IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 39A-1

WCC No. 9206-6487

JACK MURER, et al

Petitioners

vs.

MONTANA STATE COMPENSATION INSURANCE FUND

Defendant

and

BEVERLY HARDY, et al

Intervenors.

Reversed in *Murer et al. v. Montana State Fund et al.*, 283 Mont. 210 (1997) (*Murer III*)

ORDER DENYING ATTORNEY FEES UNDER COMMON FUND DOCTRINE

Summary: After successful litigation establishing right of claimants to increase in benefit rate due to expiration of cap on compensation benefits in 1987 and 1989 Acts, attorneys for claimant argued the litigation had established a common fund requiring insurers to increase benefits of all impacted claimants and pay them attorneys fees on benefit increase for each claimant.

Held: Request for attorneys fees with respect to benefits obtained for non-party claimants is denied.

Petitioners commenced this action seeking an increase in the rate of disability benefits payable to them subsequent to June 30, 1991. At the time of their injuries, subsection (3) of section 39-71-701, MCA (1987) and (1989), provided a general cap on benefits:

> (3) Weekly compensation benefits for an injury producing temporary total disability shall be 66 2/3% of the wages received at the time of the injury. **The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. . . .** [Emphasis added.]

However, subsection (5) of the same section provided a more specific cap with respect to the time period July 1, 1987 through June 30, 1991, providing:

> (5) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, [1991], weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.

Similar caps were applicable to permanent total and permanent partial disability benefits. §§ 39-71-702(6) and -703(3), MCA (1987) and (1989).

Petitioners and the respondent insurers interpreted the caps differently. The insurers relied on the usual rule that the law in effect at the time of the injury governs the payment of benefits, *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 730 P.2d 380 (1986), and interpreted the subsection (5) cap as applying to **all** benefits payable with respect to injuries occurring between July 1, 1987 and June 30, 1991. Petitioners interpreted the subsection as applying only to benefits paid during that specific period of time. For a claimant injured between July 1, 1990 and June 30, 1991, the maximum amount at stake is $24 a week, which is the difference between the $299 cap specified in subsection (5) and the state's fiscal year 1991 average weekly wage of $323.

Petitioners prevailed in *Murer v. State Compensation Mut. Ins. Fund*, 267 Mont. 516, 885 P.2d 428 (1994) (*Murer II*), and established a legal precedent that entitles many of the other claimants who were injured between July 1, 1987 and June 30, 1991, to increased benefits. Petitioners' attorneys now ask the Court to award attorney fees with respect to additional amounts that may be due those other claimants as a result of the precedent. In conjunction with their request, they have notified the only remaining respondent,[1] State Compensation Insurance Fund, that they claim a lien on all amounts payable as a result of the decision in *Murer II*.

Petitioners' attorneys concede that they have no attorney fee agreement with the affected claimants from whose benefits the requested fees would be paid. They also agree that they have no statutory entitlement to such fees. Rather, they argue that their

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[1]By agreement of the parties, the other respondents have been dismissed as parties to this proceeding. Order Dismissing Asarco and Setting Schedule, January 19, 1995.

entitlement is an equitable one arising under common fund and/or substantial benefit doctrines.

Procedural Issues

The present claim for fees surfaced shortly after remand following *Murer II*. One of the initial issues raised regarding the claim is what notice, if any, should be given to claimants who may be affected by the claim. Petitioners' attorneys argued that all potentially affected claimants must be given notice. The Court asked for case citations supporting their contention. After reading some of the cases brought to my attention, I decided to ask the parties to brief the merits of the claim. If the claim is without merit, then no further notice is necessary. If the claim appeared to have merit, I could then determine what further notice should be given.

Meanwhile, I granted a motion to intervene filed by a few of the potentially affected claimants. I also permitted two insurers -- Liberty Mutual and Liberty Northwest -- to intervene. Both interventions were limited to the attorney fee issue. Since the intervening insurers do not have a direct stake in the dispute, their participation shall be treated as in the nature of amicus curiae.

Common Fund and Substantial Benefit Doctrines

"[T]he traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization . . . ." *Hall v. Cole,* 412 U.S. 1, 4-5 (1974); *accord, Fleischmann Corp. v. Maier Brewing,* 386 U.S. 714, 717 (1967); *Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). Montana follows the American rule. *In re Dearborn Drainage Area*, 240 Mont. 39, 42, 782 P.2d 898, 899 (1989). It has "consistently adhered to the principle that in the absence of some special agreement between the parties or statutory authorization attorney's fees are not recoverable by the successful litigant." *Nikles v. Barnes,* 153 Mont. 113, 119-20, 454 P.2d 608, 611-12 (1969).

