

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 29

WCC No. 9206-6487

JACK MURER, et al.

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer.

**ORDER FOR CONTEMPT AND LIMITING USE OF
CONFIDENTIAL INFORMATION**

Summary: To allow counsel for claimants to assess the adequacy of efforts made by insurer to identify and pay claimants due benefits under Supreme Court decisions in this case, WCC ordered insurer to provide computer printouts identifying claimants who may be entitled to such benefits. Following letter from counsel for insurer, WCC inquired into whether claimant's counsel should be found in contempt of court for using the information to solicit plaintiffs for a bad faith action against the insurer. The Court also inquired into whether attorney had made misrepresentations to the Court during the Court's process of gathering information concerning the insurer's charges.

Held: Because the WCC had failed to order that claimant's counsel could not use the computer printouts as a means for contacting potential plaintiffs, counsel would not be held in contempt for that action. However, WCC was persuaded beyond any reasonable doubt that some statements made to the Court by counsel were a smokescreen to conceal counsel's real purpose in making contacts from the Court. Counsel found in contempt relating to those statements and is fined \$500.

Topics:

Attorneys: Conduct and Tactics. Because the WCC had failed to order that claimant's counsel could not use computer printouts provided to him by the insurer as a means for contacting potential plaintiffs for a bad faith case, counsel would not be held in contempt for that action, even though it was not contemplated by the parties and counsel acknowledged the listed individuals had rights of privacy. However, WCC was persuaded beyond any reasonable doubt that some statements

made to the Court by counsel during the Court's inquiry into the matter were a smokescreen to conceal counsel's real purpose in the challenged conduct. Counsel found in contempt relating to those statements and was fined \$500.

Contempt. Because the WCC had failed to order that claimant's counsel could not use computer printouts provided to him by the insurer as a means for contacting potential plaintiffs for a bad faith case, counsel would not be held in contempt for that action, even though it was not contemplated by the parties and counsel acknowledged the listed individuals had rights of privacy. However, WCC was persuaded beyond any reasonable doubt that some statements made to the Court by counsel during the Court's inquiry into the matter were a smokescreen to conceal counsel's real purpose in the challenged conduct. Counsel found in contempt relating to those statements and was fined \$500.

Background

¶1 Following the latest Supreme Court decision in this case, *Murer v. State Compensation Mut. Ins. Fund*, 942 P.2d 69 (Mont. 1997) (*Murer III*), this Court assumed supervision over the State Compensation Insurance Fund's (State Fund) efforts to identify and pay those claimants due benefits under that decision and a prior decision in *Murer v. State Compensation Mut. Ins. Fund*, 267 Mont. 516, 885 P.2d 428 (1994) (*Murer II*). This Court has actively directed and monitored those efforts.

¶2 As a part of the Court's supervision, I directed the State Fund to furnish computer information to Mr. Allan M. McGarvey, petitioners' attorney, so he could assess the adequacy of the efforts and recommend improvements. As a result of the Court's direction, in late September 1997, the State Fund furnished Mr. McGarvey with computer printouts identifying claimants who may be entitled to *Murer* benefits. The printouts provided the addresses of the claimants and in many cases identified the amounts potentially due them.

The Present Proceeding

¶3 On March 10, 1998, the Court received a copy of a letter from Mr. Bradley J. Luck, who represents the State Fund, to Mr. McGarvey. The letter set forth information indicating that Mr. McGarvey had used the computer lists provided pursuant to this Court's directive to solicit plaintiffs for a bad faith class action against the State Fund. Apparently, the action alleges that the State Fund has unreasonably delayed paying *Murer* benefits to many claimants entitled to those benefits.

¶4 On March 12, 1998, I issued an Order Regarding Confidentiality and Claimant Contact. In that Order, I forbade Mr. McGarvey from contacting claimants on the computer lists and ordered him to forward the lists, and any similar documents furnished by the State Fund, to the Court.

¶5 On March 23, 1998, I issued an Order to Show Cause. That Order directed Mr. McGarvey to show cause with respect to the following three issues:

1. Whether Mr. McGarvey should be precluded from receiving further information concerning the identity of claimants who are owed *Murer* benefits.
2. Whether Mr. McGarvey's use of the information furnished by the State Fund violated implicit Court limitations on the use of the information.
3. Whether Mr. McGarvey's representations to the Court regarding his use of the information were false.

