

N THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 60

WCC No. 9705-7746

DOUG LOCKHART

Petitioner

vs.

NEW HAMPSHIRE INSURANCE COMPANY

Respondent/Insurer for

LABOR CONTRACTORS

Employer.

1998 MTWCC 60

WCC No. 9711-7872

LIBERTY NORTHWEST INSURANCE CORPORATION

Petitioner

vs.

NANCY PETAK

Claimant/Respondent

and

COMMUNITY MEDICAL CENTER

Respondent.

ORDER AND JUDGMENT REGARDING ATTORNEY FEES

Summary: Consolidated cases raise the issue whether claimants' attorneys are entitled to attorney fees with regard to medical benefits secured with their efforts paid out of medical benefits.

Held: Attorneys are not entitled to satisfy their fee liens from medical benefits secured on behalf of clients. [Note: WCC reversed on this issue in [Lockhart v. New Hampshire Insurance Company and Liberty Northwest v. Petak, 1999 MT 205.](#)]

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code: section 37-61-420, MCA. Consolidated cases raised the issue whether claimants' attorneys are entitled to attorney fees with regard to medical benefits secured with their efforts paid out of medical benefits. WCC held attorneys are not entitled to satisfy their fee liens from medical benefits secured on behalf of clients. [Note: WCC reversed on this issue in [Lockhart v. New Hampshire Insurance Company and Liberty Northwest v. Petak, 1999 MT 205.](#)]

Attorneys Fees: Lien. Consolidated cases raised the issue whether claimants' attorneys are entitled to attorney fees with regard to medical benefits secured with their efforts paid out of medical benefits. WCC held attorneys are not entitled to satisfy their fee liens from medical benefits secured on behalf of clients. [Note: WCC reversed on this issue in [Lockhart v. New Hampshire Insurance Company and Liberty Northwest v. Petak, 1999 MT 205.](#)]

¶1 The above-captioned cases have been consolidated for purposes of determining whether attorney fees are payable out of medical benefits which are secured by a claimant's attorney. The Court invited the parties to brief the issues. It also invited *amicus curiae* briefs.

¶2 Eighteen briefs were received by the Court. The matter was argued in Helena on July 22, 1998, with eight attorneys participating. At the close of the hearing, the issue was deemed submitted for decision.

Factual Background

I. *Lockhart*

¶3 *Lockhart* is a disputed liability case. After trial the Court determined that claimant suffered a compensable injury and that he is entitled to medical benefits, temporary total disability benefits, and temporary partial benefits. (Findings of Fact, Conclusions of Law and Judgment (December 11, 1997).)

¶4 Following entry of judgment, claimant's attorney, Mr. Kenneth S. Thomas (Thomas), filed a motion requesting an order directing the insurer to directly pay him a 25% attorney fee with respect to the medical benefits ordered by the Court. (Motion for Order Directing Payment of Attorney Fees (December 18, 1997).) The insurer read the request, as did the Court, as seeking pro rata payment of attorney fees out of the medical benefits, thereby

reducing the reimbursement due the medical providers to 75% of the amounts prescribed by statute, §39-71-704, MCA (1997).⁽¹⁾

¶15 The insurer objected, pointing out that the order could subject it to a 25% increase in its liability for medical benefits should the medical providers demand the full amount of reimbursement without deduction for attorney fees. Counsel for the insurer provided the Court with a copy of a January 26, 1993 opinion letter of an attorney for the Department of Labor and Industry (Department) which concluded that attorney fees cannot be deducted from medical payments unless the medical provider consents to the deduction. A copy of the opinion letter is attached to this decision as Appendix A.

II. Petak

¶16 Meanwhile, Liberty Northwest Insurance Corporation (Liberty) petitioned the Court for a declaratory judgment with respect to amounts it owes medical providers for care rendered to Nancy Petak (Petak). (Petition for Declaratory Judgment (November 18, 1997).) Liberty had initially denied Petak's claim for compensation.⁽²⁾ Petak hired attorney Mr. Rex Palmer (Palmer) to represent her and Palmer filed a petition on her behalf, (*Petak v. Liberty Northwest Insurance Corp.*, WCC. No. 9508-7359.) Approximately a month after the petition was filed, Liberty conceded liability and the petition was dismissed without prejudice.

