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Attorneys for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DEBRA STAVENJORD,

Petitioner,

v.

MONTANA STATE FUND,

Respondent/Insurer.

WCC No. No. 2000-0207

**REQUEST FOR JUDICIAL
NOTICE/INCLUSION IN THE RECORD**

COMES NOW the Montana State Fund and moves the Court to take judicial notice of and/or to include in the record of this cause the attached original partial transcripts of hearings on February 16, 2007, in the following cases: *Pinckard v. State Compensation Mutual Ins. Fund*, WCC No. 2006-1621, and *Pinckard v. State*

Compensation Mutual Ins. Fund, Cause No. ADV-96-671, Montana Eighth Judicial District Court, Cascade County. Counsel verifies the authenticity of the transcripts.

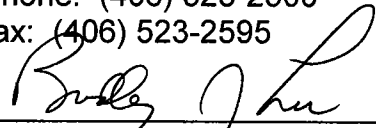
DATED this 20 day of April, 2007.

Attorneys for Respondent/Insurer:

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By

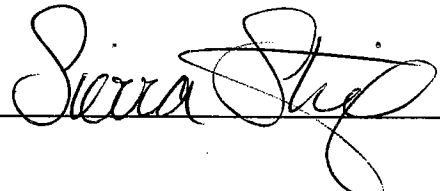


Bradley J. Luck

CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Respondent/Insurer hereby certify that on this 20th day of April, 2007, I mailed a copy of the foregoing Request for Judicial Notice/Inclusion in the Record postage prepaid, to the following persons:

Thomas J. Murphy
Murphy Law Firm
P.O. Box 3226
Great Falls, MT 59403-3226



ATTACHMENT 1

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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

HOWARD PINCKARD, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. ADV-96-671
)	
STATE COMPENSATION,)	
)	
Defendant.)	

SETTLEMENT APPROVAL

Cascade County Courthouse
Great Falls, Montana
February 16, 2007
9:15 o'clock a.m.

BEFORE: THE HONORABLE THOMAS M. McKITTRICK

APPEARANCES:

Allan M. McGarvey
McGarvey, Heberling, Sullivan & McGarvey, P.C.
745 South Main
Kalispell, MT 59901

Alan J. Lerner
Lerner Law Firm
P.O. Box 1158
Kalispell, MT 59903-1158

Michael A. Viscomi
Viscomi & Gersh, PLLP
121 Wisconsin Avenue
Whitefish, MT 59937
Attorneys for Plaintiffs

Mark F. Higgins
Ugrin, Alexander, Zadick & Higgins, P.C.
P.O. Box 1746
Great Falls, MT 59403-1746
Attorneys for Defendant

Proceedings recorded by mechanical stenography, transcript produced by computer.

ORIGINAL

1 BE IT REMEMBERED that on Friday, February 16, 2000, at the Cascade County
2 Courthouse, Great Falls, Montana, before the Honorable Thomas M. McKittrick,
3 State District Judge, the following proceedings were had:

4 (Following proceedings held in open court with counsel present.)

5 *THE COURT:* All right. This is in the matter of Pinckard, et al.,
6 v. State Compensation, ADV-96-671.

7 And this is on the calendar for petition to approve the settlement.

8 And if all parties are ready, you may proceed.

9 *MR. McGARVEY:* If I can just confer with Counsel for a moment?

10 *THE COURT:* Would you identify yourself, sir, please?

11 *MR. FISHER:* Bill Fisher from the State Fund.

12 *MR. HIGGINS:* Mark Higgins, Counsel for the State Fund, and Tom
13 Martello from the State Fund is with me, as with him.

14 *MR. LERNER:* Al Lerner, Counsel for the plaintiff class, and Michael
15 Viscomi, Co-counsel for the class.

16 *THE COURT:* Mr. McGarvey is representing Plaintiff as well?

17 *MR. McGARVEY:* Yes.

18 *THE COURT:* All right. Are you ready to proceed?

19 *MR. McGARVEY:* Yes, Your Honor.

20 *THE COURT:* You may do so.

21 *MR. McGARVEY:* Your Honor, this is the final fairness hearing in this
22 matter to conclude this class action. The Court had previously given
23 preliminary approval to the settlement and to the methodology of serving
24 notice to the class. And pursuant to that preliminary order, notice has
25 gone out, and pursuant to that notice, to all class and potential class

1 members.

