on the ruling on the central issue of “paid in full.”

Mr. Palmer advised that Tom Murphy wished to inform the Court that the *Reesor* and *Stavenjord* matters are stayed and benefits are not being paid to some claimants. The *Reesor* and *Stavenjord* matters are contingent on the ruling in *Flynn* as to the definition of “paid in full;” remediation efforts are held in abeyance and the stay remains in place. A copy of this minute entry will be docketed in the *Reesor* and *Stavenjord* files.

Court adjourned at 11:55 a.m.

JAMES JEREMIAH SHEA  
Judge

c: Parties of record via website.

JMB/PS/JB