¶17 Following its acceptance of liability, Liberty determined it owed approximately \$5,000.00 for claimant's medical care. It made out checks payable jointly to Petak, Palmer, and the respective medical providers and forwarded the checks to Palmer. The largest check was for \$3,184.42 for medical care rendered by Community Medical Center (Community). That check was payable to Petak, Palmer and Community.

¶18 Palmer asserted an attorney lien with respect to the medical payments. Community disputed the lien and insisted on full payment without any deduction for attorney fees. Since Palmer and Community could not agree to the negotiation of Liberty's check and the distribution of the proceeds, Liberty petitioned the Court for a Declaratory Judgment respecting its payment obligations. (Petition for Declaratory Judgment (November 18, 1997).)

¶19 Comment by counsel in briefs and at the July 22, 1998 hearing indicates a variety of practices with respect to attorney fees on medical benefits. At least some claimants' counsel took the position that they were entitled to a fee on and from medical benefits. In those cases, some insurers made checks for medical benefits jointly payable to the claimant, the claimant's attorney, and the medical providers, leaving it to claimant's attorney to negotiate with the medical providers. Some claimants' counsel indicated that medical providers typically acquiesced to the attorney taking the fee from the medical benefits but some medical providers did not, causing at least some attorneys to forgo the

fee. Some claimants' counsel did not attempt to collect a fee with respect to medical benefits.

¶10 One further fact is of consequence in the *Petak* matter: The only benefits due to date are medical benefits. Thus, the only source of funds for payment of attorney fees, other than Petak's personal resources, are the medical benefits.

III. *Cheetham*

¶11 *Lockhart* and *Petak* are not the first cases in which an issue regarding attorney fees on medical benefits has been raised. Nonetheless, the issue is of recent vintage as far as the Court is concerned. The issue first arose in 1997 in *Robert Cheetham, Jr. v. Liberty Northwest Ins. Corp.*, No. 9612-7675. Following judgment for claimant, the claimant's attorney requested an order directing the insurer to pay him directly, as single payee, an attorney fee of 25% of the amount of medical benefits.⁽³⁾ Without the benefit of any significant briefing or significant reflection on my part, on July 16, 1997, I issued an Order which effectively assessed a pro rata attorney fee against medical benefits procured by claimant's attorney, thus reducing the actual payments to medical providers by the amount of the fees. (*Robert Cheetham, Jr. v. Liberty Northwest Ins. Corp.*, Order Regarding Medical Payments, WCC No. 9612-7675 (July 16, 1997).) Specifically, I ordered the insurer to pay the claimant's attorney, single payee, a 25% fee on medical benefits obtained in the case.

Request for Briefs

¶12 The issue presented in these companion cases is significant and the resolution of the issue will have a significant impact on one of the three groups -- the claimants' bar, claimants individually, or medical providers -- involved in the current tug-of-war. I therefore requested further briefing by the parties. Additionally, I invited *amicus curiae* briefs. (*Liberty Northwest Ins. Corp. v. Petak*, Order Denying Community Medical Center's Motion to Dismiss, 1998 MT WCC 21 (March 4, 1998) and Order for Further Briefing (March 4, 1998); *Lockhart v. New Hampshire Ins. Co.*, Order Inviting *Amicus Curiae* Briefs and Directing Withholding of Attorney Fees, 1998 MT WCC 22.) I requested that the briefs "address whether attorney fees authorized by an attorney fee agreement with a claimant are payable out of medical benefits which are paid as a result of the attorney's efforts, or whether such fees are payable solely out of non-medical compensation benefits obtained by the attorney."

Restatement of the Issue

¶13 The Court was short-sighted in its initial statement of the issue. The briefs and oral argument disclose a threshold issue I did not consider when inviting briefs. That issue is whether a claimant's attorney is entitled to **any** fee with regard to medical benefits paid on account of his efforts. Therefore, I restate the issues as follows:

1. Is a claimant's attorney entitled to an attorney fee with respect to medical benefits procured on behalf of the claimant?
2. If a claimant's attorney is entitled to an attorney fee with respect to medical benefits procured on behalf of claimant, may that fee be deducted from the medical benefits?

Discussion

I.

