

1625 11th Avenue
P.O. Box 537
Helena, MT 59624-0537
(406) 444-7794
FAX (406) 444-7798
TDD (406) 444-0532



E-mail Clerk of Court at:
pkessner@state.mt.us

Court Web Site:
<http://wcc.dli.state.mt.us>

Workers' Compensation Court

Mike McCarter
Judge

FILED

November 17, 2004

NOV 17 2004

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Mr. Lon J. Dale
Attorney at Law
P.O. Box 4947
Missoula, MT 59806-4947

Mr. Monte D. Beck
Attorney at Law
1946 Stadium Dr., Suite 1
Bozeman, MT 59715

Mr. Stephen D. Roberts
Attorney at Law
1700 W. Koch St., Suite 5
Bozeman, MT 59715

Mr. Geoffrey C. Angel
Attorney at Law
125 W. Mendenhall
Bozeman, MT 59715

Mr. Greg E. Overturf
Special Assistant Attorney General
Montana State Fund
P.O. Box 4759
Helena, MT 59604-4759

Mr. Bradley J. Luck
Attorney at Law
P.O. Box 7909
Missoula, MT 59807-7909

Mr. Thomas J. Harrington
Attorney at Law
P.O. Box 7909
Missoula, MT 59807-7909

Ms. Carrie L. Garber
Attorney at Law
700 S.W. Higgins Ave., Suite 108
Missoula, MT 59803-1489

Mr. Larry W. Jones
Attorney at Law
700 S.W. Higgins Ave., Suite 108
Missoula, MT 59803-1489

Mr. Victor R. Halverson, Jr.
Attorney at Law
P.O. Box 1817
Billings, MT 59103-1817

Mr. Mark E. Cadwallader
Legal Counsel
Department of Labor and Industry
Legal Services Division
P.O. Box 1728
Helena, MT 59624-1728

Mr. Rex Palmer
Attorneys Inc., P.C.
301 W. Spruce
Missoula, MT 59802

Rausch, et al. v. Montana State Fund
Ruhd v. Liberty Northwest Insurance Corp.
WCC No. 9907-8274R1
Page 2
November 17, 2004

Ms. Diana K. Ferriter
Bureau Chief
Mediation Unit
Employment Relations Division
P.O. Box 1728
Helena, MT 59624-1728

Ms. Carol Gleed
Claims Supervisor
Dispute Resolutions Bureau
Employment Relations Division
P.O. Box 8011
Helena, MT 59604-8011

Re: *Rausch, et al. v. Montana State Fund*
Ruhd v. Liberty Northwest Insurance Corp.
WCC No. 9907-8274R1

Dear Counsel and Interested Parties:

I have redrafted Mr. Dale's notice to insurers in the form of a Summons and am providing it to all of you for further comment and suggestions.

As you will see, I am requiring the insurers to file claimant information with the Court but not disclose that information to the attorneys for *Rausch, Fisch, Frost, and Ruhd*. I am doing so in light of the confidentiality issues addressed in my recent order in *Flynn v. Montana State Fund*, 2004 MTWCC 75. While my order in *Flynn* determined that claims information concerning individual common fund claimants may be released to the common fund attorney, I also urged that the confidentiality issues raised by the State Fund be addressed by the Supreme Court via a writ of supervisory control. Until the Supreme Court addresses the confidentiality issues, I want to proceed cautiously in the present cases.

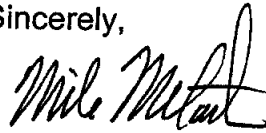
By issuing a Summons requiring that claimant information be provided only to the Court, we can avoid delay. If the Supreme Court upholds my order in *Flynn* and allows common fund attorneys access to claimant information without the express consent of individual claimants, the information gathered by the Court pursuant to the Summons can then be released to those attorneys at that time. If, on the other hand, the Supreme Court determines that the right of privacy precludes the release of information without express claimant consent, then we can still follow-up by sending notices to the identified claimants asking if they will consent to the common fund attorneys having access to their identities and claim information.

My intention is to mail the Summons by regular mail. If there is a particular desire to have the Summons sent by certified mail, please let me know. In that event, we will need to discuss who will pay for the extra cost of sending it by certified mail.

Rausch, et al. v. Montana State Fund
Ruhd v. Liberty Northwest Insurance Corp.
WCC No. 9907-8274R1
Page 3
November 17, 2004

I would appreciate your comments and suggestions by December 1, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McCarter". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mike McCarter
Judge

MM/jb
Enclosure

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9907-8274R1

ALEXIS RAUSCH, et al.

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer

and

JEREMY RUHD

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

SUMMONS

The State of Montana to the following Insurers and Self-Insureds:

ASARCO INC; BENEFIS HEALTH CARE; CHAMPION INTERNATIONAL
CORP; CONOCO INC; CONSOLIDATED FREIGHTWAYS CORP; F H
STOLTZE LAND & LUMBER CO; GOLDEN SUNLIGHT MINES INC; HOLLY
SUGAR CORP; J C PENNEY CORP INC; K MART CORP; MACO
WORKERS' COMP TRUST; MHA WORKERS' COMP TRUST; MONTANA
CONTRACTOR COMP FUND; MONTANA MUNICIPAL INS AUTHORITY;
MONTANA POWER CO; MONTANA SCHOOLS GROUP INS AUTHORITY;
NORTHWEST HEALTHCARE CORP; PLUM CREEK TIMBER CO LP;
SISTERS OF CHAR OF PROV OF MT; STAN WATKINS TRUCKING INC;
TARGET CORP; TOWN PUMP INC; AMERICAN ECONOMY INS CO;
AMERICAN HOME ASSURANCE CO; AMERICAN INTERSTATE INS CO;

