IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 75

WCC No. 2000-0222
WCC No. 2003-0771

FILED

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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

ROBERT FLYNN

and

CARL MILLER, Individually and on Behalf of Others Similarly Situated

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE CORPORATION

Intervenor.

DECISION AND ORDER REGARDING DISCLOSURE OF CLAIMANT INFORMATION

Summary: Following the Supreme Court decision in *Flynn v. State Comp. Ins. Fund,* 2002 MT 279, 312 Mont. 410, 60 P.3d 397, the petitioner's attorney sought common fund fees with respect to other, nonparty claimants benefitted by the decision. The request was consolidated with a second, parallel case brought by the attorney. Ultimately, the parties entered into a settlement agreement, approved by the Court, which provided that the respondent insurer (State Compensation Insurance Fund) will identify other claimants entitled to *Flynn* benefits and pay the benefits due them. The agreement also concedes petitioner's attorney's entitlement to common fund attorney fees.

The settlement agreement provides for disclosure of information regarding nonparty claimants who may be entitled to *Flynn* benefits. The Workers' Compensation Court approved the disclosure subject to strict confidentiality rules precluding further dissemination of the information to others. After approving the agreement, the Supreme Court decided *St. James Community Hosp., Inc. v. Dist. Court of Eighth Jud. Dist.*, 2003 MT 261, 317 Mont. 419, 77 P.3d 534, which held that the constitutional right of privacy, as well as statutes, precluded disclosure of the identity and other information of patients of a hospital which had overcharged its patients and others for copies of medical records. The parties in this case now seek direction concerning what can and cannot be disclosed in this case.

Held: The right of privacy extends only to information as to which an individual has a reasonable expectation of privacy as measured by societal expectations. *Pengra v. State,* 2000 MT 291, 302 Mont. 276, 14 P.3d 499; *Jefferson County v. Montana Standard*, 2003 MT 304, 318 Mont. 173, 79 P.3d 805. Claimants in workers' compensation cases do not have a reasonable expectation of privacy with respect to their identities and information pertaining to their entitlement to benefits, at least with respect to attorneys who have established their entitlement to further benefits under the common fund doctrine and where the attorneys are prohibited from disseminating information regarding their identities and claims to others.

Topics:

> **Constitutions, Statutes, Rules, and Regulations: Montana State Constitution: Art. II, section 10.** The right of privacy extends only to information as to which an individual has a reasonable expectation of privacy as measured by societal expectations. *Pengra v. State,* 2000 MT 291, 302 Mont. 276, 14 P.3d 499; *Jefferson County v. Montana Standard*, 2003 MT 304, 318 Mont. 173, 79 P.3d 805. Claimants in workers' compensation cases do not have a reasonable expectation of privacy with respect to their identities and information pertaining to their entitlement to benefits, at least with respect to attorneys who have established their entitlement to further benefits under the common fund doctrine and where the attorneys are prohibited from disseminating information regarding their identities and claims to others.

¶1 Prior proceedings in this case established the right of the petitioner, Robert Flynn (claimant), to a credit against the social security offset[1] taken with respect to his workers' compensation benefits. The credit is for one-half of the attorney fees and costs he

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[1]The social security offset provisions are currently found in §§ 39-71-701(5) and -702(7), MCA (2003).

expended in securing the social security benefits. *Flynn v. State Comp. Ins. Fund,* 2002 MT 279, 312 Mont. 410, 60 P.3d 397.

¶2 Following that determination, the claimant sought common fund attorney fees with respect to other, nonparty claimants who will benefit from the main decision. This case was consolidated with a parallel action brought by Flynn's attorney – *Miller v. Montana State Fund,* WCC No. 2003-0771.

¶3 The Montana State Fund (State Fund) contested the claimant's request for common fund certification. The issues raised by the State Fund were determined by order of this Court on August 5, 2003, which is reported at *Flynn v. State Comp. Ins. Fund,* 2003 MTWCC 55. In that decision this Court held that the Supreme Court's decision found at 2002 MT 279 applied retroactively and that Flynn's attorney is entitled to common fund fees with respect to other claimants who benefit from the precedent established in that decision.

