

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

Government Employees Ins. Co. v. Dunst

THE HONORABLE JOHN W. SEDWICK

CASE NO. 3:04-cv-00272 JWS

PROCEEDINGS: **ORDER FROM CHAMBERS** May 12, 2006

At docket 25, the parties filed a joint status report in which they indicated they had reached agreement on all issues save for two, attorney's fees and costs, and requested an additional thirty days to resolve those issues. Also, they notified the court that if they did not resolve those issues after thirty days, they would file briefs on those issues at that time. At docket 26, the court issued a minute order in which it accepted the parties' status report and directed the parties to proceed in accordance with it. Subsequently, Gary Dunst filed a motion for attorney's fees at docket 29 and a motion for costs at docket 30.

After considering Alaska case law, the court concludes this case must be resolved – through entry of a consent decree or judgment on the merits, for example – before it may determine which party prevailed for purposes of awarding attorney's fees to that party. See *Desalvo v. Bryant*, 42 P.3d 525, 530 (Alaska 2002) (suggesting attorney's fees awarded after "formal judicial relief" or settlement); *Sanders v. Barth*, 12 P.3d 766, 770 (Alaska 2000) (settlement agreement's terms examined when deciding whether attorney's fees may be awarded). Accordingly, the parties are directed to file closing papers by **Friday, May 26, 2006**. If the parties do not file closing papers by then, the motion for attorney's fees at docket 29 will be denied without prejudice to re-filing.

As for the motion for costs, it is **DENIED** without prejudice as not ripe. Dunst may re-file it once this case has been resolved. Before re-filing it, his counsel should consider whether the prevailing party standard under the federal rule allowing costs, Federal Rule of Civil Procedure 54(d)(1), is different than the prevailing party standard under Alaska Civil Rule 82.
