

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 16A-2

WCC No. 9907-8274R1

WCC No. 2000-0023R1

WCC No. 2000-0030R1

ALEXIS RAUSCH

CHARLES FISCH

THOMAS FROST

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer.

ATTORNEY FEE ORDER AND JUDGMENT

¶1 A hearing was held on July 8, 2003, to determine the amount of attorney fees due claimants' attorneys under the common fund doctrine. The parties proposed that claimants' attorneys be awarded 15% of any impairment award paid to a claimant less than 60 years of age, 10% if the claimant is age 60 or 61, and 5% if the claimant is age 62 or 63. The attorneys did not seek fees with respect to claimants who are over the age of 63. The ages are as of the date of the Supreme Court decision in this case, i.e., September 5, 2002.

¶2 Notice of the hearing and the requested fees was given to all affected claimants insured by the Montana State Fund. Two claimants appeared at the hearing: Richard H. Decker, who will turn 65 in October 2003, and Henry A. Buhr, who is presently 56 years old. Both opposed the proposed fees as applied to them. Mr. Decker pointed out that prior to the Supreme Court decision he understood he would receive his impairment award upon reaching age 65 and noted that it is unlikely that even now he will receive his award prior to reaching 65. Mr. Buhr said that prior to this proceeding he also understood he would receive his impairment award at age 65 and stated he does not want his award prior to that time because it is likely he would spend it. He wishes to preserve his full award for when he reaches age 65.

¶13 Mr. Stephen D. Roberts, who appeared on behalf of himself and Messrs. Beck and Dale, stated that the claimants' attorneys will waive any claim to attorney fees in Messrs. Decker and Buhr cases.

¶14 There were no other objections, either oral or written, to the proposed fees. Finding the proposed fees reasonable, but taking into account Messrs. Decker's and Buhr's specific situations,

¶15 IT IS ORDERED that with the exception of Messrs. Decker and Buhr the claimants' attorneys are entitled to fees in the amount of 15% of each impairment award paid in this case to a claimant under the age of 60 years; to 10% of each impairment award paid in this case to a claimant aged 60 or 61; and to 5% of each impairment award paid in this case to a claimant aged 62 or 63. The ages for purposes of this Order are as of September 5, 2002. No fees shall be payable with respect to the impairment awards due Messrs. Decker and Buhr or with respect to claimants who had reached age 64 as of the date of the Supreme Court decision. With Mr. Buhr's consent, his impairment award shall not be paid until he reaches age 65.

¶16 This Attorney Fee Order and Judgment is certified as final for all purposes.

DATED in Helena, Montana, this 10th day of July, 2003.

(SEAL)

Mike McCarter
JUDGE

c: Mr. Lon J. Dale
Mr. Thomas J. Murphy
Mr. Monte D. Beck
Mr. Richard H. Davenport
Mr. Stephen D. Roberts
Mr. William Dean Blackaby
Mr. Bradley J. Luck
Ms. Carol Gleed
Mr. Greg E. Overturf
Mr. Peter Strauss
Mr. Thomas J. Harrington
Mr. Victor R. Halverson, Jr.
Mr. David A. Hawkins
Mr. Thomas E. Martello
Mr. Geoffrey C. Angel
Mr. Rex Palmer
Mr. James G. Hunt

Mr. Oliver H. Goe

Mr. Larry W. Jones

Ms. Nancy Butler

Ms. Laurie Wallace

Mr. Mark E. Cadwallader

Mr. David W. Lauridsen

Mr. Lucas J. Foust

Mr. Lawrence A. Anderson

Mr. Richard H. Decker

Mr. Henry A. Buhr