¶4 The State Fund appealed my common fund decision. However, the parties thereafter entered into a mutually agreeable settlement which resulted in the dismissal of the appeal. The terms of the settlement provide that the State Fund will identify and indemnify other similarly situated claimants. Under the agreement, the claimants' attorney is entitled to claim common fund attorney fees with respect to the additional benefits and credits due the nonparty claimants. The agreement was reviewed, approved, and adopted by this Court.

¶5 Pursuant to a strict confidentiality agreement[2] approved by this Court, the State Fund has provided the claimants' counsel with the names of the *Flynn* claimants it has identified. Claimants' counsel is under a strict obligation precluding him from disclosing the shared information to others. His role, as contemplated by the parties and this Court, is to assist in assuring that claimants entitled to *Flynn* benefits are in fact identified and that the additional benefits and/or credits due them are properly calculated and paid.

¶6 Following this Court's approval of the agreement regarding the sharing of information, the Montana Supreme Court decided *St. James Community Hosp., Inc. v. Dist. Court of Eighth Jud. Dist.*, 2003 MT 261, 317 Mont. 419, 77 P.3d 534. In that case, the Court held that medical providers are constitutionally and statutorily prohibited from disclosing medical information, *including the identity of patients,* to a plaintiff's counsel in a class action even though the class action potentially benefitted the very patients whose identity was protected. *Id.*, ¶¶ 8, 9. In light of the decision in *St. James,* the parties now seek guidance regarding further disclosure of information.

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[2](*Confidentiality Agreement,* WCC No. 2000-0222 (approved September 24, 2003).)

Discussion

A. Background

¶7 Where a court decision establishes the right of other nonparty claimants to additional benefits, a common fund is created. *Murer v. State Comp. Mut. Ins. Fund,* 283 Mont. 210, 222-23, 942 P.2d 69, 76-77 (1997); *Rausch v. State Comp. Ins. Fund*, 2002 MT 203, ¶¶ 45-48, 311 Mont. 210, 54 P.3d 25. The common fund extends to all claimants benefitted by the decision irrespective of which insurer (or self-insured) is liable for the benefits. *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, ¶ 25 (*Ruhd II.)*[3].

¶8 In *Ruhd II,* the Supreme Court specifically directed the Workers' Compensation Court to "supervise enforcement of the common fund pursuant to *Rausch*,[4] and all court-approved agreements stemming from it, from all insurers involved." 2004 MT 236, ¶ 25 (footnote added). Thus, this Court has a duty to assure that claimants benefitted by court decisions are identified and paid the benefits owing them, and to then determine the amount of attorney fees due the prevailing claimants' attorneys.

¶9 While the common fund doctrine is predicated on the right of the attorneys bringing the principal litigation to collect attorney fees from nonparties who benefit from the litigation, *Murer,* 283 Mont. at 222, 942 P.2d at 76, and *Rausch*, 2002 MT 203, ¶ 45, the rationale for the doctrine is the proverbial tail that wags the dog. Before attorney fees can be determined, the claimants who are due additional benefits must be identified and the amounts due them must be calculated. Such identification and calculation is **the** major undertaking in any common fund case. In contrast, the calculation of attorney fees is simply a matter of determining a reasonable and appropriate percentage or amount to be paid the successful attorneys.

¶10 This Court has extensive experience in supervising the enforcement of common fund rights. It has supervised common fund proceedings following *Murer v. State Comp. Mut. Ins. Fund, supra.*; *Broeker v. State Comp. Mutual Ins. Fund*, 275 Mont. 502, 914 P.2d 967 (1996); *Rausch v. State Comp. Ins. Fund*, *supra.*; and in this case. The *Murer* case involved 3,200 claimants and is still not closed, although the case is getting very near to finalization.

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[3]*Ruhd II* is the second of two *Ruhd* cases. In the first case, the Supreme Court applied *Rausch v. State Comp. Ins. Fund,* 2002 MT 203, 311 Mont. 210, 54 P.3d 25.

[4]*Rausch v. State Comp. Ins. Fund,* 2002 MT 203, 311 Mont. 210, 54 P.3d 25.

