

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MT WCC 13

WCC No. 9206-6487

JACK MURER, et al.

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer.

ORDER CONCERNING IDENTIFICATION AND PAYMENT OF *MURER* BENEFITS

Summary: WCC exercised continuing jurisdiction over parties efforts to identify and compensate non-party claimants. Issues arose as to procedures for review of claims.

Held: Procedures for review of settlements made in different time periods ordered by the WCC.

Topics:

Procedure: Post-Trial Proceedings: Court Supervision. WCC exercised continuing jurisdiction over parties efforts to identify and compensate non-party claimants. WCC ordered procedures for review of settlements with State Fund made in various time periods.

¶1 This matter is on remand from the Supreme Court for determination of the amount of fees due claimants' attorneys. In addition, the Court is exercising continuing jurisdiction over efforts of the State Compensation Insurance Fund (State Fund) to identify and pay non-party claimants who are due *Murer* benefits.

¶2 Counsel and the Court have conducted numerous discussions concerning the procedure for identifying those claimants. All are in agreement that the State Fund will individually review all non-settled claims for industrial injuries occurring between July 1, 1987 and June 30, 1991, and calculate what, if any, benefits are due each claimant. The parties, however, are not in complete agreement concerning the potential entitlement of claimants who have previously settled their claims. This Order resolves in substantial part the parties' differences and establishes a procedure for the initial review of settled claims.

¶13 Cases settled prior to June 29, 1992, are deemed finally closed and the State Fund need not conduct any further review of such settlements.

¶14 Irrespective of the date of settlement, cases which have been settled on a disputed liability basis are deemed finally closed and the State Fund need not conduct any further review of such settlements.

¶15 The term "settlement documents," as used in this Order includes the petition for settlement, any supporting affidavits, any recap memos, and correspondence concerning the settlement claimant.

¶16 All cases settled between June 29, 1992 and March 30, 1993 shall be reviewed to determine if settlement documents affirmatively show that *Murer* benefits were paid, compromised or expressly released, or whether the claimant was aware of his or her potential *Murer* entitlement. Each settlement shall also be reviewed to determine whether the settlement compromised a genuine dispute over the amount of benefits due the claimant.

a) Those settlements in which the State Fund determines that *Murer* benefits were paid, compromised or expressly released, or which affirmatively demonstrate that the claimant was aware of his or her potential *Murer* entitlement, shall be set aside for further review by claimants' attorneys and the Court. If in fact *Murer* benefits were paid, compromised or expressly released, or the claimant was aware of his potential entitlement to *Murer* benefits, then the settlement shall be deemed finally closed and no further benefits need be paid. The Court will make the final determination if counsel for the parties do not agree on the effect of the settlement with respect to *Murer* benefits. An attorney fee of 15% shall be paid with respect to all *Murer* payments made or due under the settlements.

b) Any settlement which affirmatively shows that there was a compromise of a genuine dispute over the amount of benefits due claimant shall be set aside for further review by the parties' attorneys and the Court. The Court reserves decision as to what, if any, *Murer* benefits may be due in such cases and recognizes that such determination may have to be made on a case-by-case basis.

c) In the event the settlement documents do not affirmatively show (1) that *Murer* benefits were paid, compromised or expressly released; (2) that claimant was aware of his or her potential *Murer* entitlement; or (3) that the settlement compromised a genuine dispute over the amount of benefits due claimant, the State Fund shall determine and pay the *Murer* benefits due, if any.

¶17 With respect to all settlements made between March 30, 1993 and November 21, 1994, the following shall be done:

- a) If the settlement reserves *Murer* benefits, then the State Fund shall calculate what *Murer* benefits are due, if any, and pay them.
- b) If the claimant was represented by counsel and *Murer* benefits were not reserved, the claim shall be deemed closed. No further review is required.
- c) In cases where the claimant was unrepresented, the State Fund shall calculate what, if any, *Murer* benefits are due and pay them unless the settlement documents affirmatively demonstrate that the *Murer* benefits were paid, compromised or expressly released, or that the claimant was aware of his or her potential *Murer* entitlement. Where *Murer* benefits were paid or compromised, the State Fund shall calculate and pay the attorney fee due petitioning claimants' attorney (McGarvey) and those settlements shall then be deemed finally closed. It shall set aside for further review any files which affirmatively demonstrate that the *Murer* benefits were expressly released or that the claimant was aware of his or her potential *Murer* entitlement. With respect to such settlements, if counsel for the parties are unable to agree as to the effect of the settlement on the claimant's entitlement to *Murer* benefits, the Court shall make such determination on a case-by-case basis.
- d) Any settlement by an unrepresented claimant which affirmatively shows that there was a compromise of a genuine dispute over the amount of benefits due claimant shall also be set aside for further review. The Court reserves decision as to what, if any, *Murer* benefits may be due in such cases and recognizes that such determination may have to be made on a case-by-case basis.

¶8 With respect to all settlements made after November 21, 1994, the following shall apply:

- a) If the claimant was represented by counsel, the claim shall be deemed finally closed unless the settlement documents affirmatively show that *Murer* benefits were not taken into account. If *Murer* benefits were paid or taken into account, the State Fund shall determine and pay the attorney fee due Mr. McGarvey. If it is not readily apparent that *Murer* benefits were or were not paid, then the file shall be set aside for further review. If after review by counsel for the parties they cannot agree whether a fee is due, or on the amount of the fee, the Court shall determine, on a case-by-case basis, whether *Murer* benefits are due and what fee, if any, is due.
- b) The State Fund shall comply with all settlements which make specific provision for *Murer* benefits and pay said benefits if not already paid, subject to a 15% attorney fee due McGarvey in this case.
- c) If the claimant was unrepresented by counsel, the State Fund shall calculate and pay *Murer* benefits and attorney fees, if any, which have not already been paid.

¶9 7. All *Murer* payments are subject to the 15% attorney fee payable to McGarvey.

¶10 All claimants shall be notified concerning their entitlement. Claimants not entitled to *Murer* benefits shall be notified in writing as to the reason they are not entitled to those benefits. The notification requirement shall not apply to any claimant who is not entitled to benefits and for whom the State Fund has no current address.

¶11 The determinations made pursuant to the foregoing procedures shall not bar individual claimants from asserting that they are entitled to additional *Murer* benefits.

¶12 The Court shall continue to monitor the review process and resolve disputes which arise with respect to individual claims.

¶13 SO ORDERED.

DATED in Helena, Montana, this 2nd day of March, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Allan M. McGarvey

Mr. James H. Goetz

Mr. Bradley J. Luck

Mr. Thomas E. Martello

Submitted: February 17, 1998