¶6 After a telephone conference call with Mr. Luck and Mr. James H. Goetz, who represented Mr. McGarvey in the show cause proceeding, an Order Identifying Statements Which Are the Basis for the Contempt Proceeding was issued on April 3, 1998. The Order identified specific portions of two letters and transcript references to statements made by Mr. McGarvey in a March 20, 1998 hearing. The statements identified by the Court were to the effect that the State Fund had "voluntarily" provided Mr. McGarvey with the computer lists (March 18, 1998 letter at 1; Tr. of March 30, 1998 Hearing at 7:18-20), hence no restriction applied to their use, and that the calls had involved a "spot check" in connection with the present case (March 16 and 18, 1998 letters; Tr. of March 30, 1998 Hearing at 7:24-8:4, 12:17-13:22; 15:5-12; 17:23-18:13).

Hearing

¶7 On April 8, 1998, a hearing was held in Helena. Mr. McGarvey was represented by Mr. Goetz, the State Fund by Mr. Luck. At the Court's direction, Mr. Luck subpoenaed six claimants contacted by Mr. McGarvey. Four of those claimants - Richard Matsko, Diane Hansen, Paul Batterman, and Garland Hall -- testified at the hearing. Mr. McGarvey also testified.

The Contacts Made by McGarvey

¶8 The information provided by Mr. McGarvey shows that by October 1997, he had decided to file a bad faith tort action against the State Fund arising out of its alleged failure to promptly identify and pay *Murer* benefits to all claimants due them. Meanwhile, he was involved in the process ordered by this Court to identify *Murer* claimants, send them written notice of an attorney fee hearing to be held on February 17, 1998, and ultimately pay the benefits due them. During a hearing held November 21, 1998, Mr. McGarvey agreed that the list of claimants compiled by the State Fund was adequate and was indeed over-inclusive. Notices of the February 17th hearing were then mailed, and the hearing was in fact conducted on February 17th.

¶9 Either before or after the February 17th hearing, Mr. McGarvey determined that the bad faith tort action against the State Fund should be filed by March 23, 1998, to avoid statute

of limitations problems. (See Tr. March 20, 1998 Hearing at 4.) Using the September 1997 computer printouts furnished by the State Fund, in early March 1998, Mr. McGarvey put together three lists of claimants he intended to contact. (April 8, 1998 Hearing Ex. 3 at 9, 27 and 42.) He limited the list to claimants living in the Butte, Helena, and Great Falls areas because those were the venues he was considering for the new lawsuit. (McGarvey Test. at April 8, 1998 Hearing, and see Hearing Ex. 3 at 9, 27 and 42.) He further limited the list to those claimants who were, based on the computer printouts, due the highest amounts of *Murer* benefits. (April 8, 1998 Hearing Ex. 3 at 9, 27 and 42.)

¶10 On March 5 and 6, 1998, Mr. McGarvey talked to between eight and ten claimants on his lists. (McGarvey Test. at April 8, 1998 Hearing; Hearing Ex. 3.) Testimony from four of the claimants indicated that the focus of Mr. McGarvey's conversations with them was the new lawsuit.

Discussion and Disposition

¶11 Contempt of Court is governed by statute. Section 3-1-501, MCA, specifies the matters for which an individual may be held in contempt, as follows:

3-1-501. What acts or omissions are contempts. (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

- (i) any other unlawful interference with the process or proceedings of a court;
- (j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;
- (k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;
- (l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

....

¶12 The paragraph implicated in this contempt proceeding is (1)(c), which provides that a "violation of duty by an attorney" is punishable as contempt. In *Wyse v. District Court*, 195 Mont. 434, 636 P.2d 865 (1981), the Supreme Court upheld a contempt judgment against an attorney who secured confidential information from court files and files of the county attorney, then disseminated the information in violation of a statute. Among the duties of an attorney are duties to comply with statutes and constitutional proscriptions against the dissemination of confidential information and to be truthful in representations made to the Court.

