

WORKERS' COMPENSATION COURT

Hearing No. 3351
Volume XVI

Helena, Montana
August 28, 2003

KELLY WILD

James G. Hunt and
Lucas J. Foust

vs.

MONTANA STATE FUND

Greg E. Overturf and
Bradley J. Luck

WCC No. 2001-0286

MARK MATHEWS

Geoffrey C. Angel

vs.

LIBERTY NORTHWEST
INSURANCE CORPORATION

Larry W. Jones

WCC No. 2001-0294

The status conference in the above-entitled matter came on Thursday, August 28, 2003, at 9:00 a.m., in the Workers' Compensation Court, Helena, Montana. The Honorable Mike McCarter, Judge of the Workers' Compensation Court, presided. Petitioner, Kelly Wild, was represented by Mr. James G. Hunt and Mr. Lucas J. Foust. Respondent, Montana State Fund, was represented by Mr. Greg E. Overturf and Mr. Bradley J. Luck. Also appearing on behalf of the Montana State Fund were Mr. Thomas E. Martello, Mr. Thomas J. Harrington, 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. Mr. Lawrence A. Anderson appeared as an interested party to the proceedings. The court reporter in this matter was Ms. Laurie Crutcher.

All parties advised that the notice to insurers as drafted is acceptable. A procedure for mailing the notice was established. Claimants' counsel argued that the notice should also be provided to all people who held IC exemptions and not just to those claimants who had claims denied.

Mr. Luck reported that the *Flynn* case may settle so it is unlikely that it will be the case in which the issue of retroactivity will reach the Supreme Court.

Regarding the affidavit for insurer's record on the *Chevron Oil* issue, Mr. Hunt and Mr.

Luck reported that they are close to working out a stipulation. Both parties believe this issue may be submitted on briefs. Mr. Angel and Mr. Jones will report in four weeks as to whether they are close to working out a stipulation.

The State Fund advised the Court and petitioner of their policy of assessing independent contractor status independent of exemption during certain time periods. This may impact the respondent's position on various issues arising in retroactive application.

Regarding adjudication of IC claims, the Court noted that Supreme Court decisions leave open the issue of whether an employer's "sufficient inquiry" into the IC status of someone holding an exemption make the exemption valid, obviating the need for the Court to hold a full inquiry after the fact.

Mr. Luck reported that there are some cases which do not currently have stay issues relating to retroactive application pending decision by the Supreme Court. Motions for stay have recently been filed in some cases. The parties requested guidance as to the date on which application becomes prospective in various cases. Some agreement seems to exist that "prospective" means from the date of the Workers' Compensation Court decision in those common fund cases where the Workers' Compensation Court decision was affirmed; and from the Supreme Court decision in those cases where the Workers' Compensation Court was reversed.

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 (excluding 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 is a prospective application.

Mr. Hunt noted that he does not want parties or the Court to be surprised if claimants' counsel begin publishing notice to workers who may have been injured but did not submit a claim because they held an IC exemption.

Mr. Hunt returned in the afternoon and advise that he will **not** claim prospective attorney fees.

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 10:10 a.m.

MIKE McCARTER
Judge