

WORKERS' COMPENSATION COURT

Hearing No. 3500  
Volume XVII

Helena, Montana  
September 21, 2004

ROBERT FLYNN

Rex Palmer

vs.

MONTANA STATE FUND

Bradley J. Luck,  
Thomas J. Harrington,  
Thomas E. Martello, and  
Nancy Butler

WCC No. 2000-0222

A conference call was held this date with the above counsel to discuss the medical privacy issues as it relates to the claimants in this case. Also in attendance was Mr. Larry W. Jones on behalf of Liberty Northwest Insurance Corporation to discuss the retroactivity issue and whether Liberty can contest retroactive application of the *Flynn* decision.

Mr. Luck cited two cases, *St. James Hospital* and *State v. Nelson* (941 P.2d, 441), in his discussion as to the health care privacy act and the right of an individual's right to informational privacy. The State Fund is concerned about the application of these decisions in the present case. Even though it has entered into a settlement agreement for common fund application of the decision in this case, it seeks Court guidance to avoid violating the mandates in the two cited cases. It is proposing a notice to claimants it identifies as entitled to *Flynn* benefits which would allow them to opt-out and therefore avoid identifying them. The State Fund also proposes appointment of a master to consider any opt-out cases.

I indicated my willingness to work with counsel to assure a process that identifies claimants entitled to *Flynn* benefits without violating the decisions in *St. James Hospital* and *Nelson*. I expressed my belief that the parties are on the right track in seeking limitations regarding the disclosure of the identification of affected claimants but also expressed my initial view that the Supreme Court will uphold a process allowing for the identification of benefitted claimants. Counsel will work on an agreement regarding the identification process and present it to the Court for approval. We tentatively agreed to meet in Helena on October 5, 2004, to discuss the proposed agreement and determine if it meets with the requirements of the two cited cases. I agreed that a Court order should be entered which governs the process and protects the privacy of claimants.

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Regarding Mr. Jones' issue, the Court agreed to enter an order joining his client as a party so that his client will have the opportunity to appeal the retroactivity issue to the Supreme Court since the State Fund conceded the issue. I noted that Mr. Palmer has claimed a global lien and that his claim is validated by the Supreme Court's recent *Ruhd* decision. However, other insurers should be provided an opportunity to contest the retroactivity issue of the *Flynn* decision and the existence of a common fund. Mr. Jones indicated that he will be back in his office on October 1, 2004, and will file a motion to intervene shortly thereafter.

MIKE McCARTER  
Judge