2 This is the time for the final fairness hearing under Rule 23(e).
3 What we are asking the Court to do this morning is to sign an order of
4 final approval, and to sign a final judgment, which resolves the action
5 for all class members with the exception of matters that have to do with
6 the administration of the settlement fund.

7 Specifically, what we are asking the Court to do in the proposed
8 orders that I would like to hand up to the Court is give final approval to
9 the certification of the settlement class, to give final approval to the
10 notification procedures, to give final approval to the settlement, approve
11 the special awards to class representatives, and to approve the attorney
12 fees and costs awards.

13 I think the first order of business is to report to the Court what we
14 have accomplished since the preliminary order of approval. We have filed
15 the affidavit of Bill Visser from the State Fund that describes the
16 process that was completed to serve notice. And I am advised this morning
17 Mr. Visser's affidavit is updated with a change of one number, and so we
18 will be filing -- do you have that?

19 MR. HIGGINS: I do.

20 MR. McGARVEY: So I will, if the Court will permit me, hand these up,
21 the proposed orders.

22 THE COURT: That motion is granted. Are these all of them?

23 MR. McGARVEY: Those are everything, yes.

24 THE COURT: Thank you.

25 MR. McGARVEY: Previously filed, Your Honor, is the affidavit of

1 Michael Viscomi and the affidavit of Al Lerner, and, of course, previously
2 filed is our motion for this final approval and the brief in support
3 thereof.

4 Just walking the Court through the affidavit of William Visser, what
5 the State Fund did, because of privacy concerns, the involvement of class
6 counsel was somewhat limited, so the State Fund did the actual process
7 keeping us blind to the names until claim forms which had a release were
8 received back. But what they did basically is get every potential
9 claimant that fit the time frame, and sorted through those to exclude
10 those who had been represented by counsel and, therefore, would not be
11 within the class definition, and they got those, the universal list from
12 the employment relations division.

13 Then they went through a process which we participated in, not in
14 seeing the actual files, but in discussing how they applied it and what
15 they meant by each application, which is described in paragraph five of
16 the affidavit, throwing out, for example, settlements that were approved
17 prior to a particular date which would fit the class definition, throwing
18 out those in which there was a disputed initial liability, et cetera, et
19 cetera.

20 We did have some issues with the State Fund, and were able to resolve
21 those, and just to advise the Court that this was an arm's length and
22 monitored process.

23 At the end of that process, we were left with a somewhat over broad
24 but probably pretty close to exact identification of members of the class.
25 There may be a handful, kind of questionable whether they were members or

1 not, and they were included.

2 *THE COURT:* Sounds to me like the Fund really went out of their way
3 to try to comply.

4 *MR. McGARVEY:* I think the State Fund really went to extraordinary
5 means to do this.

6 *THE COURT:* Looks to me -- I remember our early discussions in court,
7 and I don't know if the Fund's ever gone through something like this bad
8 faith --

9 *MR. HIGGINS:* Some similar common fund cases.

10 *THE COURT:* Certainly looks like you folks went at this in good faith
11 and tried your best, and went a little bit beyond. That's gratifying to
12 the Court.

13 *MR. McGARVEY:* Thank you, Your Honor. We certainly, as class
14 counsel, felt that all the efforts that were needed to be taken were
15 completed to make sure that we didn't leave anyone behind.

16 Then of those 1,066 people that were identified, a mailing was sent
17 out, and surprisingly only 332 were returned with a wrong address.

18 And then we -- the State Fund, pursuant to the Court's order, used
19 various resources to get additional addresses, Nexis-Lexis and Merlin, and
20 did a remailing. And through that process, of the 1,066 people we know
21 that letters went out, were successfully sent to addresses for 1,006, so
22 over 94 percent we know hit home, which in my experience is astonishing
23 numbers -- that some of these date back to the early 90s.

24 So Mr. Visser's affidavit establishes that all the requirements of
25 the Court's order of notice have been satisfied.

1 And, oh, I know what else I needed to submit. Do we have the package
2 of the --

3 MR. HIGGINS: That's what went out.

4 MR. McGARVEY: Your Honor, this document -- in the Court's order,
5 there was a class notice. And there was a claim form and an opt-out form.
6 All of that is in this package. And the reason that I wanted to submit
7 this to the Court and have it filed is in the Court's order there were a
8 couple of blanks we had to fill in because of dates and so forth, so this
9 is the actual package that went out.