ASSOCIATED INDEMNITY CORP; AUTOMOBILE INS CO OF HARTFORD; BANKERS STANDARD INSURANCE CO; CONTINENTAL CASUALTY CO; CREDIT GENERAL INSURANCE CO; EMPLOYERS INS OF WAUSAU MUTUAL CO; FAIRMONT INSURANCE CO; FIREMANS FUND INS CO; FREMONT IND CO OF THE NORTHWEST; FREMONT INDEMNITY CO; INSURANCE COMPANY OF STATE OF PA; LEGION INSURANCE CO; LIBERTY INSURANCE CORP; LIBERTY MUTUAL FIRE INSURANCE CO; LIBERTY NORTHWEST INS CORP; LM INSURANCE CORPORATION; NATIONAL UNION FIRE INS OF PITTSBURGH; NATIONWIDE MUTUAL FIRE INSURANCE CO; OLD REPUBLIC INSURANCE CO; PENNSYLVANIA MANUFACTURERS ASSOC; RELIANCE NATIONAL INDEMNITY CO; SAFECO INSURANCE COMPANY OF AMERICA; STANDARD FIRE INSURANCE CO; TRAVELERS CASUALTY & SURETY CO; TRAVELERS IND CO OF AMERICA; TRAVELERS INDEMNITY CO; TRAVELERS INDEMNITY CO OF CT; TRAVELERS PROPERTY CASUALTY COMP OF AMERICA; VALOR INSURANCE COMPANY INC; WAUSAU UNDERWRITERS INS CO; ZURICH AMERICAN INSURANCE CO; and MONTANA STATE FUND

On January 23, 2003, each of you named in this Summons was sent a Lien Notice notifying you of the attorney fee lien claimed by the petitioners' attorneys in *Rausch, et al., v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, with respect to impairment awards due permanently totally disabled claimants pursuant to the decision in that case. In *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236 (*Ruhd II*), decided August 31, 2004, the Montana Supreme Court confirmed that lien, holding that a common fund exists with respect to **all** impairment awards due permanently totally disabled claimants irrespective of the insurers liable for the awards and that the *Rausch* attorneys are entitled to common fund attorney fees with respect to those awards. The Supreme Court specifically directed the Workers' Compensation Court to "supervise enforcement of the common fund pursuant to *Rausch*, and all court-approved agreements stemming from it, **from all insurers involved.**" 2004 MT 236, ¶ 15 (emphasis added).

Each of you named in this Summons has been identified by the Department of Labor and Industry (DLI) as paying permanent total disability (PTD) benefits to one or more claimants injured or suffering from an occupational disease (OD) since June 30, 1991, which is the time-frame covered by the *Rausch* decision. Pursuant to *Ruhd II*, this Court must determine which of those claimants are due impairment awards. The Court must also determine what attorney fees are due with respect to the impairment awards.

Accordingly, each of you named in this Summons is **ordered** to continue to withhold the attorney fees claimed in the January 23, 2003 Lien Notice previously served on you in this case.

Further, each of you is **ordered** to file a **response** to this Summons. In that response you shall provide the Court with the following information:

1. The names and last-known addresses of all claimants injured or suffering occupational diseases since June 30, 1991, to whom you have paid PTD benefits at any time.
2. The date of injury or OD for each of the claimants identified in response to paragraph 1.
3. The date and amount of any impairment awards paid to each claimant identified in answer to paragraph 1. With respect to any award paid after September 5, 2002, state the amount you withheld for attorney fees on account of the Lien Notice.
4. With respect to each claimant identified in paragraph 1 who has not been paid an impairment award, whether an impairment rating has been rendered and the rating given.
5. The names and last-known addresses of all claimants injured or suffering occupational diseases since June 30, 1991, who were paid temporary total disability (TTD) benefits for eighteen (18) months or longer.
6. With respect to each claimant identified in response to paragraph 5, state the nature of the injury the claimant suffered, the inclusive dates he or she was paid TTD benefits, and the current status of indemnity benefits still being paid or the date and nature of the disposition of the claim if benefits are no longer being paid.
7. The names and addresses of each claimant whose claim was settled by you after September 5, 2002, and who was receiving TTD benefits at the time of the settlement.
8. As to each claimant identified in response to paragraph 7, provide a copy of the settlement agreement.
9. If at the present time you are unable to provide any of the information requested, state why you are unable to do so and state whether you can provide it at a future date. If you can provide it at a future date, please provide an estimate of the time you need to assemble the

information and what you must do to assemble it. If you believe you cannot provide the information, explain why.

You may mail your response to the Workers' Compensation Court, P.O. Box 537, Helena, Montana 59624-0537, or send it via Federal Express or other delivery method to the Court at its offices on 1625 11th Avenue, Helena, Montana, 59601. **Your response must be received by the Court by [date].**

Since confidential information may be involved in your response, **DO NOT** send copies of your response to the attorneys in *Rausch, Fisch, Frost, and Ruhd*, or for that matter to anyone else. **Your response should be sent only to the Court.**

DATED in Helena, Montana, this ____ day of November, 2004.

(SEAL)

JUDGE

DRAFT