

WORKERS' COMPENSATION COURT

Hearing No. 3778  
Volume XIX

Helena, Montana  
November 28, 2006

DEBRA STAVENJORD

Thomas J. Murphy

vs.

MONTANA STATE FUND

Bradley J. Luck  
Thomas E. Martello

WCC No. 2000-0207

A telephone conference was held on this date with the above-named counsel at the request of Bradley J. Luck. The purpose of the call was to discuss the Montana Supreme Court's Order remanding this matter back to the Workers' Compensation Court for further proceedings and its Order denying the Petition for Rehearing.

Mr. Luck advised that when Respondent received the Supreme Court's Orders and noticed the Supreme Court's direction that the Workers' Compensation Court oversee identification and notice to potential beneficiaries, the State Fund began a review of its resources. The State Fund is compiling information to identify potential beneficiaries and is preparing a report on their position.

The question was raised as to how this Court can conduct further proceedings on a case when the Petitioner's claim is effectively settled, there is no common fund status, and therefore there are no claimants for the case to be remanded for further proceedings. Additionally, counsel for Petitioner suggested that the Supreme Court may have been referring to "implementation" counsel and not "common fund" counsel in its Order denying petition for rehearing.

Mr. Murphy stated that he believes initially this Court needs to determine whether it is impractical or impossible to proceed without identifying common fund counsel. He further stated that Respondent's arguments have been that there is no way to identify potential claimants. How can they now argue that they can identify them?

Mr. Martello countered by stating that in this case, the disparity of each of claim is that each claimant is to be treated differently and the Supreme Court determined that there was not a common fund. The State Fund never claimed that they could not identify an overly broad population of potential claimants.

Mr. Luck stated that the Supreme Court determined the State Fund is the only party to this matter and that there is no common fund. This was the Supreme Court's specific remand instruction. The Workers' Compensation Court was charged with overseeing

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notification of beneficiaries. In addition, the Workers' Compensation Court is to determine if it is impracticable or impossible to identify potential claimants.

After hearing arguments from all counsel, this Court will issue an Order as follows: The State Fund is to prepare a report as to the procedures it will follow in determining potential beneficiaries. This report will be provided to the Court and Mr. Murphy. After review, a conference will be scheduled whereby this Court and Mr. Murphy can question the State Fund's procedures. Subsequent to this conference, the Court will issue a briefing schedule on the issue of the State Fund's procedures and the issue as to whether it is impracticable or impossible for this Court to comply with the remand order without the assistance of common fund counsel.

James Jeremiah Shea  
JUDGE

Minute Entry e-mailed to parties of record on November 29, 2006.

JB

Docket Item No. 95