¶11 Based on my experience in common fund cases, I respectfully disagree with the Supreme Court's statement in *Ruhd* that "[e]forcement in a specific case is not a necessary element of the common fund doctrine." *Ruhd,* ¶ 23. Lacking enforcement, i.e., identification of benefitted claimants and the amounts of additional benefits due them, the beneficiaries of the common fund cannot be identified and attorney fees cannot be determined.

¶12 In each of the common fund cases I have supervised, including this one, I have enlisted the parties and their counsel in a cooperative endeavor to identify benefitted claimants, calculate the additional benefits due them, pay the additional benefits, and ultimately determine the attorney fees due claimants' counsel. By acting in concert, we have avoided time-consuming, costly discovery, as well as further, contentious litigation. We have spent hours around conference tables identifying the most efficient and effective means for identifying affected claimants and for calculating the benefits due them. The process in each of the cases has been efficient and effective. On the other hand, the time and effort spent by claimants' counsel in each of these cases has far exceeded the time and effort they spent in establishing the precedent giving rise to the common fund.

¶13 In *Ruhd,* the Supreme Court noted that there are "*only* 165 permanently totally disabled claimants" affected by the decision. *Ruhd*, ¶ 24 (italics added). Such a small number of claimants may suggest that enforcement of the common fund doctrine will be simple and straightforward. However, information furnished to this Court in a post-remand conference held on October 5, 2004, with counsel and officials of the Department of Labor and Industry (DLI) indicates that more than 165 claimants are affected by the *Ruhd* decision. Additional, difficult work needs to be done to identify **all** of the affected claimants. I have attached a copy of my minute entry of the conference. A copy of the minute entry is also posted on the Court's WEB site, http://wcc.dli.state.mt.us. A copy of the transcript of the conference is also posted on the Court's WEB site and with this reference is made a part of the record in this case.

¶14 The information furnished at the conference illustrates the difficulty and time-consuming nature in enforcing the common fund doctrine. The DLI's initial data identified 377 permanently totally disabled (PTD) claimants. One hundred sixty-seven (167) are insured by the State Fund. That leaves another 210 claimants who are insured by 57 insurers, *excluding* the Uninsured Employers' Fund and the Western Guaranty Insurance Fund.[5] Moreover, the DLI's data is incomplete. It covers only PTD claimants who filed

[5]The Western Guaranty Fund covers claimants of insolvent insurers.

claims after March 1995 or who were paid benefits after April of 1995.[6] The decisions in *Ruhd* and *Rausch* affect claimants injured after July 1, 1991, thus there is a period of four years for which there is incomplete data.

¶15 Moreover, the Supreme Court has under advisement an appeal in *Rausch* in which the petitioners contend that all PTD claimants injured since **1987** are encompassed in the decision. The original decision in *Rausch* applied only to claimants injured on or after July 1, 1991. Depending on the outcome of the appeal, this Court may have to expand the proceeding to encompass PTD claimants injured between 1987 and 1991, thus requiring the additional mining of data.

¶16 Additional data mining will require either compelling each Montana insurer and self-insured (there are over 600 of them) to identify other PTD claimants and/or resorting to an old database maintained by the Division of Workers' Compensation (Division) prior to its demise in 1989. 1989 Mont. Laws, ch. 613. The Division database is commonly referred to as the DB02 database. For a period of time after the Division was dissolved, the State Fund maintained the database.

¶17 In *Rausch,* the Court was also alerted to the fact that some PTD claimants may in fact be improperly classified as temporarily totally disabled. If the common fund is extended to encompass such improperly classified claimants, the data mining will have to expanded.[7]

¶18 Finally, in *Ruhd* and *Rausch* the Court will have to hale at least fifty-seven insurers before the Court to determine whether they have paid the affected claimants the impairment awards required by law. It will then have to compel payment of those impairment awards not already paid.

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[6]*See* October 18, 2004 letter of Diana Ferriter, Bureau Chief of the Workers' Compensation Assistance Bureau, Department of Labor and Industry, a copy of which is attached to this Decision and Order. The letter was in follow-up to the October 5, 2004 conference in *Ruhd* and *Rausch*.

