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WORKERS' COMPENSATION COURT
IN AND FOR THE STATE OF MONTANA

JACK MURER, et al.,)	
)	
Petitioners,)	March 25, 2013
)	10:00 a.m.
v.)	
)	
STATE COMPENSATION MUTUAL)	Conference Call
FUND,)	
)	
Respondent/Insurer.)	

BEFORE THE HONORABLE JAMES JEREMIAH SHEA

The telephonic conference call in the above-entitled matter was held on Monday, March 25, 2013, at 10:00 a.m., at the Workers' Compensation Court, 1625 11th Avenue, Helena, Montana.

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A-P-P-E-A-R-A-N-C-E-S

APPEARING ON BEHALF OF THE PETITIONERS:

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1 BE IT REMEMBERED that on Monday, March 25,
2 2013, before the Honorable James Jeremiah Shea, at
3 the Workers' Compensation Court in Helena, Montana,
4 the following proceedings were had:

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8 THE COURT: Okay, thank you. I don't
9 expect this to take too long. We are on the
10 record. I guess I just wanted to kind of get just
11 a sense and maybe some explanation as to exactly
12 what we are doing here. And in particular since in
13 Murer, I don't think we have done much of anything
14 in my tenure on Murer, so I wanted to kind of get
15 up to speed on it, and I thought the easiest way
16 would be to get both of you on the phone here.

17 In particular, I was just noticing -- and
18 I think this is just probably, we are maybe using
19 some different vernaculars -- but in the order that
20 was prepared, at the final paragraph, it reads:
21 "It's hereby ordered the Court hereby approves the
22 resolution of the class action claims and all
23 attorneys fees claims in connection with the
24 above-referenced action."

25 Obviously, and this is somewhat just a

1 nomenclature issue, but this is a common fund. And
2 what I -- just from a jurisdictional question, I --
3 and this is probably my biggest question is to make
4 sure that this order isn't being interpreted as
5 where I'm approving anything, that I'm essentially
6 signing off on the Mordja case -- not that I
7 wouldn't necessarily, if that was appropriate and
8 the jurisdiction is there to do it, I would have an
9 objection to that. But since I'm not all that
10 familiar with the Mordja case, I wanted to kind of
11 get a sense -- and maybe I'll stop talking and let
12 Allan or Chuck, whichever of you wants to speak
13 first. I guess, Allan, since you are representing
14 the claimants, and then, Chuck, just kind of
15 explain to me what exactly we are doing here. So
16 go ahead, Allan.

17 MR. MCGARVEY: Yeah, I think the issue
18 that we seek to resolve in the Workers'
19 Compensation Court centers around disagreement on
20 the payment of common fund fees. And there was --
21 I contended that there were a number of claimants
22 that the fee had not been calculated with respect
23 to those, and State Fund contended they made
24 duplicate payments and, therefore, there was an
25 over payment, and so we agreed to each drop our

1 respective contentions and just say we are done
2 with it going both ways: No more fees will be
3 claimed, no reimbursements will be sought. The
4 common fund fee recovery and obligation of the
5 State Fund to collect and pay those is at an end.

6 THE COURT: Okay.

7 MR. MCGARVEY: Now, this happened in the
8 context of negotiations over a separate case, the
9 Mordja case.

10 THE COURT: Uh-huh.

11 MR. MCGARVEY: And I think you are right.
12 I don't have the proposed order in front of me,
13 just the petition, but I think you are right that
14 the Workers' Comp Court doesn't have jurisdiction
15 over that case. That case has been resolved by
16 final order of the Montana district court.

17 THE COURT: Uh-huh.

18 MR. MCGARVEY: So that's the context of
19 it. But as far as I'm concerned, the purpose of
20 this petition was just to lay to rest the lingering
21 issues over common fund fees in the Murer case.

22 THE COURT: Okay, so that was going to
23 actually be my next question. In the past, when
24 there's been any issue with fees that were going to
25 be taken from obviously any prospective claimants

1 in terms of what the rates are, we have had
2 fairness hearings, allowed potential claimants the
3 due process of -- they have gotten notice and had
4 opportunity to object. And my understanding in
5 this case is we have already gone down that road.

