

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9907-8274R1  
WCC No. 2000-0023R1  
WCC No. 2000-0030R1

**FILED**

**MAR 31 2003**

**ALEXIS RAUSCH, as Conservator for  
KEVIN RAUSCH**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

and

**CHARLES FISCH, Individually and on  
Behalf of Others Similarly Situated**

and

**THOMAS FROST, Individually and on  
Behalf of Others Similarly Situated**

**Petitioners**

v.

**MONTANA STATE FUND**


**Respondent/Insurer.**

**ORDER APPROVING REVISED SETTLEMENT STIPULATION**

¶1 Upon reading and reviewing the revised settlement stipulation, the stipulation is hereby approved and adopted by the Court.

DATED in Helena, Montana, this 31<sup>st</sup> day of March, 2003.

(SEAL)



JUDGE

c: Mr. Lon J. Dale  
Mr. Monte D. Beck  
Mr. Stephen D. Roberts  
Mr. Bradley J. Luck  
Mr. Greg G. Overturf

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**FILED**

**MAR 28 2003**

**OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA**

**THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA**

ALEXIS RAUSCH, as Conservator for  
KEVIN RAUSCH,

and

CHARLES FISCH, Individually and on  
Behalf of Others Similarly Situated,

and

THOMAS FROST, Individually and on  
Behalf of Others Similarly Situated,

Petitioners,  
v.

MONTANA STATE FUND,

Respondent/Insurer.

WCC No. 9907-8274R1  
WCC No. 2000-0023R1  
WCC No. 2000-0030R1

**REVISED SETTLEMENT  
STIPULATION**

This Settlement Stipulation made and entered into this \_\_\_\_ day of March, 2003, by and between Alexis Rausch, as Conservator for Kevin Rausch, Charles Fisch, individually and on behalf of others similarly situated, Thomas Frost, individually and on behalf of others similarly situated, their counsel of record (Monte Beck, Stephen Roberts, Lon Dale and each of their respective law firms) (counsel) and the State Compensation Insurance Fund (State Fund).

The parties agree to settle outstanding issues arising as a result of the decisions and directives emanating from this litigation, as follows:

**1. Common Fund Fees**

**(a) Payment to Counsel**

The State Fund shall pay the sum of \$90,000 to counsel for the named Claimants upon the approval of this Stipulation by the Workers' Compensation Court. Such sum shall constitute full and final payment from the State Fund for any and all common fund fees or other costs, expenses or fees due the named counsel or their law firms for any benefit payments made to any person as a result of the decisions and directives emanating from the present litigation with the exception of litigation contemplated in Section 2(e) below. The payment also constitutes additional funds paid in consideration of the terms and conditions hereof. The payment of such fees specifically takes into account any entitlement to payment or credit and/or any payment made as a direct or indirect result of the decisions and directives emanating from this litigation for any benefit paid to a State Fund Claimant injured after July 1, 1991 (past, present, or future). Except as set forth in this Stipulation, counsel will claim no further fee for any State Fund Claimant injured after July 1, 1991, as a result of their efforts in this litigation.

(b) In addition to the sum paid to counsel pursuant to Paragraph 1(a), and subject to the approval of the Workers' Compensation Court in a separate hearing set to consider and approve common fund fees as set forth in Paragraph 4, counsel will receive a percentage of each impairment payment made to a Claimant (or each credit offset against the impairment payment as a result of an advance or overpayment on the claim) identified on the list described in Paragraph 3. In making the impairment award payments to the Claimants identified, the State Fund shall withhold a percentage of the total impairment award due each Claimant in amount that is determined based upon the age of the Claimant on the date of the Supreme Court decision in this matter, as follows:

Age of Claimant	Percentage of Impairment Award Paid as Common Fund Fee
64 and over	0%
62-63	5%
60-61	10%
under 60	15%

The deduction taken by the State Fund from an impairment award payment to be paid over as common fund fees to counsel shall be the percentage set forth above applied to the entire impairment award whether it is paid directly to the Claimant or credited, in whole or in part, against an advance, overpayment or other outstanding credit against benefits due on the claim. The percentage fee set forth will apply against the entire impairment award of each Claimant regardless of the election of any individual Claimant to be bound by the decision of the Montana Supreme Court in this matter or the amount of time such payment was accelerated as a result of the noted appellate decision. However, counsel may waive any portion of any fee due from a Claimant. No Claimant will be required to pay sums out-of-pocket to counsel or the State Fund as common fund attorney's fees.

## **2. Implementation of Decisions and Directives**

The State Fund shall take appropriate steps to implement the decisions and directives emanating from this litigation. The parties have considered the issues and entitlements related to such decisions and directives, and agree as follows in relation thereto:

### **(a) Common Fund Fee**

All common fund fee issues relating in any way to the present litigation, with the exception of potential fees generated through the litigation contemplated in Section 2(e) below, are fully resolved and settled with the payment specified in Paragraph 1.

### **(b) Settled Claims**

Any workers' compensation or occupational disease claims settled with the State Fund prior to the date of this agreement are fully and finally resolved and no additional impairment payment or entitlement arises as a result of the decisions and directives emanating from this litigation. Therefore, settled claims need not be reviewed by the State Fund in the implementation process.

(c) Previous Payments

All impairment award payments made in full by the State Fund to persons in workers' compensation or occupational disease claims who were or became permanently totally disabled which were accepted by such individual Claimants prior to the Supreme Court decision in this action are full and final payments resolving entitlement to impairment awards. There is no additional benefit entitlement for such Claimants based upon an argument that the payments should have been made prior to retirement. Therefore, the State Fund need not review claims where the entire impairment award was paid prior to the Supreme Court decision in this matter. This provision applies to claims arising before and after 1991.