¶14 Initially, I acknowledge the conflicting interests of attorneys, the medical community and claimants, and the predictions of dire consequences should I reach one conclusion or another. The medical community points out that section 39-71-704, MCA, fixes their reimbursement for treating workers' compensation patients at a lower rate than their usual and ordinary charges. One attorney argues that if fees are imposed on medical benefits, the medical community will lobby vigorously for a legislative reversal of that result. Some claimants' attorneys point out that the reduction of benefits since 1987 and the curtailment of attorney fees make it difficult for claimants to obtain counsel. They argue that a failure to impose attorney fees pro rata on medicals will further erode the ability of claimants to find attorneys to represent them. The Court is also aware that taking fees for medical benefits from a claimant's indemnity benefits may leave the claimant with little or nothing by way of actual compensation for her or his wage loss.

¶15 Without question, one group -- claimants, claimants' attorneys, or medical providers -- is going to be a loser in this litigation. Without question, the issues presented in these cases raise serious and difficult policy issues. Nonetheless, it is not the role of the Court to weigh in for or against one group or for it to craft policy based on political power: those matters are for the legislature to consider. The Court's role is to determine what the law is concerning attorney fees and enforce that law.

II.

¶16 The first issue the Court must address is whether a claimant's attorney can charge a fee with respect to medical benefits. I hold that the attorney can.

¶17 Montana statutes provide that attorney fees are a matter of contract between the attorney and client. Section 37-61-420(1), MCA, provides:

(1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

Section 25-10-301, MCA, provides in relevant part:

The measure and mode of compensation of attorneys and counselors at law is left to agreement, express or implied, of the parties

Thus, by statute, attorney fees are generally governed by the agreement of the attorney and the client. Nothing in these general statutes prohibits an attorney from charging a fee with respect to medical benefits obtained on behalf of the client.

¶18 The Montana Workers' Compensation Act (WCA) does not alter that conclusion. Section 39-71-613, MCA, provides for a written, contractual agreement between the attorney and claimant and further provides that the Department may regulate the "amount" the attorney charges a claimant.⁽⁴⁾ In relevant part, it provides:

(1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department **a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.**

(2) The department may regulate the **amount** of the attorney fees in any workers' compensation case. . . . [Emphasis added.]

¶19 In regulating the amount of attorney fees, the Department has expressly permitted the claimant's attorney to charge a fee with respect to medical benefits obtained through his or her efforts. It has done so by adopting a standard fee agreement to be used in workers' compensation cases. ARM 24.29.3802 provides in relevant part that "[a]ttorneys' compensation shall be determined by the approved fee agreement."

¶20 The standard agreement adopted by the Department expressly permits a contingency fee on medical benefits obtained through the attorney's efforts. Paragraph A of the agreement permits a 20% contingency fee for "additional compensation payments the claimant receives due to the efforts of the attorney" and a 25% contingency fee if those payments are obtained through an order of the Workers' Compensation Court or Supreme Court. The agreement adopted by the rule goes on to expressly provide that the fee applies to medical benefits obtained through the efforts of the attorney:

Where the initial compensability of the claim is not in dispute, no fee shall be charged upon temporary total disability benefits paid during the healing period or upon medical benefits. If the insurer has denied liability, the attorney fee shall apply to all monies, including medical benefits, obtained for the claimant through the efforts of the attorney.

The following benefits shall not be considered as a basis for calculation of attorney fees:

(1) The amount of medical and hospital benefits received by the claimant, unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment

of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

(2) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.

(3) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.

(4) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.

(5) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.

(Attorney Retainer Agreement ERD050 Rev. 5/95) The agreement approved by the Department leaves no doubt that a fee may be charged with respect to medical benefits procured by the attorney.

¶21 There is nothing in the WCA precluding the Department from authorizing fees with respect to medical payments. To the contrary, the WCA appears to require such fees. Section 39-71-613, MCA, provides that in regulating attorney fees the Department must consider "the **benefits** the claimant gained due to the efforts of the attorney." §39-71-613 (2)(a), MCA. Section 39-71-704, MCA, which governs medical payments, expressly refers to medical payments as **benefits**. Section 39-71-704 (1), MCA (1997), provides in relevant part:

In addition to the compensation provided under this chapter and **as an additional benefit** separate and apart from compensation benefits actually provided, the following must be furnished:

....

The remainder of the section goes on to require the insurer to furnish medical benefits. While some attorneys argued that there is a distinction between furnishing medical benefits as required by the section, and paying for medical care, full reading of section 39-71-704, MCA, shows that the legislature contemplated that the insurer's duty to furnish medical care will be discharged by paying medical providers for the care.