10 THE COURT: That's received. Do you want to have it marked as an
11 exhibit?

12 MR. McGARVEY: Yeah, let's just mark that as an exhibit to
13 Mr. Visser's affidavit.

14 THE CLERK: Is that Plaintiff's Exhibit or Respondent's Exhibit?

15 MR. HIGGINS: Exhibit to the original affidavit that Judge McKittrick
16 has, William Visser.

17 THE COURT: I will give you the original here that I have.

18 MR. McGARVEY: Your Honor, the affidavit of Al Lerner was recently
19 filed, and what that documents is the hours that Counsel spent and the
20 costs and so forth. And it is our support for our request for fees.

21 The preponderance standard or resolution is that the best notice
22 reasonably practicable has been accomplished, and the law presumes that
23 when possible, that best notice is mailing to the last known address. And
24 I think that Mr. Visser's affidavit establishes to a very high level of
25 satisfaction that the best notice reasonably practicable under these

1 circumstances has been accomplished. And, actually, the law because
2 that's the standard. Actual notice doesn't actually have to be received
3 by all class members, as long as the best reasonably practicable notice
4 have been served.

5 The content of the notice had been previously approved by the Court,
6 and it advises the class members of this hearing, and advises each class
7 member of their right to attend this hearing, to file objections, to opt
8 out of the class, to object to attorney fees, any settlement, so forth.

9 Your Honor, nothing of record shows that any member of the class has
10 objected. And I see no one in the courtroom today who is objecting to the
11 class settlement.

12 Of the 1,066 class notices that went out, a total of 53 individuals
13 have opted out of the class, and are not part of this settlement, and are
14 defined by reason of the opt-out, they are defined out of the class with
15 one exception. One of those opt-outs was not timely filed. And all of
16 the opt-outs have been filed with the Court under seal because Class
17 Counsel doesn't get to see them, but Counsel for the State Fund has filed
18 those.

19 And it is the view of both Class Counsel and the State Fund the late
20 filing opt-out should be treated as ineffective. But the Court can
21 determine that.

22 So pursuant to Rule 23(c)(3) we ask the Court to exclude those 52 of
23 the 53 from the class.

24 The next issue is the final approval of the class settlement. And as
25 explained in our brief, the standard is whether the settlement is fair,

1 adequate and reasonable.

2 This litigation, as the Court is aware, has involved many years of
3 hard fought litigation. Settlement was reached through arm's length
4 negotiations.

5 *THE COURT:* Twelve years.

6 *MR. McGARVEY:* Twelve years.

7 *THE COURT:* Eleven.

8 *MR. LERNER:* Yeah.

9 *MR. McGARVEY:* One of the oldest on your dockets.

10 *THE COURT:* Unfortunately, I have cases, very complex cases, going
11 on, not very many, but a few.

12 *MR. McGARVEY:* We will get one of them out of the way here, Your
13 Honor.

14 *THE COURT:* Yeah, that's good.

15 *MR. McGARVEY:* It is over \$2.1 million in recovery that has been
16 obtained by a class, and going to be divided among about 200 class members
17 who filed claims. And we sustained damage, and so that results to a gross
18 average recovery of about 10,000 per person, provides for claim
19 administration procedure. And during that, each class member will be
20 contacted and Worker's Compensation, with the independent insurance
21 adjuster, to evaluate the amount to get, and each will share in proportion
22 to the amount of claim as determined by the adjuster, and an opportunity
23 for objection.

24 And so, in view of the risks of the litigation, the Class
25 Representative and Class Counsel are confident to recommend to this Court

1 it is a fair, adequate and reasonable settlement.

2 The final order of approval that I have handed up so finds and
3 concludes.

4 The next issue is that of special allocations. And at the time of
5 the preliminary approval, we presented to the Court the affidavit of
6 Michael Viscomi, which explains the special efforts that the class
7 representatives undertook in undertaking the action and in supporting the
8 action, participating in decisions on behalf of the class, and for a
9 number of them having their depositions taken. And on the basis of that,
10 we sought \$1,000 each for each class representative and an additional
11 \$1,000 for the four people who had their depositions taken.

12 There have been, obviously, no objections to those special
13 allocations, and the order of final approval approves those as well.