[7]In *Rausch,* the State Fund agreed to attempt to identify temporary total disability (TTD) claimants who should be reclassified as PTD. It did so by running a computer query identifying claimants who had been receiving TTD benefits for one year or more. It then reviewed the files for those claimants and identified thirty-five claimants who should have been classified as PTD. While I question whether the mandate in *Rausch* and *Ruhd* can be expanded to encompass misclassified claimants, I also note that identification of such claimants in conjunction with the *Rausch-Ruhd* proceedings will avoid further litigation later on. Avoidance of further litigation was one of the considerations expressed by the Supreme Court in its *Ruhd II* decision.

¶19 *Ruhd* and *Rausch* are not the only common fund cases pending in this Court. This Court has previously held that the common fund doctrine applies to *Schmill v. Liberty Northwest Ins. Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290 (striking down the apportionment provision of the Occupational Disease Act), and *Stavenjord v. Montana State Fund,* 2003 MT 67, 314 Mont. 466, 67 P.3d 229. *Schmill v. Liberty Northwest Ins. Corp.*, 2004 MTWCC 47; *Stavenjord v. Montana State Fund,* 2004 MTWCC 62. Those cases involve thousands of claimants – the State Fund alone has identified 3,500 potentially affected claimants. *Stavenjord,* 2004 MTWCC 62, ¶ 25.

¶20 I have set out the above information to illustrate the nature of the tasks involved in enforcing the common fund doctrine. The information provides the background and setting for the *St. James* issue.

B. The *St. James* Issue

¶21 To facilitate the enforcement of the common fund doctrine, in each of the common fund cases I have handled to date, I have authorized insurers to provide the claimants' counsel with information and documents identifying affected claimants and showing the basis for calculating the additional benefits due them. The dissemination of the information has been subject to strict confidentiality agreements. Claimants' attorneys in each of the cases have been integrally involved in the enforcement process and have made major contributions to the process. Indeed, their assistance has been essential to the process. And, they have honored the confidentiality requirements.

¶22 *St. James*, however, raises questions as to whether I can authorize insurers to share information with claimants' counsel. Both parties in the instant case agree these questions must be addressed before proceeding further with the implementation of their agreement.

¶23 *St. James* was a class action seeking "monetary damages predicated upon excessive fees allegedly charged for copies of patients' medical records from 1993 to 1999." 2003 MT 261, ¶ 2. The District Court held that the defendant medical providers had overcharged patients and their representatives, i.e., attorneys, for copies of medical records. It certified a class consisting of patients and others who had obtained copies of records and gave notice to the potential class members, apparently without disclosing individual identities. The District Court gave class members an option to "opt-out" of the class; members who failed to expressly "opt-out" were automatically included in the class.

¶24 Following the class determination and notice to class members, plaintiffs filed discovery requests seeking information as to the identity of patients within the class and the charges they had incurred for copies of records. The District Court ordered the health care providers to provide the information. The providers then sought a writ of supervisory control quashing that order.

¶25 In considering the writ, the Supreme Court noted that all patients who had not expressly elected to "opt-out" of the class had in theory become clients of the plaintiffs' attorneys but that "[i]n essence, plaintiffs' counsel are seeking to identify their own clients . . . [to enable them] to compute damages and notify the class members." 2003 MT 261, ¶ 6. The Court went on to hold that the provisions of the Montana Health Care Information Act and, "[m]ore importantly, Article II, Section 10" of the Montana Constitution protected the patients from the non-consensual release of information identifying them. *Id.,* ¶ 8. Finally, the Court held that failure of patients to reply to an opt-out notice did not constitute consent to release their names and other information to plaintiffs' attorneys.

¶26 The Court in *St. James* recognized that its decision created a dilemma as to how to enforce the constitutional and statutory privacy rights of the class members while advancing their rights to damages for copying overcharges. It resolved the dilemma by requiring the District Court to provide an "opt-in" notification. An "opt-in" notification assured that the class members expressly consented to the release of identifying information to plaintiffs' attorneys.

¶27 In the present case, the State Fund has expressed concern that *St. James* precludes the release of claimant information to the claimants' attorney. It has suggested that the Court follow an opt-in procedure similar to that required in *St. James*.