However, federal and state courts have created several exceptions to the general rule. One of the exceptions -- the common fund doctrine -- was created by the United States Supreme Court in 1881 in the case of *Trustees v. Greenough*, 105 U.S. 527, 528-29 (1881). Francis Vose was the plaintiff in *Greenough*. He owned a large number of bonds issued by the Florida Railroad Company. He brought an action on behalf of himself and other bondholders seeking to preserve trust assets, consisting of large real estate holdings, which had been pledged for the payment of the bonds. Payments on the bonds were in arrears and Vose charged that the trustees "were wasting and destroying the [trust] fund by selling at nominal prices the lands by the hundred thousand and even million acres, and failed and refused to provide for the payment of interest or sinking fund on the bonds."

Trustees v. Greenough, 105 U.S. 527 (1881). The litigation was hugely successful, but expensive for Vose. "[A] large amount of the trust fund was secured and saved" and dividends were paid to the bondholders. *Id.* at *529.* Vose, as could be expected, was resentful of his fellow, freeloading bondholders, who had reaped the rewards of his tenacity and his financial investment in the lawsuit. He petitioned the Court for litigation expenses, including attorney fees, requesting that his expenses be paid from the recovered funds. *Id.* at 529-31. The lower court granted his petition. His fellow, but ungrateful, bondholders appealed to the United States Supreme Court.

In its landmark decision the United States Supreme Court held that Vose was entitled to his "reasonable costs, counsel fees, charges, and expenses incurred in the fair prosecution of the suit." *Id.* at *537.* The Court indicated that although Vose was not a trustee of the property "he at least acted the part of a trustee in relation to the common interest." The Court recited the "general principle that a trust estate must bear the expenses of its administration." After noting that Vose had brought the suit not only on his own behalf "but in behalf of all other bondholders having an equal interest in the fund", and that the other bondholders would be unjustly enriched if the Court were to deny him his litigation expenses, the Court held that the other bondholders "ought to contribute their due proportion of the expenses which he has fairly incurred." *Id.* at *532*. It then said, "To make them [the expenses] **a charge upon the fund** is the most equitable way of securing such contribution." *Id* (emphasis added). The concept of "charging the fund" rather than the individuals benefiting from the lawsuit became known as the "common fund doctrine."

Later decisions of the United States Supreme Court expanded the situations in which attorney fees may be awarded. In *Sprague v. Ticonic Bank,* 307 U.S. 161 (1939), a bank had earmarked bonds to secure trust fund monies it administered. *Id.* at 163. After the bank became insolvent, the plaintiff, who was trustee of one of the trusts secured by the earmarked bonds, sued "to impress upon the proceeds of the bonds a lien for their trust deposit." *Id.* at 163. After securing a determination that the proceeds from the sale of the bonds must be used to reimburse the trust, plaintiff sought attorney fees out of the bond proceeds. She argued that the proceeds were sufficient to discharge the bank's obligations to 14 other trusts and that the precedent set by her litigation entitled those trusts to recover from the proceeds. Conceding that the precedent established by plaintiff did not "automatically establish a fund in which others could participate", *id*. at 166, the Court nonetheless observed that "the petitioner by establishing her claim necessarily established the claims of fourteen other trusts pertaining to the same bonds." *Id*. *Sprague v. Ticonic Bank,* 307 U.S. 161 (1939). In broad language, Justice Frankfurter, who authored the unanimous decision, then observed:

> Whether one professes to sue representatively or formally makes a fund available for others may, of course, be a relevant circumstance in making the fund liable for his costs in producing it. But when such a fund is for all

> practical purposes created for the benefit of others, the formalities of the litigation -- the absence of an avowed class suit or the creation of a fund, as it were, through *stare decisis* rather than through a decree -- hardly touch the power of equity in doing justice as between a party and the beneficiaries of his litigation.

Id. at 167. The Court held that "the District Court may entertain the petition for reimbursement in the light of the appropriate equitable considerations." *Id.* at 170.

In a 1970 case, *Mills v. Electric Auto-Lite,* 396 U.S. 375 (1970), the Supreme Court went beyond the "traditional metes and bounds of the [common fund] doctrine" and embraced a companion doctrine called the "substantial benefit" doctrine. *Id.* at 395. Creation or preservation of a common fund is not required under the substantial benefit doctrine; neither is an actual monetary recovery. *Id.* at 392. *Mills* involved a challenge by several minority shareholders to the merger of Electric Auto-Lite Company into Mergenthaler Linotype Company. Mergenthaler owned a majority of the shares of Electric Auto-Lite but not enough to approve the merger, which required a two-thirds vote. The dissenting shareholders established that the merger had been accomplished through the use of a materially false or misleading proxy statement. Observing that "informed corporate suffrage" is an important policy under securities laws, and that the suing shareholders had therefore "rendered a substantial service to the corporation and its shareholders," the Supreme Court held that all shareholders should bear the costs of the expenses of the litigation and remanded the case for an award of attorney fees against the corporation. *Id.* at 396-97.