14 The next issue is that of attorney fees. The class notice advised
15 the class members that we would be seeking 25 percent as attorney's fees
16 in addition to our costs. And, again, there have been no objections to
17 Class Counsel's request for that common fund fee.

18 The affidavit of Al Lerner that has been recently filed documents
19 that as I have described. The costs advanced by Class Counsel total
20 \$14,735.16. The benchmark recognized by all federal courts, and I think
21 has been recognized in Montana, for recovery in a class action under
22 common fund basis for a case of this size is 25 percent.

23 And in view of the large amount of work done in this case, as well as
24 the risk of the undertaking, and the result achieved, we ask the Court to
25 follow that benchmark and not deviate from it. The final order of

1 approval gives the Class Counsel 25 percent of the recovery, the 2.136, or
2 something like that, million dollars plus costs in the amount of \$14,735.

3 The last debt of the case is the completion of the claims
4 administration process. The claim forms came back. And they have been
5 forwarded to Antioch Adjusters, which is the claims adjusters. They will
6 complete that adjustment process in the next couple of months. The
7 process will culminate with the list of recoveries for each claimant, and
8 then each claimant will be advised of the settlement, and have an
9 opportunity to object. And assuming no objection, and resolution of any
10 objections, we will submit a report that the matter has been completed,
11 submit that report to the Court.

12 So unless the Court has any questions, we ask the Court at this time
13 to sign the order of final approval. And I would direct Your Honor's
14 attention first to page six, paragraph 17 of the order of final approval.
15 There is, I believe, a blank there in anticipation of any objectors, and
16 we just need to insert there are no objectors.

17 *THE COURT:* Mr. Higgins?

18 *MR. HIGGINS:* We will concur in that, Your Honor.

19 *THE COURT:* All right.

20 *MR. McGARVEY:* So that order is ready for signature. This will
21 accomplish the final certification, the declaration of the opt-outs, the
22 approval of the completion of the notice program, the approval of the
23 settlement, the approval the attorney fees and special allocations.

24 *THE COURT:* Mr. Higgins?

25 *MR. HIGGINS:* I just have -- very brief -- two matters.

1 First of all, Your Honor, the State Fund absolutely concurs with
2 Class Counsel in their request for the final approval of this settlement.
3 And, frankly, Your Honor, I appreciate the kind words directed at the
4 State Fund because I actually do believe my client did go the extra mile.
5 This was a hard fought --

6 *THE COURT:* It was hard fought. But I do recognize that the Fund, in
7 my opinion, operated in extraordinarily good faith in trying to resolve
8 this. I think the results prove that. And it is not easy, as you know.
9 And the problems that we were faced with. So I do compliment the Fund for
10 their efforts.

11 *MR. HIGGINS:* Thank you, Your Honor. We appreciate that. And we are
12 glad to have this concluded.

13 The only small remaining piece of the puzzle from the Fund's
14 perspective is another affidavit. This is the affidavit, also, of
15 Mr. Visser here with the State Fund, which I would like to bring the
16 original forward. And, Your Honor, what it sets forth are the actual
17 mailing costs of the State Fund -- copy has been provided to Class
18 Counsel. The documents approved by the Court allowed up to \$5,000 for the
19 costs of mail.

20 Obviously this was a mass undertaking. I thought they were very
21 efficient on this front, too, as the affidavit which I will bring forward
22 reflects while we had a budget of \$5,000, we actually were able to do the
23 initial mailing, all of the remailing, the research necessary, stamps,
24 everything, printing costs, for about \$2,500, so half of that.

25 So with that, Your Honor, I would bring this forward and ask on the

1 record that the \$2,521.59 in actual costs be approved from the settlement
2 fund for the cost of mailing.

3 *THE COURT:* Mr. McGarvey?

4 *MR. McGARVEY:* We have no objection.

5 *THE COURT:* That motion is granted.

6 *MR. McGARVEY:* Your Honor --

7 *THE COURT:* Excuse me, Mr. McGarvey, is there a proposed order
8 approving that?

9 *MR. HIGGINS:* There isn't. I apologize. I got the affidavit this
10 morning. It was my fault.

11 Can I have one to you this afternoon?

12 *THE COURT:* Sure, whenever you have time.

13 *MR. HIGGINS:* Thank you.

14 *THE COURT:* But on the motion, the record, the motion is approved,
15 Mr. McGarvey.