¶28 An opt-in procedure will complicate and delay identification and payment of claimants entitled to *Flynn* benefits. It may also result in the imposition of additional administrative burdens on the Court, which would be tasked with undertaking its own independent inquiry with respect to benefits due those who fail to expressly opt-in. I therefore concluded that I will adopt an opt-in procedure only if it is legally required by *St. James*.

¶29 The decision in *St. James* has both constitutional and statutory underpinnings. The constitutional foundation is Article II, section 10 of the Montana Constitution. The statutory foundation is the Uniform Health Care Information Act, § 50-16-501, *et seq*., MCA (2003).

¶30 Article II, section 10 of the Montana Constitution provides: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." The section neither defines what is encompassed in the right of privacy or what constitutes a compelling state interest. A review of Montana Supreme Court decisions arising under the section indicates that most cases have involved searches and seizures in criminal cases.

¶31 The seminal federal case concerning the right to privacy is *Katz v. United States,* 389 U.S. 347, 353 (1967), which, like most Montana privacy cases, involved a search and seizure issue. In that case, the FBI used a recording device on the outside of a telephone booth to record the defendant's telephone conversation. The FBI urged that its recording

of the conversation did not constitute a search and seizure because its electronic surveillance did not involve a physical intrusion into the phone booth. The Supreme Court rejected the argument and held that the test as to whether a search had occurred was whether the defendant had a justifiable expectation of privacy regarding his conversations.

¶32 Although not discussed in *St. James,* Montana has adopted the "expectation of privacy" test as the benchmark for determining whether the privacy protections under Article II, section 10 apply. In *Pengra v. State,* 2000 MT 291, 302 Mont. 276, 14 P.3d 499, it expressly held that the constitutional right of privacy guaranteed by Article II, section 10 of the Montana Constitution extends only to matters involving a "reasonable expectation of privacy." Moreover, the expectation of privacy must not only be reasonable but it must be reasonable **in light of societal expectations**. *Id.,* ¶ 15.

¶33 *Pengra* involved an action by the husband and children of a wife and mother who had been brutally raped and murdered. The complaint alleged that negligence of the State of Montana contributed to the rape and murder. The Pengras and the State ultimately settled but the Pengras sought to seal the settlement agreement, arguing that disclosure of the settlement violated their rights of privacy. The District Court refused the request and on appeal the Supreme Court affirmed. In its analysis of the privacy claim, the Supreme Court held that in light of the prosecution of their legal action against the State, the Pengras could not have had a subjective expectation of privacy concerning any resolution of the case. 2000 MT 291, ¶ 18.[8] Second, the Court reasoned that even if they had a subjective expectation of privacy, such expectation was unreasonable:

> As to whether society is willing to recognize the Pengras' privacy expectation as to the amount of their tort settlement with the State, the

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[8]The Court said:

> ¶ 18 The claim that the Pengras have a subjective expectation of privacy in the settlement amount is, moreover, discredited by the surrounding circumstances of this case. Pengra took no steps to keep private his lawsuit against the State, and in fact requested a jury trial in the District Court. Pengra's counsel admitted at oral argument before this Court that if the settlement amount had not been sufficient, his client would have gone forward with the public jury trial of this case. The District Court opined that any harm to the Pengras by publicity had already occurred and that there was no basis for a conclusion that disclosure of the amount of the settlement would cause greater harm to the Pengras than had already been caused by the previous disclosures of the facts of the crime. We agree.

> enactment of the disclosure requirement in § 2-9-303, MCA [requiring public disclosure of settlement agreements involving the State], indicates that it is not.

Id., ¶ 19.

¶34 In *Jefferson County v. Montana Standard*, 2003 MT 304, 318 Mont. 173, 79 P.3d 805, a case decided **after** *St. James*,[9] the Montana Supreme Court reiterated the twin tests laid out in *Pengra*, holding:

> In order to determine if the individual has a protected privacy interest under Article II, Section 10, of the Montana Constitution, it is appropriate to apply a two-part test. First, one considers whether the individual has a subjective or actual expectation of privacy. Secondly, one determines whether society is willing to recognize that expectation as reasonable.