¶13 Contempt of court is a serious matter, especially when it involves an attorney. Attorneys are officers of the court. While they are duty bound to vigorously represent their clients, they must respect the limits of legitimate advocacy. Their advocacy must comply with statutes, the Montana and United States constitutions, professional rules of conduct, court rules and court orders. Attorneys must be forthright and truthful in their representations to the court. Anything less is unacceptable.

I. Use of the Computer Lists

¶14 This case is not a class action; certification was requested but denied. Thus, Mr. McGarvey's representation in this case extends only to the named petitioners. However, the Supreme Court determined that because of the precedent established in this case Mr. McGarvey is entitled to attorney fees with respect to the benefits that the claimants not represented by him may receive. Mr. McGarvey has not passively accepted the fees. He has continued to advocate on behalf of unrepresented claimants. He has continued to press for full payment of *Murer* benefits to all claimants who are entitled to them. In disposing of the Order to Show Cause, I have considered Mr. McGarvey's unflagging advocacy on behalf

of all claimants entitled to *Murer* benefits, and the fact that his view of his role as promoter of the rights of all claimants may have clouded his judgment in deciding to contact claimants identified in the computer lists.

¶15 In directing the State Fund to furnish Mr. McGarvey with its computer programs and the information generated by those programs, I expected that Mr. McGarvey would only use them in connection with this case. Specifically, I expected that the information would remain confidential and be used only to further the identification and payment of claimants entitled to *Murer* benefits. At hearing, Mr. McGarvey confirmed my own view that the information identifying claimants and their entitlement to benefits is protected by a right to privacy and is not generally publishable to the public. However, he viewed my directive to release the information to him as a license to contact claimants to sign them up as participants in a tort action against the State Fund.

¶16 This Court certainly never contemplated such use of the information. My purpose in ordering the disclosure was singularly limited to the identification and payment of *Murer* claimants. The context of my directive and Mr. McGarvey's acknowledgment of privacy concerns, should have put Mr. McGarvey on notice that the use of the information was limited to this case and was not a license to contact claimants to enlist them in a new lawsuit. On the other hand, Mr. McGarvey's advocacy on behalf of all claimants who may be entitled to *Murer* benefits - a role which this Court has implicitly and explicitly approved - may well have led him to believe that he was in effect representing all individuals injured between July 1, 1987 and June 30, 1991.

¶17 Unfortunately, the Court did not issue an order limiting the use of the information. In that regard, the Court is at fault. It cannot and will not hold Mr. McGarvey accountable in contempt for using the computer lists to contact claimants and solicit their participation in the new action.

¶18 Nonetheless, I am disturbed by the license that Mr. McGarvey took with the information. At hearing it was disclosed that the State Fund had previously resisted Mr. McGarvey's requests for information identifying *Murer* beneficiaries. In resisting the disclosure, it had specifically alleged that Mr. McGarvey would use the information to sign up plaintiffs in a new bad faith action. That resistance should have put Mr. McGarvey on notice that contacting claimants in connection with a new lawsuit was out of bounds.

¶19 But Mr. McGarvey took the opposite view. He interpreted the State Fund's failure to resist my directive for disclosure as acquiescence to his use of the information for any purpose which might promote the potential interests of *Murer* beneficiaries, including a tort action for bad faith. Thus, he interpreted the State Fund's willingness to comply with the Court's directive as acquiescence permitting him to contact claimants on the lists and line them up for the new legal action. His logic is tortured but not contemptuous.

II. Representations to the Court - Voluntary Disclosure

¶20 After the Court was alerted to Mr. McGarvey's contacts, on March 16, 1998, Mr. McGarvey wrote a responsive letter to Mr. Luck. He copied the letter to the Court and I deem the copied letter as a direct representation to the Court. On March 18, 1998, Mr. McGarvey wrote a letter directed to the Court. Thereafter on March 20, 1998, a telephone conference call was held with the Court and State Fund counsel. The conference was requested by Mr. McGarvey for the purpose of clarifying whether he could name as plaintiffs any of the claimants he contacted from the list. During the conference he further responded to the allegations made in Mr. Luck's initial letter. A court reporter was present during the conference call and has transcribed the conversation.

