

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 39A-3

WCC No. 9206-6487

JACK MURER, et al.

Petitioners

vs.

MONTANA STATE COMPENSATION
INSURANCE FUND, et al.

Defendants.

*See Murer et al. v. Montana State Fund et al.,
283 Mont. 210 (1997) (Murer III)*

ORDER DENYING RENEWED MOTION FOR CLASS CERTIFICATION

Summary: In case with long and complex history, claimants sought class action certification.

Held: Court finds class action certification neither necessary nor appropriate. **Note that Supreme Court found common fund doctrine applicable, which shares some properties with class actions.**

This case has a long history. It involves an issue of statutory interpretation, viz. whether the freeze on benefits imposed by the legislature (between 1987 and 1991) applies to benefits payable after 1991 on account of injuries occurring during the freeze. Insurers interpreted the freeze as extending to **all** benefits payable for injuries occurring during the period; claimants contended that the freeze applied only to benefits between 1987 and 1991.

The parties have made two trips to the Supreme Court. In their first trip, class certification was at issue. This Court denied certification; the claimants appealed from that ruling and the Supreme Court affirmed this Court's decision. ***Murer v. State Compensation Ins. Fund*, 257 Mont. 434, 849 P.2d 1036 (1993) (hereinafter *Murer I*)**. During the second trip the Supreme Court adopted claimants' interpretation of the freeze and

remanded the case with instructions that this Court determine the amounts due the individual claimants. ***Murer v. State Compensation Ins. Fund***, 51 St.Rptr. 1145 (1994) (hereinafter ***Murer II***). On remand the claimants have renewed their motion for class certification. The motion is **denied**.

Initially, claimants' renewed attempt to expand this action into a class action is barred by the "law of the case doctrine."

The rule of law of the case provides that in deciding a case upon appeal, when the Supreme Court states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent proceedings, both in the trial court and upon subsequent appeal.

Haines Pipeline Construction, Inc. v. Montana Power Co., 265 Mont. 282, 289, 876 P.2d 632 (1994). In ***Murer I*** the Supreme Court held that the typicality requirement was not met. In part it said:

There would be many different situations among the estimated two thousand claimants who would be included within this class action so that the typicality of the Rule requirement could not be met. Claimants would include unrepresented claimants and those who are already represented by other attorneys, who are suffering either from an industrial injury or occupational disease; claimants whose cases are either open or have been settled; claimants who may be entitled to either a temporary total or permanent total wage supplement impairment, rehabilitation, or death benefit; and different rates for various claimants, depending on whether they were injured or were disabled by an occupational disease. . . .

Murer I at 437-438. It is thus clear that the differences among claimants was one of the Court's reasons for affirming the denial of certification. Reconsideration of the matter is, therefore, precluded.

Moreover, the numerous distinctions among claimants which was pointed out by the Supreme Court in ***Murer I*** have not changed. Thus, even if ***Murer I*** did not preclude the renewed motion, the present claimants have still failed to meet the typicality requirement.

Finally, I am not persuaded that a class action is either necessary or appropriate. The State Fund is obligated to comply with the decision in ***Murer II***. In conferences with

the parties' attorneys, the State Fund has informed the Court and claimants' attorneys that it is in the process of identifying those claimants who may be entitled to increased benefits based on **Murer II**. It has completed that identification process and substantially completed its effort to notify those claimants of their potential entitlement. Where no affirmative defenses, offsets, or legal issues exist, the State Fund intends to pay the additional benefits, less the twenty (20%) percent lien claimed by claimants' attorneys.

There are, however, remaining legal and factual issues with respect to some claims, and the parties agree that those issues will have to be adjudicated. Those issues include the applicability of **Murer II** to impairment awards paid prior to July 1, 1991, and whether settlements foreclose additional benefits. Those issues can be adjudicated in cases involving individual claimants. Presumably the State Fund will comply with the precedents established in those cases. Should it fail to do so, it may be subject to imposition of penalties and attorney fees. It may also be subject to penalties and attorney fees if the issues it raises to avoid payment are frivolous. Thus, there should be enough incentive for the State Fund to comply with the decisions of the Supreme Court and this Court without certifying the entire class of claimants who may benefit from the decision in **Murer II**.

Dated in Helena, Montana, this 5th day of April, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Allan M. McGarvey
Mr. Roger M. Sullivan
Mr. Bradley J. Luck
Mr. Michael C. Prezeau
Mr. Ira Eakin

Mr. Charles G. Adams (Courtesy Copy)
Mr. Mark E. Cadwallader (Courtesy Copy)
Mr. Chuck Edquest (Courtesy Copy)
Mr. Larry W. Jones (Courtesy Copy)