2003 MT 304, ¶ 15 (citations omitted). In that case, the Court held that a public official – a county commissioner – does not have a reasonable expectation of privacy with respect to arrest information pertaining to driving under the influence of alcohol, at least where the official subsequently pled guilty to the charge. The Court noted that public officials should expect release of information pertaining to their ability to make good judgments in their official capacity. It noted that a willing violation of the law is relevant to the ability of a county commissioner to perform her duties.

¶35 In *St. James, supra.*, the Supreme Court did not analyze the expectation of privacy. However, the confidentiality of medical information has long been protected under rules of evidence and by statute, hence the reasonable expectation of privacy concerning that information is well established and needs no explication. *State v. Nelson*, 283 Mont. 231, 941 P.2d 441 (1997), cited in *St. James*, ¶ 8, as authority for the Court's statement that Article II, section 10 of the Montana Constitution "encompasses confidential 'informational privacy,'" similarly involved personal medical information.

¶36 As should be evident from the foregoing discussion, it would be a mistake to read *St. James* as holding that the constitutional right of privacy protects any and all information concerning the identification of potential class members and their entitlement to class benefits. As the decision in *Pengra* shows, not all claims of privacy are equal. Accordingly, I must consider the privacy interests at issue in ***this case.***

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[9]*St. James*, 2003 MT 261, was decided on September 25, 2003. *Jefferson County*, 2003 MT 304, was decided November 6, 2003.

¶37 The question I must answer in this case is whether claimants who may be entitled to *Flynn* benefits have a reasonable expectation of privacy with respect to their identities and their entitlement to *Flynn* benefits. The reasonableness of any such expectation must in turn be measured by societal expectations.

¶38 In beginning my analysis, I note that workers' compensation benefits are provided by statute; there is no common law entitlement to such benefits. The Montana legislature has provided a detailed statutory scheme regulating the entitlement to benefits and how they are secured. A claimant who seeks benefits does so subject to those statutes.

¶39 Statutes governing workers' compensation have numerous provisions in derogation of any "reasonable" claim of privacy in the context of this case. Initially, a claimant is required to report any industrial injury to his or her employer. § 39-71-603, MCA (2003). Thus, the claimant's identity is immediately disclosed to the employer, who is not under any proscription as to further disclosure of the information.

¶40 A claimant is further required to file a written claim for compensation with the employer's workers' compensation insurer, § 39-71-601, MCA (2003), and disclose information necessary to the adjustment of his or her claim. Moreover, a claimant must release pertinent medical information regarding the injury to the insurer. Section 39-71-604, MCA (2003), provides in relevant part:

> **Application for compensation – disclosure and communication without prior notice of health care information.** (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and proof of other matters that may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.
>
> (2) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be

> consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court or as otherwise provided by law.
>
> (3) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (2) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

¶41 The Uniform Health Care Information Act, which was cited in *St. James,* also contains a provision authorizing disclosure of medical information necessary to the adjustment of claims. Section 50-16-527, MCA (2003), provides:

> **Patient authorization – retention – effective period – exception – communication without prior notice for workers' compensation purposes.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.
>
> (2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.
>
> (3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.
>
> (4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to

the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. **This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed** under the Montana Rules of Civil Procedure, **by the workers' compensation court,** or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

(Emphasis added.) Under subsections (4) and (5), filing and pursuit of a workers' compensation claim constitutes consent to the release of pertinent medical information to the insurer **and** its agents.[10] Importantly, subsection (4) also provides the Workers' Compensation Court with authority to order disclosure of additional medical information not specifically authorized in that subsection. That authority is, of course, subject to a claimant's constitutional expectation of privacy concerning the information, hence it is not unlimited.

¶42 In addition to the foregoing disclosure requirements, section 39-71-225, MCA (2003), requires insurers to report basic claim information to the Montana Department of Labor and Industry. In turn the DLI is expressly authorized to release "current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution." § 39-71-225(2)(c), MCA (2003). It is also authorized to release limited information, including the identity of the claimant and essential facts regarding the claim, to other insurers. Section 39-71-225(2)(b), MCA (2003), provides:

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[10]Agents may include, for example, medical case managers and vocational consultants.