¶21 The Court was troubled by two statements made and reiterated by Mr. McGarvey in the letters and conference. First, he stated that the information he used in contacting claimants was "voluntarily" disclosed by the State Fund and therefore not subject to any limitations. Second, he represented that one of his purposes in contacting claimants was to perform a "spot check" in connection with the ongoing process to identify, notify and pay *Murer* claimants.

¶22 In his March 18, 1998 letter to the Court, McGarvey said, among other things:

At our last conference, the Court expressed concern that the Court should have placed limitations on the use to be made of the computer lists ordered produced. I **would point out to the Court that the Court's failure to do so was of no consequence because none of the computer lists ordered produced by the Court have been used in any respect to contact claimants. Rather, it is only the lists voluntarily produced by the State Fund in September which were used in the "spot check" project.**

(April 8, 1998 Hearing Ex. 3; emphasis added). In the hearing of March 20, 1998, Mr. McGarvey again asserted that the lists had been voluntarily disclosed:

We have received from the State Fund at our request these computer lists for the explicit purpose of assuring that each of the members of this group receive the benefit of the *Murer* ruling. There was no - **they were not produced pursuant to court order, it was produced voluntarily,** produced for that purpose.

(Tr. March 20, 1998 Hearing at 7:14-20; emphasis added.)

¶23 At hearing Mr. McGarvey conceded that the Court had directed the State Fund to cooperate with him and furnish information which would allow him to verify that *Murer* claimants are identified and paid. Indeed, any other view flies in the face of the record of this case. At a hearing held on August 25, 1997, I made it clear to the State Fund that I expected it to provide Mr. McGarvey with computer information related to the identification

of *Murer* claimants. (Tr. August 25, 1998 Hearing at 38:10-23, 39:1-3; 78:12-16; and passim.) On September 9, 1997, Mr. McGarvey wrote to Mr. Luck specifically asking for computer runs identifying *Murer* claimants. (April 8, 1998 Hearing Ex. 9.) The letter was copied to the Court. On September 26, 1997, Mr. Luck wrote to the Court indicating that the State Fund was cooperating with Mr. McGarvey and had scheduled a meeting with him in Missoula. The meeting was to include computer specialists from the State Fund. (April 8, 1998 Hearing Ex. 19.) On September 29, 1997, the State Fund forwarded to Mr. McGarvey the computer lists which are at issue in this proceeding. (April 8, 1998 Hearing Ex. 20.) On October 1, 1997, the Court wrote to Mr. McGarvey and Mr. Luck reiterating that State Fund should make full disclosure to Mr. McGarvey. I wrote:

I have Mr. McGarvey's and Mr. Luck's letters concerning the status of the information collected so far by the State Fund and your plans to hold a conference in Missoula next week. **As I indicated during the last conference I held with counsel and others on August 25th, and reiterated to Mr. Martello [in house counsel for the State Fund] in my call to him on September 23rd, I want Mr. McGarvey fully informed of and involved in the State Fund's efforts to identify the claimants who may benefit from the *Murer* decisions.**

(April 8, 1998 Hearing Ex. 21; emphasis added.)

¶24 At the April 8, 1998 show cause hearing, Mr. McGarvey urged that the disclosure of the lists was nonetheless voluntary because it appeared to him that the State Fund recognized that it was in trouble and was only too eager to provide the information. As in other instances, Mr. McGarvey's logic in this regard is tortured. I can only chalk his logic up to overzealous advocacy. Nonetheless, tortured logic is not contemptuous and, in any event, the Court was fully aware of what it had ordered and could not have been misled by the representation.

III. Representations to the Court - "Spot Check"

¶25 More troublesome than the two matters already addressed was Mr. McGarvey's assertion that in contacting claimants on March 5 and 6 he was doing a "spot check" in connection with this case.

¶26 The list of claimants he targeted to call was limited to claimants due the largest amounts of *Murer* benefits. All claimants targeted had amounts in excess of \$1,000 due them, whereas many claimants on the list were recorded as due very small amounts or nothing at all. This led the Court to question whether spot check rationale advanced by Mr. McGarvey was in fact true or whether it was a subterfuge to justify his contacts with the claimants.