16 *MR. McGARVEY:* We have one issue regarding the late filing by class
17 members.

18 Because we thought it would be convenient for the class -- getting
19 one package to mail back one package, we set the same filing date as the
20 objection or opt-out date. And what happened is after that date passed,
21 there were seven or eight, maybe nine or more, I am not sure exactly the
22 number, but I am sure at least seven who returned proof of claims which
23 were postmarked after January 17th. These people have all provided
24 explanations of why the mailing did not actually reach them, with an ex
25 spouse or been on vacation, or whatever.

1 Your Honor, the circumstance has no application in the finality of
2 the settlement and the resolution of the case. The only question is
3 whether we allow these people, who are members of the class, do we allow
4 them to file their proofs of claim.

5 Class Counsel believes that these claims were received only a few
6 days late, and they had reasonable explanations for the delay, and should
7 be permitted to participate in the claims. But it is not something we can
8 do unilaterally. We ask the Court for direction on how to handle these
9 claims.

10 They include for the record Jake Krusoff, Russ Patton, Kathleen
11 Spain, Steven Elvis, Steve Shockley, Virginia Larson, and Molly Ann Saska.

12 And I qualify even that list with -- as I look at the claim forms
13 received by the State Fund, some of those look like they didn't get filed
14 timely, if they are filing a second claim. I am not sure, Your Honor.

15 But in any event, those are -- those trickled in the first few days,
16 and we haven't seen any since then. And I would ask the Court to allow us
17 to treat those as late but permissible claims.

18 And in the event that some come after this, and there appears to be
19 good cause, advise those claimants we can make application as well.

20 *THE COURT:* Mr. Higgins?

21 *MR. HIGGINS:* The State Fund agrees under the circumstances presented
22 by the individuals that Mr. McGarvey has outlined, those should be
23 considered, despite being technically late.

24 Based on the representation of Counsel and the fact that Counsel
25 received notice relatively shortly after the closing date, and for other

1 reasons generalized by Counsel, we will recognize the folks whose names
2 were mentioned today as part of the class, even though their documents
3 were not timely, but certainly not excessively, late.

4 MR. McGARVEY: Thank you.

5 Your Honor, final action we have today is the execution of the final
6 judgment. And this will conclude and finally resolve the class action
7 case, with the exception of the completion of the adjustment and
8 distribution process.

9 We do want to take conformed copies of both the order of final
10 approval and the final judgment with us today when we present the case for
11 approval by the Workers' Compensation Court, so if the Court is prepared
12 and inclined to do so, we would ask you execute the final judgment. And
13 that's all we have, Your Honor.

14 THE COURT: All right. Your motion has been granted. The documents
15 have been signed. And you can get conformed copies to bring with you.

16 Do you need the original or just the conformed copies?

17 MR. McGARVEY: Just the conformed copy.

18 THE COURT: And thank you all for your cooperation. This is a
19 difficulty, I know. I haven't been in a lot of class action cases, but in
20 a few, and to me, they are very difficult. And I know they are for
21 Counsel as well. There's a lot of work that goes into it. So thank you.
22 Mr. Higgins, in particular, thanks.

23 MR. HIGGINS: That you, Your Honor.

24 MR. McGARVEY: Thank you, Your Honor.

25 (Hearing adjourned.)

CERTIFICATE

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STATE OF MONTANA)
 : ss.
County of Cascade)

I, Anne Perron, RPR, do hereby certify that:

I am a duly appointed, qualified and acting Official Court Reporter of the Eighth Judicial District of the State of Montana; that I reported all of the foregoing proceedings had in the above-entitled action, and the foregoing transcript contains a full, true and correct transcript of the said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand the 26th day of February, 2007.

Anne Perron, RPR
Anne Perron, RPR
Official Court Reporter
P.O. Box 1423
Great Falls, MT 59403-1423
(406) 454-6895

ATTACHMENT 2

1 IN THE WORKERS' COMPENSATION COURT
2 OF THE STATE OF MONTANA
3 IN AND FOR THE AREA OF HELENA
4 BEFORE THE WORKERS' COMPENSATION JUDGE

4 -----
5 HOWARD PINCKARD, on behalf of)
6 himself and similarly situated)
7 workers' compensation)
8 claimants,)
9)
10 Petitioners,) WCC No. 2006-1621
11) Judge James Jeremiah Shea
12 vs.)
13)
14 MONTANA STATE FUND and STATE)
15 OF MONTANA,)
16)
17 Respondent.)
18 -----