(d) Advances and Overpayments

Any Claimant entitled to payment as a result of any decision or directive emanating from this action is subject to reduction for outstanding credits, advances or overpayments on the individual claim. The State Fund may set off any credit, advance or overpayment against any impairment payment made to a Claimant. An explanation of the reduction in payment shall be provided to such Claimants.

(e) Pre-1991 Claims

The State Fund contends that the decision of the Montana Supreme Court in this matter does not, directly or indirectly, require payment of impairment awards to pre-1991 law permanently totally disabled Claimants prior to retirement. The State Fund contends that impairment awards on pre-July 1, 1991, claims are not payable to totally disabled Claimants until such Claimants retire and/or are precluded as a result of the law at the time-of-injury. Counsel for the named Claimants contend that the Supreme Court decision requires impairment award payments to permanently totally disabled Claimants when the impairment is rendered, for those Claimants injured between 1987 and 1991. The parties shall brief such issue (entitlement to impairment awards when rendered for permanently totally disabled Claimant injured between July 1, 1987 and June 30, 1991) and present it to the Court for Declaratory Ruling. A final determination shall be sought from the Montana Supreme Court.

Claimants waive common fund attorney's fees for injuries insured by the State Fund occurring before July 1, 1987.

The Claimants agree that in regards to the pre-1991 claims, no penalty or attorney's fees other than common fund fees will be sought from the Courts.

(f) Occupational Disease Claims

Presently pending litigation will determine whether an Occupational Disease Act Claimant is entitled to an impairment award. In the event it is determined that an Occupational Disease Act Claimant is entitled to an impairment award, the decision in this action will allow for the payment of such award on a date earlier than it would otherwise have been paid. As a result, counsel for the Claimants in this action would have been entitled to a fee based upon the early payment. All such fees have been considered, taken into account and fully and finally settled hereby.

**3. Implementation of Payments**

(a) Subject to the above, the State Fund shall make payments required by the decisions and directives emanating from this action and shall report quarterly to the Court relative to such process until such time as all Claimants are paid. Payments to counsel required by Paragraph 1(b) will be made monthly, or at such other interval as the parties agree. The State Fund will provide counsel verification of the source and calculation of fees. The Court shall retain jurisdiction to consider any disputes between the parties relative to the payment of fees agreed to hereby. The State Fund agrees to complete the review and payment process within six months of the date of the Court's issuance of a final attorney fee order subsequent to hearing.

(b) The parties agree that the State Fund has undertaken a good faith effort to identify all persons entitled to benefits as a result of the Supreme Court decision. Exhibit 1 constitutes a complete list of the Claimants identified as a result of such effort. Claims reviewed and paid pursuant to this Stipulation will therefore be limited to those claims identified on Exhibit 1. If additional Claimants come forward, their entitlement will be considered on a claim-by-claim basis. The parties agree that counsel will collect no fee on any claim paid that is not identified on Exhibit 1. Individuals injured after the date of the Montana Supreme Court decision who become permanently and totally disabled are entitled to the payment of their impairment award consistent with the noted decision and any amendment to Montana law enacted subsequent thereto. No deduction for common fund fees will occur with payments to Claimants injured after the Supreme Court decision.

(c) Subject to Paragraph 2(e), upon the approval of this Settlement Stipulation the named Claimants and their counsel will have no further obligations in relation to this action or the issues raised herein. The only exception to this provision will be any participation of counsel directed in any later attorney fee hearing or appeal thereof for Claimants subject to the common fund and any proceeding allowed by Paragraph 3(a).

4. **Presentation to Court**

This Settlement Stipulation shall be presented to the Court for approval and adoption of its terms and conditions. The settlement shall not be effective and the payment specified in Paragraph 1(a) will not be due absent approval and adoption of the terms and conditions hereof by the Court. However, it is anticipated that an additional proceeding designed to consider and approve common fund fees will be necessary. The payment of common fund fees described in Paragraph 1(b) will not be made until and unless the attorney fee and reimbursement provisions of this Stipulation are approved by the Court following such subsequent proceeding or final approval after an appeal by any party. In the event the common fund fee payment and reimbursement provisions specifically set out in this Stipulation are disapproved or modified in any way by the Court as a result of the subsequent proceeding, counsel will accept as their total common fund fee (in full compliance with Paragraph 1(b)) any such fee approved by the Courts. In such event, no other provision of this agreement will be modified in any way (i.e., counsel will accept any common fund fee directed by the Courts and a modification of Paragraph 1(b) by the Courts will not modify or affect any other provision or the enforceability of the remainder of this agreement).

DATED this 19 day of March, 2003.

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Attorneys for Respondent

By Bradley J. Luck  
Bradley J. Luck

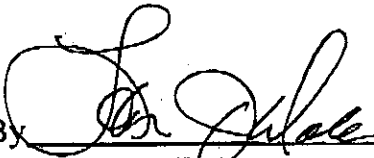
DATED this 28 day of March, 2003.

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By Nancy Butler  
Nancy Butler

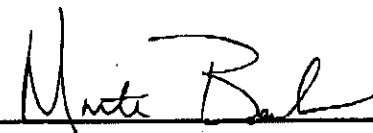
DATED this 19<sup>th</sup> day of March, 2003.

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Kevin Rausch.

By   
Lon J. Dale

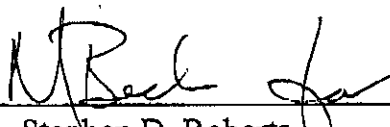
DATED this 21<sup>st</sup> day of March, 2003.

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By   
Monte D. Beck

DATED this 21<sup>st</sup> day of March, 2003.

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By   
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