¶22 Decisions of the Montana Supreme Court also compel a conclusion that a claimant's attorney is entitled to a fee on medical benefits obtained through his or her efforts. In *Hartford v. Young*, 239 Mont. 527, 782 P.2d 365 (1989), the Court held that an attorney is entitled to a fee on "debts waived through the attorney's efforts." 239 Mont. at 531, 782 P.2d at 367. It went on to say:

A waiver of debt is a benefit to the claimant obtained by the attorney and is fully compensable within the limitations of the attorney fees regulation.

¶23 Medical benefits stand on a footing similar to the waiver of a debt. Absent a determination that medical services are covered under the WCA, the claimant is liable for the services. A determination of compensability exonerates the claimant from liability for medical benefits:

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), **a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.**⁽⁵⁾ [Emphasis added.]

Thus, an attorney's success in securing medical benefits is a benefit to the claimant.

¶24 *Hilbig v. Central Glass Co.*, 249 Mont. 396, 816 P.2d 1037 (1991), lends additional support for the imposition of attorney fees with respect to medical benefits. In *Hilbig*, the Supreme Court held that an order directing an insurer to pay for domiciliary care of a claimant is an award of benefits, thus the claimant was entitled to attorney fees under section 39-71-612, MCA. While the statute at issue concerned an award of attorney fees against the insurer rather than a claimant's obligation for fees, the decision determined that payment for domiciliary care was a benefit within the meaning of the WCA. The finding is binding on this Court.

¶25 In conclusion, an attorney for a claimant is entitled to attorney fees from his or her client with respect to medical benefits secured by the attorney.

III.

¶26 Some attorneys have argued that payment of attorney fees is simply a matter of lien priorities; therefore, claimant's attorneys are entitled to take fees from medical benefits. I am unpersuaded by their arguments.

¶27 "A lien is merely a charge or encumbrance on property which subjects the property to the payment of a claim or debt." *Madison Fork Ranch v. L & B Lodge Pole Timber Products*, 189 Mont. 292, 307, 615 P.2d 900, 909 (1980). While in a damage action an attorney's lien certainly attaches to settlement or judgment proceeds **as a whole**, the question raised in this case is whether it attaches to the medical benefits payable as part of that settlement or judgement. This is not a priority question, it is a question of what monies are subject to a lien.

¶28 A lien is created by a debt; lacking a debt there can be no lien. *Matos v. Rohrer*, 203 Mont. 162, 175, 661 P.2d 443, 450 (1983). A lien attaches to property of the debtor and,

gives the lienor a superior claim against the property when seeking satisfaction of the debt. A lien does **not** attach to property rights of third parties. *Sue Davidson, P.C. v. Naranjo*, 904 P.2d 354 (Wyo. 1995) (child support payments belong to children not to the custodial parent and are not subject to an attorney lien for fees owed by the parent to the attorney).

¶29 In the present case, medical payments do not become part of a judgment awarding money to the claimant. A favorable judgment or settlement only relieves a claimant from liability to third parties:

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

§ 39-71-743(3), MCA. Unlike general damages awarded in a tort case, see *Sisters of Charity*, 157 Mont. 106, 483 P.2d 279 (1971), a claimant is not entitled to recover money for his or her medical treatment.

¶30 Thus, under the WCA the claimant is not entitled to recover monies owed for medical benefits. Medical payments never become part of the claimant's property to which any lien can attach.

¶31 I therefore conclude that medical benefits payable to a claimant are not subject to any lien of the claimant's attorney.

IV.

¶32 Even if I were to determine that medical benefits are part of the claimant's property and subject to an attorney's lien, there is still no legal basis for apportioning any part of the fees to the medical benefits. An argument to the contrary was considered and rejected in

Sisters of Charity of Providence of Montana v. Nichols. That case involved medical care rendered to a victim of an automobile accident. Sisters of Charity operated a hospital which provided medical care to the victim (plaintiff) following the accident. The plaintiff sued the tortfeasor and ultimately settled. Prior to disbursement of the settlement proceeds, the hospital notified the plaintiff's attorney of its medical lien. The plaintiff's attorneys sought pro rata recovery of their fees out of the hospital expenses.

¶33 The Court stated the issue as follows:

[I]s the hospital liable for its pro rata share of the attorneys' fees incurred in procuring an accident settlement from a third party from which payment of its hospital bill can be made?