6 And so that was another thing I wanted to
7 make sure. At this point, we are just saying,
8 essentially, moving forward -- well, there is no
9 forward. It's done. There's -- State Fund is not
10 withholding any additional fees going forward.
11 Allan, your firm is not making a claim for any
12 additional withholding as it moves forward, and the
13 matter is just resolved; is that accurate?

14 MR. MCGARVEY: That is. The common fund
15 issue as far as the obligation of the insureds that
16 are receiving the benefits to pay a percentage was
17 resolved through a fairness hearing procedure. And
18 it just came, and since the State Fund was really
19 implementing that because they were taking it out
20 of the amounts that were being paid on a
21 going-forward basis, in addition to the back
22 payments, it was really an implementation question
23 where the dispute arose.

24 THE COURT: Right, okay. Chuck, is there
25 anything you wanted to add, or if you disagree with

1 anything that Allan said?

2 MR. McNEIL: No, I agree with what Allan
3 said, and that's an accurate representation of how
4 this came to you. And the reason it's before you,
5 Your Honor, is because we want to make sure that
6 there are, there is a conclusion to the attorney
7 fee dispute the, the other aspect of the settlement
8 Mr. McGarvey and I have agreed to and Judge Newman
9 has already approved.

10 THE COURT: Okay.

11 MR. McNEIL: It's just a loose end, and
12 this is the end.

13 THE COURT: Okay. Well, the only thing I
14 guess I would want to do, then -- and again, this
15 is just probably to make it just a little bit
16 clearer, is I would -- and I think whoever drafted
17 the order can just e-mail it to us and I will print
18 it out. But it would be just in that final
19 paragraph, just so it's clear what this Court is
20 doing, is that we just change the words "class
21 action" to "common fund." Does anybody have any
22 heart burn over that? Just seems to me that makes
23 it clear that all we are doing is dealing with the
24 resolution of the Murer case here, and that it's --
25 we are not trying to exercise any sort of

1 jurisdiction over Brad Newman.

2 So since this was a common fund opposed to
3 class action, that it would just say: "It's hereby
4 ordered the Court approves the resolution of the
5 common fund claims and all attorney fees claims in
6 connection with the above-referenced action." Does
7 that make sense to you, Allan?

8 MR. MCGARVEY: That's fine with me.

9 THE COURT: Chuck, are you okay with that?

10 MR. McNEIL: Yes.

11 THE COURT: So who prepared the order?

12 MR. MCGARVEY: Chuck did.

13 THE COURT: Chuck, do you want to just
14 e-mail it to Jackie?

15 MR. McNEIL: I'll do that, Your Honor, and
16 we will make sure that it's all in accordance with
17 what you want.

18 THE COURT: Okay, sounds good. And then
19 with that change, I will -- we have obviously got a
20 record of our conversation. I think that clears up
21 everything, so I don't think we need to do anything
22 further in that respect. And I will just sign that
23 amended order that just references common fund
24 claims instead of class action claims, all right?

25 Any questions, or any other comments,

1 Allan?

2 MR. McGARVEY: Nope.

3 THE COURT: Chuck?

4 MR. McNEIL: Nothing further, thank you.

5 THE COURT: Thank you, everyone.

6 MR. McGARVEY: Thank you, Judge.

7 THE COURT: Bye.

8 (The hearing concluded at 10:10 a.m.)

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1 STATE OF MONTANA)
2 County of Lewis and Clark) :SS.

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5 I, Kimberly Johnson, a Registered
6 Professional Reporter and Notary Public in and for
7 the County of Lewis and Clark, do hereby certify:

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9 That the foregoing cause was taken before
10 me at the time and place herein named, that the
11 foregoing cause was reported by me, and that the
12 foregoing pages contain a true record of the
13 testimony to the best of my ability.

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15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this _____ day of _____, 2013.

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Kimberly E. Johnson
Registered Professional Reporter
Notary Public
My Commission Expires 3/19/2016

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