

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 34

WCC No. 2001-0300

CASSANDRA SCHMILL

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

ORDER AUTHORIZING WITHHOLDING

Summary: As a result of the legal precedent established by this Court's decision, which has been affirmed on appeal, counsel for Liberty requests Court authorization to withhold 25% of the claimed attorney fees pending further proceedings.

Held: Liberty Northwest Insurance Corporation and other Plan II insurers and Plan I self-insured employers are authorized to withhold 25% claimed by petitioner's counsel as attorney fees.

Topics

Attorney Fees: Common Fund. Where counsel for petitioner has established a legal precedent entitling other claimants to additional workers' compensation benefits, and has given notice of her intent to seek common fund attorney fees with respect to those benefits whether paid by the respondent insurer in this case or by other Plan I and II insurers, all potentially affected insurers are authorized by the Court to withhold the claimed attorney fees pending further proceedings with respect to the claimed attorney fees.

¶1 Counsel for petitioner in this matter has given notice of her intent to seek attorney fees with respect to benefits paid as a result of the precedent established by the decision in this case. By way of a letter from petitioner's counsel, she requested respondent withhold a 25% attorney fee until this matter is resolved. A copy of this letter has been provided to the Court.

¶2 Liberty's counsel has requested an order from this Court directing Liberty Northwest to withhold the 25% amount.

¶13 Finding good cause, and until further order of the Court, Liberty Northwest Insurance Corporation is authorized to withhold the 25% attorney fee amount claimed by petitioner's counsel from any and all benefits which are paid on account of the decision in this case and which would not have otherwise been paid absent that decision.

¶14 By this Order I authorize other insurers and self-insured employers to similarly withhold the claimed attorney fees.

¶15 The Court will consider a motion to intervene by insurers, self-insured employers, and/or claimants when they are received.

SO ORDERED.

DATED in Helena, Montana, this 25th day of April, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Laurie Wallace

Mr. Larry W. Jones