157 Mont. at 110-11, 483 Mont. at 282. After stating the issue, the Court answered it in the negative. Finding that the amount of plaintiff's recovery was sufficient to pay both the hospital bill and the attorney fees, the Court determined that the hospital, which had given notice of its lien, was entitled to full payment from the settlement proceeds without any deduction for attorney fees.⁽⁶⁾

¶134 In arriving at its decision, the Court relied on the statute requiring an express or implied contract to give rise to an attorney fee lien and obligation.⁽⁷⁾ It found that there was neither an express nor implied agreement by the hospital to pay attorney fees to the plaintiff's attorney. It specifically found that the indirect benefit (payment) the hospital received from the lawsuit was insufficient to establish an implied agreement to pay attorney fees.

¶135 In discussing the statute governing attorney fees, the Court said:

The language of this statute clearly indicates that the foundation of an attorney's lien is an express or implied contract for his services. It is the fact of his employment that gives rise to his right to compensation. In re Baxter's Estate, 94 Mont. 257, 22 P.2d 182. The lien simply provides security for the payment to the attorney of his client's contractual obligation to pay him for services. Galbreath v. Armstrong, 121 Mont. 387, 193 P.2d 630. **Such lien does not change the nature of the underlying contractual obligation upon a stranger to the attorney's employment contract to pay the attorney for his services.**

157 Mont. at 111, 483 P.2d at 282 (emphasis added). I have bolded the last sentence because it answers the contention that *Sisters of Charity* only concerns lien priorities. As the language of the last sentence states, the decision holds that a stranger to the attorney fee contract is not bound by the contract and has no obligation to pay attorney fees.

¶136 Language in *Sisters of Charity* initially led me to question whether, assuming medical benefits are part of the claimant's property out of which a lien may be satisfied, attorney fees might be assessed to medical providers under a possible exception mentioned in the decision. Language suggesting the possible exception is contained in the following paragraph:

The attorneys and their client additionally contend, however, that the hospital here is obligated to share in the attorneys' fees and costs of collection on the same basis that a subrogated insurer is obligated to share attorney's fees and costs with its insured in recovery against a third party. This analogy is inapt and the principle inapplicable here. **The obligation of the subrogated insurer to share in the costs of recovery from a third party wrongdoer arises because the insurer occupies the position of the insured with coextensive rights and liabilities and no creditor-debtor relationship between them.** But here, unlike that situation, the hospital's claim and lien is based upon a debt owed the hospital by its patient in

whose shoes it does not stand for any purpose, the debt being owed to it by its patient irrespective of the patient's rights against a third party wrongdoer. Because the substitution principle does not apply here, no obligation arises on the part of the hospital to share in the costs of recovery against a third party, and the attempted analogy fails. [Emphasis added.]

157 Mont. at 112-13. At hearing I asked counsel to address this paragraph, especially the bolded language.

¶137 The bolded language suggests that where an insurer or some other person "occupies . . . the position . . . with coextensive rights and liabilities" as the settling party, then attorney fees may be assessed pro rata. My concern as to "coextensive rights and liabilities" arose from the fact that the WCA imposes an affirmative and direct obligation upon insurers to pay medical benefits, § 39-71-704, MCA, and expressly relieves claimants of liability for their medical care, § 39-71-743, MCA. Oral argument and further reflection has disabused me of the possibility that the exception mentioned in *Sisters of Charity* might require a different result in this case.

¶138 Attorneys for medical providers cogently pointed out that their rights are not coextensive with the rights of claimants. But for the WCA, medical providers often will be entitled to recover more for their treatment than under the medical payment schedules adopted under section 39-71-704, MCA.⁽⁸⁾ Moreover, medical providers are not insurers who are paid premiums to assume a risk of liability or non-payment, thus they do not stand in the same relationship to an insured as a subrogated insurer.

¶139 Moreover, in a case decided subsequent to *Sisters of Charity*, the Supreme Court refused to apportion attorney fees on a pro rata basis even to a subrogated insurer. In *Wyoming Farm Bureau Mutual Ins. Co. v. Mondale*, 160 Mont. 239, 502 P.2d 39 (1972), the Court specifically considered a claim for attorney fees against a subrogated insurer and rejected the claim. As in *Sisters of Charity*, the decision was rooted in the lack of an attorney fee agreement:

This appeal is controlled by our decision in *Sisters of Charity, etc. v. Nichols*, 157 Mont. 106, 483 P.2d 279, and cases cited therein. It is the fact of an attorney's employment that gives rise to his right to compensation. The jury found no express contract of employment on the basis of substantial, though conflicting, evidence and attorney Mondale is concluded thereby. There is no evidence in this case on which an implied contract of employment can be based. Even if we assume that the subrogated insurer derived an incidental benefit from the attorney's services which is far from clear in this case, such incidental benefit, in itself, does not create an implied contract by the subrogated insurer to pay an attorney's fee. Nor is there any evidence in this case that would give rise to an equitable lien absent employment.

