IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA
WCC No. 9311-6938

LARRY D. CHANEY

Petitioner

vs.

U.S. FIDELITY & GUARANTY

Respondent/Insurer for

OWENS-HURST LUMBER COMPANY

Employer.

ORDER DENYING MOTION IN LIMINE

Petitioner, Larry D. Chaney (claimant), has filed a motion in limine asking the Court to strike respondent's defense that claimant's current condition is the result of a new injury or aggravation. According to claimant, the State Compensation Insurance Fund should have been joined as a party since it was claimant's last employer. No further information is provided.

While respondent has not replied to the motion, and the time for response has expired, the motion is nonetheless **denied.** No facts have been provided which would indicate that the alleged new injury or aggravation occurred on the State Fund's watch, or that a claim was even filed. Moreover, ARM 24.5.308 does not require that the ***respondent*** initiate a motion to join a third party. The defense is set out in the Response of the Employer and Insurer to Petition. Petitioner was free to bring a joinder motion if he believed that the State Fund was a necessary party to resolution of the defense.

DATED in Helena, Montana, this 9th day of March 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Randall O. Skorheim
Mr. Michael S. Lattier