Two years later the Court applied the substantial benefit doctrine to a case involving a union. In *Hall v. Cole,* 412 U.S. 1 (1972), the plaintiff, who was a union member, had been expelled from the union following his introduction of a set of resolutions at a union meeting which were critical of union officers. Following his expulsion he sued, claiming that his expulsion violated his right to free speech as guaranteed by the Labor-Management Reporting and Disclosure Act of 1959. He prevailed and sought attorney fees. Citing *Mills*, the Court concluded that his litigation had substantially benefited all union members by dispelling the "'chill' cast upon the rights of others [union members]." *Id.* at 8. It held that the members should share the expenses of litigation and that plaintiff's attorney fees should be paid "out of the union treasury." *Id.* at 8-9.

Finally, in *Boeing Co. v. Van Gemert,* 444 U.S. 472 (1980), the Supreme Court considered an action brought by owners of certain convertible debentures of The Boeing Company. Boeing issued a call on the debentures, offering to redeem each $100 of principal for $103.25, which was the default option, or for two shares of the company's common stock. The call, which was through newspaper ads and mailings to owners who had registered their debentures, was issued in March 1966, and the response deadline was

March 29, 1966. At the time of the deadline, two shares of common stock were worth $316.25, or three times the cash offer. Owners of over a million dollars, face value, of debentures failed to meet the deadline and were by default required to accept the cash. Some obviously unhappy debenture holders cried foul and commenced a class action alleging that Boeing had violated federal and state securities laws requiring reasonable notice of the proposed redemption. They prevailed and requested attorney fees.

The Supreme Court in *Boeing* held that the suing shareholders were entitled to attorney fees but premised their decision on the common fund doctrine. *Id.* at 478-79. The district court had ordered Boeing to deposit the amount due the class into an escrow account at a commercial bank and had appointed a master to sort out individual claims. *Id.* at 476. Since a fund had been created by the lawsuit, the Court held that it was appropriate to assess the "attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.* at 478.

The common fund doctrine is firmly established in Montana. In a 1933 case the Supreme Court acknowledged the doctrine, holding, "When a fund is brought into court through the service of an attorney, or where his services have added to or preserved or increased the amount being administered, the court of primary jurisdiction may properly allow a reasonable compensation for his services to be paid from the fund." *In re Baxter's Estate,* 94 Mont. 257, 271, 22 P.2d 182 (1933) (quoting from *Ford v. Gilbert,* 44 Or. 259, 75 Pac. 138). However, the Court held that the doctrine was inapplicable to the facts of the case because the plaintiff had not preserved or enhanced a fund.

In *Hardware Mutual Casualty Co. v. Butler,* 116 Mont. 73, 86-87, 148 P.2d 563 (1944), the Court applied the common fund doctrine in a subrogation case involving workers' compensation benefits. In that case, the widow of a deceased worker, who was killed in a two car automobile accident, sought and received death benefits under the Workers' Compensation Act. The widow then employed an attorney who negotiated a settlement of a third-party claim against the driver of the other automobile. The Industrial Accident Board, which was paying the workers' compensation benefits, asserted that it was entitled its full, statutory subrogation interest without deduction of any attorney fees. The Supreme Court rejected its claim, holding, "[W]here as here, one litigant has borne the burden and expense of successful litigation which has created and brought into court a fund in which others share with him, it is only just and equitable that those who share in the benefits should contribute to the payment for the services of the attorney whose labors resulted in the creating or preserving of such common fund." *Hardware Mutual Casualty Co. v. Butler,* 116 Mont. 73, 86-7, 148 P.2d 563 (1944). The Court reached the same result in a 1978 subrogation case. *Tuttle v. Morrison-Knudsen Co., Inc,* 177 Mont. 166, 171, 580 P.2d 1379, 1382 (1978). It also invoked the common fund doctrine in a common disaster case involving 31 separate claims and lead counsel. *Means v. Montana Power Co.,* 191 Mont. 395, 404, 625 P.2d 32, 37 (1981).

The Montana Supreme Court has not expressly adopted the substantial benefit doctrine, but language in *Helena Elementary School Dist. No. 1. v. State of Montana,* 236 Mont. 44, 59, 769 P.2d 684, 693 (1989), suggests that it will do so in an appropriate case. In *Helena Elementary* the Court affirmed a district court decision that both the common fund and substantial benefit doctrines were inapplicable to the particular facts of the case. Concerning the substantial benefit argument, the Court said, "[U]nder the 'substantial benefit' concept. . . the District Court [properly] concluded that no substantial benefit had resulted from its opinion and that no such benefit would accrue unless the Legislature acts." *Id.*

It is against this legal background that the petitioners in the present case seek an award of attorney fees.

