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**FILED**

FEB 7 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

SETTLEMENT STIPULATION

Feb. MS

This Settlement Stipulation made and entered into this 6 day of ~~January~~, 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) 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 \$240,000 to counsel for the named Claimants as set out below. Such sum shall constitute full and final payment 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). 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) The payment specified in Paragraph 1(a), shall be paid as follows:

1. \$120,000 upon the approval of this Stipulation by the Workers' Compensation Court;

2. \$120,000 upon the approval of the attorney fee and reimbursement provisions of this Stipulation following a separate attorney fee hearing conducted by the Workers' Compensation Court and any appeal that may result from such order. In the event the attorney fee and reimbursement provisions of this Stipulation are not approved by the Workers' Compensation and Montana Supreme Court (if an appeal is filed) as written or are modified in any way by such Courts, the payment anticipated by this sub-paragraph will not be made pending further agreement or Order of the Courts (see Paragraph 4) and the payment made pursuant to Paragraph 1(a) will be credited against any future common fund fee obligations of the State Fund to counsel for the Claimants.

(c) **Partial Credit for Payment**

Subject to the approval of the Workers' Compensation Court as outlined below, the State Fund shall be entitled to a partial credit for the payment of common fund fees from the benefits paid to claimants as a result of the decisions and directives emanating from this litigation. For 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), the State Fund shall take a credit in an amount that equals 15% of the total impairment award. (i.e., The credit taken by the State Fund shall be a full 15% of 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 15% reimbursement will apply against the entire impairment award of each claimant regardless of the election of any individual claimant to be bound by 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.) No claimant will be required to pay sums out-of-pocket to the State Fund as recouped 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**

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. 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 Claimant's counsel will collect no fee and the State Fund will not recoup any sum 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.

Upon the approval of this Settlement Stipulation, consistent with Paragraph 1(b) and subject to Paragraph 2(e), 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.

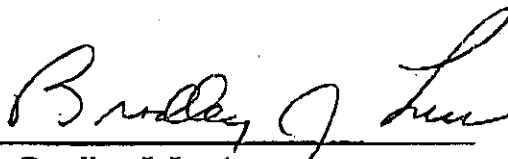
**4. Presentation to Court**

This Settlement Stipulation shall be presented to the Court for approval and adoption of its terms and conditions. The settlement shall not be effective absent approval and adoption of the terms and conditions hereof by the Court. It is also anticipated that an additional proceeding designed to consider and approve common fund fees will be necessary.

The second installment of the common fund fee payment 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 of such proceeding. 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, the parties may elect to cancel this agreement. In such event, the previous attorney fee payment becomes a credit against any future settlement or award approved by the Workers' Compensation Court.

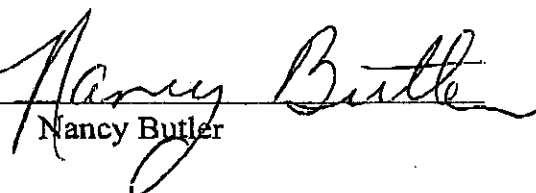
DATED this 27 day of January, 2003.

GARLINGTON, LOHN & ROBINSON, PLLP  
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Attorneys for Respondent

By   
Bradley J. Luck

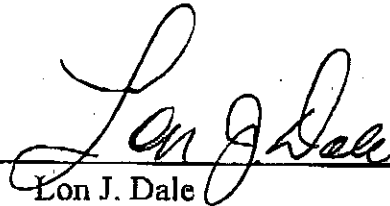
DATED this 6 day of <sup>Feb. <sup>NB</sup></sup> ~~January~~, 2003.

MONTANA STATE FUND  
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By   
Nancy Butler

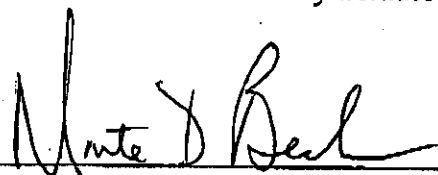
DATED this 27<sup>th</sup> day of January, 2003.

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Kevin Rausch.

By   
Lon J. Dale

DATED this 29<sup>th</sup> day of January, 2003.

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On Behalf of Others Similarly Situated.

By   
Monte N. Beck

DATED this 28<sup>th</sup> day of January, 2003.

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On Behalf of Others Similarly Situated

By   
Stephen D. Roberts