¶27 Moreover, the Court read, and still reads, Mr. McGarvey's statements concerning a spot check as representing that any discussion of the new legal action was merely incidental to the spot check. During the March 20, 1998 hearing, he stated:

The suggestion that is being made now that is very irritating and I take extreme personal offense at is that we have used these lists somehow to solicit business, which is totally absurd and, of course, we could have done that, we could have taken those lists and started calling people and found out that the various manners in which they had claims that ought to be pursued against the State Fund or against the third parties. We certainly did not do that and there never was - there's absolutely nothing to suggest that. **The only thing that we have done is in the process of, the legitimate process and, indeed, the expected and directed process of confirming that the State Fund was doing what they were supposed to with respect to these Murer decisions, identified some people who in the course of the conversation indicated they would like to participate in our claims.**

(Tr. March 20, 1998 Hearing at 8:5-22.) In his March 16, 1998 letter to Mr. Luck, which was copied to the Court, Mr. McGarvey described the spot checks as follows:

Moreover, we are concerned that the computer lists are not what they have been represented to be. Specifically, the State Fund has represented to the court that all claimants falling under the Murer decision were, at a minimum, mailed a computer generated letter. We have tested this with a spot check of some of the claimants identified by the State Fund on its computer lists. Based on the statements from the people contacted, we have reason to question the State Fund's representations.

Our spot check further reveals a grave concern that the notice mailing required for the recent fairness hearing was not made to all of the people on the computer lists provided to us.

(April 8, 1998 Hearing Ex. 2 at 2.) Later on in the letter, Mr. McGarvey further discussed the "spot checks," saying:

It is my understanding that as claimants' counsel it is my duty and right to review and test the procedures for implementing the Murer decision and that the computer lists have been provided to me for that reason.

I will certainly challenge any suggestion that claimants' counsel does not have the right to test the representations made by the State Fund by spot checks from the computer lists.

In the course of performing such spot checks, a number of questions were standard, including a) verifying that the person was a claimant who may meet the

Murer criteria; b) determining whether the claimant had received any payment of Murer benefits; c) determining whether the claimant had received any notice of the Murer decisions; d) determining whether the claimant had received any notice of the recent fairness hearing; e) determining whether the claimant had settled their claim in any fashion; and f) determining whether the claimant was represented by an attorney.

In the course of these spot checks, I answered all questions propounded to me by these claimants to the best of my ability.

Some of these claimants expressed an interest in recovering damages for the delay in receipt of their entitlement. Among such claimants, there were six who I believed might be appropriate candidates for named plaintiffs to be added as additional plaintiffs to our already existing bad faith complaint. To these six individuals (or their attorneys), I have sent letters and retainer agreements which will enable us to add their names if it appears beneficial to the formally named plaintiffs in the class action lawsuit.

(April 8, 1998 Hearing Ex. 2 at 3; emphasis added.)

¶128 At hearing, Mr. McGarvey conceded that the primary purpose of his March 5-6, 1998 contacts was to solicit the claimants' participation in the new lawsuit. He testified that he intended to line up plaintiffs from Great Falls, Helena, and Butte because those were the venues he was considering for the new lawsuit. He agreed that he made no attempt to undertake a random sampling of claimants, rather he specifically targeted claimants who might aid his class action.

¶129 Mr. McGarvey made the contacts only two weeks prior to his deadline for filing the new action. He made the contacts after the notices regarding the attorney fee hearing had been sent out and the hearing had actually been held. If the sufficiency of the mailing was a legitimate concern to him, he would have made the inquiry prior to the hearing. Any "spot check" to check on the State Fund's prior efforts to notify claimants of benefits due them pursuant to *Murer* was superfluous to this case since the Court made it clear that all necessary measures will be taken to assure that all *Murer* claimants are identified and that they receive the payments due them.