14 FAIRNESS HEARING
15 1625 11th Avenue
16 Helena, Montana
17 February 16, 2007
18 3:10 p.m.

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20 **ORIGINAL**
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A P P E A R A N C E S:

1
2
3 For the Petitioners: Allan M. McGarvey
4 Attorney at Law
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6 McGarvey, P.C.
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10 Alan J. Lerner
11 Attorney at Law
12 Lerner Law Firm
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14 Kalispell, Montana 59903
15
16 Michael A. Viscomi
17 Attorney at Law
18 Viscomi & Gersh, PLLP
19 121 Wisconsin Avenue
20 Whitefish, Montana 59937
21
22 For the Respondent: Thomas E. Martello
23 Special Assistant Attorney General
24 Montana State Fund
25 PO Box 4759
Helena, Montana 59604

Also Present: Bill Visser

Court Reporter: Kim Johnson

1 BE IT REMEMBERED that on Friday, February 16,
2 2007, in Helena, Montana, before the Honorable
3 James Jeremiah Shea, Workers' Compensation Judge, the
4 following proceedings were continued and testimony was
5 taken:

6 * * * * *

7
8 THE COURT: It's ten after, so should we go ahead
9 and go on the record?

10 Okay, we are on the record now in the matter of
11 Howard Pinckard, on behalf of himself and similarly
12 situated workers' compensation claimants, versus The
13 Montana State Fund and State of Montana. This is the
14 Workers' Compensation Court Cause No. 2006-1621.

15 This is the time that was set for a fairness
16 hearing pursuant to an order that I had issued
17 preliminarily approving the proposed class action
18 settlement on August 14, 2006. This is when it was filed
19 here. It's Document No. 3, anyway, in the file.

20 Counsel for Petitioners is present. And why
21 don't we -- for Kim's benefit, I'm going to ask everybody
22 present to identify themselves. So why don't we start with
23 you, Alan, and you three and go to you and Tom.

24 MR. MCGARVEY: Alan McGarvey for Pinckard, et al.

25 MR. LERNER: Al Lerner for Pinckard class.

1 MR. VISCOMI: Michael Viscomi for Pinckard.

2 MR. MARTELLO: Tom Martello for respondents.

3 MR. VISSER: Bill Visser, State Fund.

4 THE COURT: Thank you. I have reviewed the
5 materials including the notice packet that went out, and I
6 have also, before we went on the record, I have discussed
7 with counsel what has gone on today, and we will just put
8 that on the record, as well.

9 This matter, which is the class action
10 settlement, there was an order signed this morning by
11 Judge McKittrick in Cause No. ADV-96-671 in the Eighth
12 Judicial District Court in Cascade County. He entered an
13 order finally approving proposed class action settlements
14 and a final judgment. Both of those have been presented to
15 me and I have reviewed them.

16 Also, what has been filed and will be entered
17 into the record is the affidavit of Mr. Visser, who is
18 present here today. And it details -- Mr. Visser was in
19 charge of the identification and notification of potential
20 class members, and it details the efforts that were made in
21 that regard.

22 Also, what was presented to the Court is the
23 notice packet that -- and I have discussed with counsel
24 that I was just presented with it, so I have not had an
25 opportunity to review it. But I have reviewed the notice

1 packet that was originally drafted, which has been
2 represented to me as substantively identical, just some
3 minor alterations that were made to the notice packet that
4 was presented to me.

5 So let's see. In addition, just a note for the
6 record, since the order that was signed and entered by this
7 court at Docket No. 3, filed in our file, we have received
8 two communications from individuals. And one is from a
9 Kevin W. Kyle, K-Y-L-E, who resides here in Helena, which
10 actually does not appear to be objecting or asking for any
11 specific relief for anything, just more or less kind of
12 discussing what transpired in his view with his claim with
13 State Fund.

14 I understand from talking to counsel that
15 Mr. Kyle is one of the claims identified in this, in any
16 event.

17 The other one is a Mr. Jonathan DeTienne,
18 D-E-T-I-E-N-N-E, who sent his proof of claim packet to the
19 court erroneously, and that was forwarded on to the State
20 Fund by this court. And as I understand it from talking to
21 counsel, that's been identified -- he has been identified
22 and is on the list of claims, as well. So those are the
23 only communications we have had.

