

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 20-0279

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DANA ROLAN, on her own behalf  
and on behalf of the class she represents,

Plaintiffs/Appellees,

vs.

NEW WEST HEALTH SERVICES,  
DARWIN SELECT INSURANCE  
COMPANY and ALLIED WORLD  
ASSURANCE COMPANY and  
DARWIN NATIONAL  
ASSURANCE COMPANY,

Defendants/Appellants.

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**APPELLEES' MOTION  
TO SUPPLEMENT  
THE RECORD**

Pursuant to M. R. App. P. 16, counsel for Appellees/Plaintiffs, Dana Rolan, and the Class she represents, respectfully moves the Court for an order allowing Rolan to supplement the record with the Status Report of Administration of the Class, a copy of which is attached. The report was completed and filed in the lower Court while this case was under appeal in February 2021. It indicates the number of putative class members based on the response to the administrator's initial notice. The actual number of persons who qualify will be determined when the

insurance issue is resolved, and the case is remanded.

Counsel for the Appellants have been notified. Counsel for New West Health Services have no objection. Counsel for Allied World, Martha Sheehy, indicates she consents to Rolan's supplementation of the record so long as Allied has an opportunity to supplement its briefing in response. Rolan requests the opportunity to respond in the event she challenges the arguments in Allied's brief. Counsel for Allied World, Randall Nelson, objects.

DATED this 3<sup>rd</sup> day of August, 2021.

/s/ Erik B. Thueson  
ERIK B. THUESON  
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Helena, MT 59624-0280  
*Attorney for Plaintiffs/Appellees*

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*Attorney for Plaintiffs*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY**

<p>DANA ROLAN, on her own behalf and on behalf of the class she represents,</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>NEW WEST HEALTH SERVICES, DARWIN SELECT INSURANCE COMPANY and ALLIED WORLD ASSURANCE COMPANY and DARWIN NATIONAL ASSURANCE COMPANY,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. CDV 2010-91</p> <p>Honorable Kathy Seeley</p> <p><b>PLAINTIFFS' STATUS OF ADMINISTRATION OF CLASS</b></p>
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Class counsel submits the attached status report from the administrator showing over 4,000 people responded to the initial class notice. The initial notice was designed to identify putative class members entitled to recovery. Based on the magnitude of the response, it is estimated that the number of actual class members will probably reach or exceed 1,000 persons.

Based on the current situation, the immediate administration plan is to await the outcome of the insurance appeal before following up with putative class members, since the availability of a remedy depends upon the availability of adequate insurance coverage.

The exception pertains to former New West insureds who were identified on a list New West provided during earlier discovery. The list identifies New West insureds whose third-party liability recoveries were subjected to subrogation by New West. A second notice will probably be sent to those on the list who did not respond to the initial notice, given the significant possibility that many should be eligible for class recovery.

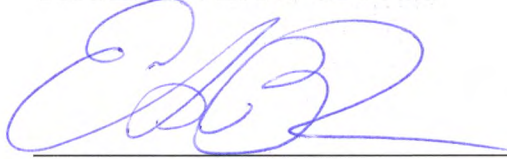
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DATED this 18<sup>th</sup> day of February, 2021.

THUESON LAW OFFICE



ERIK B. THUESON  
PO Box 280  
Helena, MT 59624-0280

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served true and accurate copies of the foregoing document upon counsel of record by the following means:

Robert Lukes  
Garlington, Lohn & Robinson  
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Missoula MT 59807-7909  
*Attorneys for New West Health*

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Nelson Law Firm  
2619 St. Johns Ave, Ste E  
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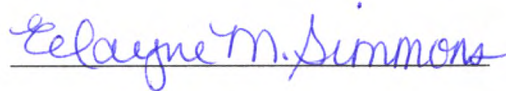
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DATED this 18<sup>th</sup> day of February, 2021.



MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY

DANA ROLAN, on her own behalf and on  
behalf of the class she represents;

Plaintiffs,

v.  
NEW WEST HEALTH SERVICES, DARWIN  
SELECT INSURANCE COMPANY and  
DARWIN NATIONAL ASSURANCE  
COMPANY,

Defendant.

CASE NO. CDV 2010-91

**DECLARATION OF DAVID KAUFMAN  
OF HEFFLER CLAIMS GROUP**

I, David Kaufman, declare as follows:

1. I am Senior Director for Heffler Claims Group (“Heffler”) in Philadelphia, Pennsylvania. I am over twenty-one years of age and am authorized to make this declaration on behalf of Heffler and myself. The following statements are based on my personal knowledge and information provided by other experienced Heffler employees working under my supervision. This declaration is being filed in support of claims filed.

2. As of February 17, 2021 Heffler, has received 4,121 claim forms received through the mail and 87 claims filed electronically through the Settlement Website. To prevent claims from individuals outside the Class and to prevent fraud, Class Members were provided a unique Class Member ID on their respective Notices. The Class Member ID is required for Class Members to file a claim online.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed in Waxhaw, NC on February 17, 2021.

A handwritten signature in cursive script, appearing to read "David Kaufman", written in black ink.

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David Kaufman

## **CERTIFICATE OF SERVICE**

I, Erik B. Thueson, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 08-03-2021:

Martha Sheehy (Attorney)  
P.O. Box 584  
Billings MT 59103  
Representing: Allied World Assurance Company  
Service Method: eService

Randall George Nelson (Attorney)  
2619 St. Johns Ave., Suite E  
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Representing: Allied World Assurance Company  
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Gary M. Zadick (Attorney)  
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Representing: New West Health Services  
Service Method: eService

Robert C. Lukes (Attorney)  
Garlington, Lohn & Robinson, PLLP  
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Representing: New West Health Services  
Service Method: eService

Electronically signed by Elayne M. Simmons on behalf of Erik B. Thueson  
Dated: 08-03-2021