¶130 Mr. McGarvey was also aware of a high rate of return of the notices sent out with respect to the February 17, 1998 hearing. On January 8, 1998, Mr. Luck wrote the Court and Mr. McGarvey a letter stating that "in excess of 2,400" of the notices had been returned as undeliverable. (Court File.) That was nearly one-third of the notices sent! Mr. McGarvey did not ask to review the returned notices to determine which ones had been returned. Nonetheless, based on one report by a claimant (Mr. Matsko) of not receiving a notice of

the February 17th hearing, Mr. McGarvey recklessly asserted in the March 20, 1998 hearing that he had caught the State Fund "red-handed" in failing to mail the notices. He asserted:

Then the representation was that this list was sent out to everybody. That is a condition that is certainly precedent to accomplishing what is supposed to be accomplished here in the implementation, that is, that everyone receives notice and everyone receives their benefits. In fact, the people on these lists that the State Fund is representing today have been mailed these notices and will receive these benefits and are being added to this computer process and this file by file search process are not, in fact, based on our short sampling, receiving notice. Now that's clearly exactly what we're supposed to be monitoring and checking, and here we've caught the State Fund red-handed, and this isn't done behind the scenes, this isn't done in any kind of contemptuous action of what the Court has proposed. Indeed, when this individual was identified that hadn't received any notice, I spoke with him specifically about calling the State Fund to find out why he wasn't receiving these notices, because that's exactly the purpose of what I've been hired to do.

(Tr. March 20, 1998 Hearing at 13-14.)

¶131 How could he have caught the State Fund red-handed when he didn't review the return notices? Mr. Matsko -- the claimant who did not receive notice -- testified that he had problems with his mail, including credit card bills he had not been receiving. Mr. McGarvey's disregard of the returned notices and his reckless misconduct charge against the State Fund is further evidence that his assertion that he was conducting a "spot check" was subterfuge and untrue.

¶132 Ultimately, I am persuaded *beyond any reasonable doubt* that Mr. McGarvey's statements concerning a spot check were concocted in an attempt to persuade the Court that in making the March 5 and 6, 1998 telephone calls he had a legitimate purpose connected with this case. His statements were simply a smokescreen to conceal the fact that his **only** purpose in contacting claimants on March 5 and 6, 1998, was to solicit claimants for his planned bad faith action against the State Fund. The statements were false. His representations concerning the spot check constitute contempt of court.

III. Further Access to Information

¶133 Mr. McGarvey's involvement in developing the methodology to identify *Murer* claimants and compute the amounts due them has been invaluable to the Court. I continue to view his involvement in the process as vital. Therefore, I am lifting my Order which precludes the State Fund from further disseminating information identifying and concerning *Murer* claimants. However, I am ordering that such information not be further disseminated by Mr. McGarvey and that it be used only for the purpose of assuring that *Murer* claimants are identified and properly paid.

ORDER

¶34 1. Mr. McGarvey is in contempt of Court for falsely representing to the Court that one of his reasons for contacting claimants on March 5 and 6, 1998, was to conduct a "spot check" for purposes of this case.

¶35 2. Mr. McGarvey is fined, and shall pay to the clerk of the Workers' Compensation Court, the sum of \$500 by May 1, 1998.

¶36 3. The State Fund shall resume and continue to supply Mr. McGarvey information relating to the ongoing process of identifying *Murer* claimants and calculating the benefits due them and the attorney fees due Mr. McGarvey.

¶37 4. If the State Fund doubts the need for Mr. McGarvey to have access to or possess any information, then it shall notify the Court and the Court will determine whether the specific information should be supplied.

¶38 5. Mr. McGarvey and his law firm are prohibited from further disseminating or publishing any identifying information concerning any *Murer* claimant other than the actual petitioners in this case and the claimants contacted on March 5 and 6, 1998, who have requested that he represent them.

¶39 6. Mr. McGarvey is prohibited from utilizing information gleaned about *Murer* claimants in this case in connection with any other case except to the extent that the information pertains to those claimants he actually represents or which duplicates information independently gathered through some other legal means. This certainly does not preclude any discovery that he might undertake in the bad faith action.

¶40 7. Mr. McGarvey is prohibited from contacting *Murer* claimants except those claimants he represents and those claimants whose identities are disclosed from information independently gathered through some other legal means.

¶41 8. At the conclusion of this proceeding, Mr. McGarvey shall return to the State Fund all copies of written materials forwarded to him by the State Fund in this process

DATED in Helena, Montana, this 16th day of April, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Allan M. McGarvey
Mr. James H. Goetz
Mr. Bradley J. Luck

Mr. Thomas E. Martello
Submitted: April 8, 1998