

WORKERS' COMPENSATION COURT

Hearing No. 3503
Volume XVII

Helena, Montana
October 5, 2004

ALEXIS RAUSCH
CHARLES FISCH
THOMAS FROST

Lon J. Dale
Monte D. Beck
Stephen D. Roberts

vs.

MONTANA STATE FUND

Bradley J. Luck &
Thomas J. Harrington

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

An in-person conference was held Tuesday, October 5, 2004, at 1:05 p.m., in the Workers' Compensation Court, Helena, Montana. The Honorable Mike McCarter, Judge of the Workers' Compensation Court, presided. Petitioners, Alexis Rausch, Charles Fisch, and Thomas Frost were represented by Mr. Stephen D. Roberts, Mr. Lon J. Dale, and Mr. Monte D. Beck. Respondent was represented by Mr. Bradley J. Luck and Mr. Thomas J. Harrington. Other parties present were Carol Gleed, Diana Ferriter, Mark E. Cadwallader, Carrie L. Garber, Larry W. Jones, and Greg E. Overturf. The court reporter in this matter was Ms. Kim Johnson.

Colloquy was held between all counsel regarding the notice issues. Judge McCarter asked Mr. Beck, Mr. Dale, and Mr. Roberts to draft a proposed letter to send the insurance companies within two weeks. The letter should also be sent to Mr. Jones and Mr. Cadwallader for review and input. Attached to these minutes is a memorandum outlining points made during the conference.

Court adjourned at 2:10 p.m.

MIKE McCARTER
Judge

Ruhd, Fisch, Frost, & Rausch Conference
October 5, 2004 - Helena
Judge McCarter Notes

- ▶ DLI statistics regarding PTD claimants is based on its database
 - ▶ 377 PTD claimants
 - ▶ 167 are SF claims
 - ▶ Other insurers = 210
- ▶ Limitations on DLI statistics
 - ▶ Database started in 1994
 - ▶ Since 1994, reports are required every 6 months. Those reports summarize indemnity benefits paid to individual claimants.
 - ▶ Prior to 1994, information concerning claims was maintained on a database system known as DBO2. That system was maintained by the old Division of Workers' Compensation. After dissolution of the Division and transfer of its responsibilities to the Department of Labor and Industry, the Montana State Fund assumed responsibility for maintaining the DBO2 database.
 - ▶ In 1994, when the DLI established its present database regarding claims, it inputted information from the DBO2 but only as to "open claims."
 - ▶ As a result, the present system may not capture all PT claimants back to 91, or back to 87 for that matter.
 - ▶ DBO2 system also limited – required insurers only to report change in indemnity benefits status, but such reporting should capture PT claimants.
- ▶ Classification Issues
 - ▶ Some insurers continue to pay PTD claimants TTD benefits, so reports may not capture some PTD claimants. (Claimants' attorneys noted that by paying TTD benefits insurers avoid COLA's.)
 - ▶ SF reviewed files of claimants who received TT benefits for 1 year or more and identified 35 claimants who should have been properly classified as PTD.
 - ▶ Question is whether 1 year is a good cut-off time for such review.
 - ▶ I asked SF to go back and review the 35 claims and determine the length of time TT benefits had been paid. Based on that information, we can determine whether a year is a good marker or whether a longer period is more reasonable.
 - ▶ I raised question as to whether review of TT classified claimant's is in the scope of my authority on remand. The State Fund agreed to engage in the analysis and I noted that it was a good idea. I noted that if it is not done now, then it will probably have to be done later as some claimant will bring

a class or common fund action alleging that some TTD claimant's should be reclassified as PTD. Why not deal with the problem up-front?

▶ DBO2 Issues

- ▶ The DBO2 database is no longer on line
- ▶ DLI may be able to obtain and query the database. Diana Ferriter is exploring that possibility.
- ▶ State Fund, which was responsible for the DBO2 database after the legislature dissolved the old Division of Workers' Compensation, may be able to help. Diana and State Fund IT people will consult to determine what is available and what information can be accessed.

▶ Identifying benefitted claimants

- ▶ I think the consensus was that we should try to identify claimants using DLI and DB02 sources. However, insurers will be requested to provide information identifying PTD claimants.
- ▶ DLI compiled a list of PTD claimants in its database, as well as a list of the 57 insurers that reported one or more PTD claimants. The insurers include self-insureds. The list does not include information regarding claimants of guarantee funds for self-insureds and for Plan II insurers. Department information indicates that there are probably no self-insureds in that guarantee fund; the Western Guarantee Fund, which covers plan II bankrupts, may have PTD claimants. I also questioned whether the UEF may have PTD claimants. We agreed that the Western Guarantee Fund and the UEF should be notified and brought into our proceedings.
- ▶ There was consensus that only the insurers identified by DLI (or later identified by further queries of the DBO2 database), along with the Western Guaranty Fund and the UEF, should be brought into the post-remand proceedings.

▶ Notice to Insurers

- ▶ Counsel for claimants will draft a proposed notice to the affected insurers circulate it to the other attorneys, then submit it to me for review.