Judge McKinnon was correct in finding that the jury resolved the only ultimate issue of fact in this case and that plaintiff was entitled to judgment.

160 Mont. at 242, 502 P.2d at 40-42.

¶40 Based on the foregoing discussion, it is clear that a medical provider providing care to a workers' compensation claimant is entitled to the full amount of benefits provided in section 39-71-704, MCA, without deduction for attorney fees.

Summary of decision

¶41 The following summarizes my holdings in this case:

- Lacking an express or implied contract between the medical provider and the claimant's attorney, a medical provider entitled to medical reimbursement under the Montana WCA is not liable for attorney fees payable to the claimant's attorney with respect to medical benefits secured by the attorney.
- Pursuant to the attorney fee agreement applicable to workers' compensation cases, the claimant is liable to the attorney for attorney fees with respect to medical benefits secured through the attorney's efforts.
- An attorney lien does not apply to medical benefits due medical providers. Therefore, a claimant's attorney must satisfy his or her lien out of indemnity benefits recovered on behalf of claimant. If those benefits are insufficient to satisfy the lien then the attorney must look to the claimant for any amount remaining due.

JUDGMENT

¶42 1. Attorneys Palmer and Thomas are **not** entitled to satisfy their liens for attorney fees from the medical payments secured on behalf of their clients. Liberty Northwest Insurance Corporation and New Hampshire Insurance Company shall pay the claimants' medical providers the full amount due them without deduction for any attorney fees.

¶43 2. New Hampshire shall forward the remaining amount due claimant for indemnity benefits to claimant's attorney. The check shall be dually payable to claimant and his attorney.

¶44 3. This JUDGMENT is certified as final for purposes of appeal

¶45 4. Pursuant to ARM 24.5.348, any party to this dispute may have 20 days in which to request a rehearing from this Order and Judgment Regarding Attorney Fees.

DATED in Helena, Montana, this 31st day of July 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Kenneth S. Thomas

Mr. Donald R. Herndon

Mr. Larry W. Jones

Mr. Rex Palmer

Mr. Regan Whitworth

Enclosure: Appendix A - Claren Neal's January 23, 1996 letter to Chuck Hunter

Date Submitted: July 24, 1998

1. Presumably, the check for indemnity benefits was payable jointly to the claimant and his attorney, leaving them to settle between themselves the attorney fees applicable to the indemnity benefits.

2. The facts relating to *Petak* are set out in Stipulated Facts filed February 9, 1998, in the Court record, and in agreed facts recited by counsel at the time of the July 22, 1998 hearing.

3. As in *Lockhart*, see footnote 1, the check for indemnity benefits in *Cheetham* was apparently payable jointly to the claimant and his attorney.

4. Some of the attorneys arguing this matter have urged the Court to look to sections 39-71-611 and -612, MCA, in determining the limitations of attorney fee agreements. Those sections, however, govern awards of attorney fees by the Court against insurers. They do not concern the contractual agreement between a claimant and the attorney.

5. A court determination of liability is equivalent to acceptance by the insurer.

6. The recovery was \$5,000.00, the hospital bill \$2,038.30. The attorney fee agreement was for a one-third (1/3) contingency, thus amounting to \$1,666.00. Since the total recovery exceeded the hospital bill by more than \$3,000.00, there were sufficient funds to pay both the attorney fee and the hospital bill **in full**.

7. At the time of the decision, the statute was codified as 93-2120, RCM 1947. The statute was recodified as section 39-61-420, MCA.

8. Section 39-71-704(3), MCA, authorizes the Department of Labor and Industry to regulate the amount of medical reimbursements. Counsel for the Montana Hospital Association has pointed out that the level of reimbursement fixed for hospitals is as low as 69% of hospitals' usual and customary charges. § 39-71-704(3)(b)(i), MCA.