

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 30

WCC No. 2000-0207

DEBRA STAVENTJORD

Petitioner

vs.

MONTANA STATE FUND

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, petitioner's counsel is seeking common fund attorney fees with respect to benefits paid as a result of the precedent. He has a notice of an attorney fee lien extending to all Plan II insurers and all Plan I self-insurers and served a copy of that notice on Liberty Northwest Insurance Corporation (Liberty Northwest) and Liberty Mutual Fire Insurance Company (Liberty Mutual). Counsel for the two Liberty companies requests Court authorization to withhold the claimed attorney fees pending further proceedings.

Held: Liberty Northwest, Liberty Mutual, and other Plan II insurers and Plan I self-insured employers are authorized to withhold amounts claimed by petitioner's counsel as attorney fees. Petitioner's counsel shall provide the Court and counsel for the two Liberty companies with written notice of the percentage of the claims.

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 his 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 his intent to seek attorney fees with respect to benefits paid as a result of the precedent established by the decision in this case. He provided a notice of lien for attorney fees to counsel for Liberty Northwest and Liberty Mutual. That notice, which has been provided to the Court, extends to all Plan II

insurers, as well as to Plan I self-insurers, although it does not appear at this time that the notice has in fact been sent to all those insurers.

¶12 Liberty's counsel has requested guidance from the Court concerning withholding of the claimed attorney fees pending further proceedings with regard to the lien claim. Liberty's counsel also indicates Liberty's intent to intervene with respect to further proceedings involving non-party insurers.

¶13 Finding good cause, and until further order of the Court, Liberty Northwest and Liberty Mutual are authorized to withhold the attorney fee amounts 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. Since the lien notice does not specify the percentage claimed by petitioner's counsel, counsel for Liberty Northwest and Liberty Mutual should contact petitioner's counsel and determine that percentage. Counsel for petitioner shall confirm that percentage in writing to the Court.

¶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 24th day of April, 2003.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Thomas J. Murphy
Mr. Kelly M. Wills
Mr. David A. Hawkins
Mr. Larry W. Jones (Courtesy Copy)