24 Mr. McGarvey, is there anything that you want to
25 add or put on the record?

1 MR. MCGARVEY: Just briefly, Your Honor. The
2 purpose of this fairness hearing is to get the final
3 approval of this settlement from the Workers' Compensation
4 Court to the extent that this settlement effectively
5 precludes any reopening of the claims that underlie the
6 tort claims that are actually being settled.

7 And so it's the final stage, and satisfaction of
8 the preliminary order that the Court granted in the issue
9 is whether due process has been satisfied by the service of
10 the notice. And Mr. Visser's affidavit establishes that
11 notice was sent to all class members at their last known
12 address, consisting of 1,066 people.

13 Based on the fact that mailings either did not
14 get returned or, after being returned, better addresses
15 were found and then were not returned, I think that we know
16 that we successfully hit home with 1,006 of those, so a
17 very high actual hit rate. And of course, the standard is
18 best notice reasonably practical under the circumstances,
19 and I think an outstanding work has been done by State Fund
20 to meet that standard.

21 There being no objections, notwithstanding that
22 notice, and in accordance with Judge McKittrick's ruling,
23 we ask the Court to approve this.

24 That were 53 people who filed a notice to opt out
25 of the class and they have been excluded from that. One of

1 those was actually a late filer, but by the Court's,
2 Judge McKittrick's ruling, those people are out and are not
3 affected by the settlement. Other than that, the remaining
4 class members are settled and the claims have been filed,
5 and we hope to process those and complete the process.

6 THE COURT: Okay.

7 MR. MARTELLO: Excuse me, you may want to mention
8 the late filings that Judge McKittrick --

9 MR. MCGARVEY: We did, as not really a part of
10 the settlement, or the approval process, but we did have a
11 question that arose because six or eight people filed
12 claims within a few days but beyond the deadline for filing
13 of claims. And because there wasn't any hearing
14 forthcoming and the adjuster hasn't even started on that
15 matter, as class counsel, we didn't see a reason to keep
16 them out. They all had excuses that were pretty good
17 excuses for not being timely filed.

18 And we thought, rather than creating an issue, it
19 would be better to allow them to present the claims. We
20 presented that issue to Judge McKittrick, and he agreed
21 they should be allowed to present claims, so they will. No
22 one further will be allowed to present claims, unless they
23 are able to show cause and convince Judge McKittrick to
24 allow that.

25 MR. MARTELLO: The State Fund concurred in that.

1 THE COURT: Okay. Since that's on the record, is
2 there anything that would require an amendment in either of
3 your views as to the proposed order that's been submitted
4 here?

5 MR. MCGARVEY: No.

6 MR. MARTELLO: No.

7 THE COURT: Okay. And Mr. Martello, this was
8 provided to me by Mr. McGarvey, and I understand you have
9 looked at this as well, haven't you?

10 MR. MARTELLO: Yes.

11 THE COURT: Is there anything you wanted to add
12 to that?

13 MR. MARTELLO: No.

14 THE COURT: Okay, then, having reviewed
15 everything as I have discussed, I will enter an order
16 approving the proposed class action settlement, and that
17 would be done today and entered in.

18 MR. LERNER: Thank you, Your Honor.

19 THE COURT: I think as I said at the beginning,
20 reflect this was set for three o'clock. It's now 3:20, and
21 still nobody has shown up to object.

22 So with that, we will go off the record.

23 (The hearing concluded at 3:23 p.m.)

24 * * * * *

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1 STATE OF MONTANA)
2 County of Lewis & Clark) : SS.

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4 I, Kimberly Johnson, Professional Court Reporter, do
5 hereby certify that:

6 I am a duly-appointed, qualified, and acting Official
7 Court Reporter for the Workers' Compensation Court of the
8 State of Montana; that I reported all of the foregoing
9 proceedings had in the above-entitled action, and the
10 foregoing transcript contains a full, true, and correct
11 transcript of the said proceedings to the best of my
12 ability.

13 IN WITNESS WHEREOF, I have hereunto set my hand this
14 6th day of March, 2007.

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Kimberly Johnson
Kimberly Johnson
Official Court Reporter
Workers' Compensation Court
Helena, MT 59601

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KIMBERLY E. JOHNSON
NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires March 19, 2008

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