<u>Discussion</u>

The authority of courts to award attorney fees in absence of statute or contract rests on "their equitable powers . . . when the interests of justice so require." *Hall v. Cole,* 412 U.S. 1, 4-5 (1973); and *see Sprague v. Ticonic Bank,* 307 U.S. 161, 166 (1939). The common fund doctrine is "rooted in equitable concepts of quasi-contract, restitution and recapture of unjust enrichment." *Means v. Montana Power Co.,* 191 Mont. 395, 403, 625 P.2d 32, 37 (1981); *and see Dawson, Lawyers and Involuntary Clients: Attorney Fees From Funds,* 87 Harv.L.Rev. 1597 (1974) ("This fund concept is employed to realize the broadly defined purpose of recapturing unjust enrichment."). Ultimately, the common fund doctrine (as well as the substantial benefit doctrine) "is in practice a device whose purposes are (1) to augment the income of lawyers and (2) distribute the added cost that is thus created among the beneficiaries of litigation." *Dawson* at 1653.

But the two doctrines have not been stretched so far as to encompass every situation where a plaintiff sets a precedent which benefits others who may be similarly situated. "Recent cases still refuse awards of counsel fees against disconnected litigants in disconnected lawsuits, though their success has been assured through *stare decisis." Dawson* at 1653. It is still generally true that "[o]ne who is influential in litigation leading to the announcement of a rule of law does not thereby gain a right to compensation from all those who later benefit from the application of the rule." *Whittier v. Emmet,* 281 F.2d 24, 32 (1960).

In this case the Court must first determine whether it has equitable powers to consider the petitioners' request. If it has such powers, then it must determine whether the common fund or substantial benefit doctrine applies to the facts of this case.

I. Jurisdiction/Equitable Powers

Respondent and intervenors argue that attorney fees are regulated by statute and that the Court lacks jurisdiction to award attorney fees in circumstances other than those prescribed by statute. The Court agrees.

In *Fleischmann Corp. v. Maier Brewing,* 386 U.S. 714, 719 (1967), the United States Supreme Court specifically noted that equitable doctrines permitting awards of attorney fees "were not . . . developed in the context of statutory causes of action for which the legislature had prescribed intricate remedies." *Fleischmann Corp. v. Maier Brewing,* 386 U.S. 714, 719 (1967). In discussion that followed, the Supreme Court acknowledged that Congress may limit or preclude equitable awards of attorney fees. It held, "When a cause of action has been created by a statute which expressly provides the remedies for vindication of the cause, other remedies should not readily be implied." *Id.* at 720.

At issue in *Fleischmann* was a request for attorney fees in connection with successful trademark litigation. The statute governing trademarks set forth specific remedies, including an award of "costs", but did not expressly authorize any award of attorney fees. The Court held that the statutory remedies were exclusive and that it was precluded from judicially creating any additional remedy. It therefore denied the request for attorney fees.

In *Hall v. Cole,* 412 U.S. 1 (1973), the Court again discussed the interplay between a statute and the Court's equitable powers. It acknowledged that "even where 'fee-shifting' would be appropriate as a matter of equity, Congress has the power to circumscribe such relief." *Id.* at 9. However, as discussed previously in this Order, the Court in *Hall* awarded attorney fees to the union member who had wrongfully been expelled from his union. The Court held that the governing statutes at issue in that case did not preclude an equitable award of attorney fees because the statute did **not** "meticulously detail the remedies available to a plaintiff" and in fact "broadly authorizes the courts to grant 'such relief (including injunctions) as may be appropriate.'" *Id.* at 10.

In this case, the statutory scheme is more akin to the one considered in *Fleischmann*. Sections 39-71-611 to -614, MCA, of the Workers' Compensation Act specifically regulate attorney fees. Fee agreements between attorneys and claimants are specifically governed by section 39-71-613, MCA. The Act does not contemplate or authorize the exaction of attorney fees from non-client claimants. The legislature's detailed regulation of attorney fees is strong evidence that it intended its regulations to be exclusive. I decline petitioners' invitation that this Court create a separate equitable remedy regarding attorney fees.

In reaching this result, I have considered the Montana Supreme Court's decisions in *Hardware Mutual Casualty Co. v. Butler*, 116 Mont. 73, 148 P.2d 563 (1944), and *Tuttle v. Morrison-Knudsen Co., Inc.,* 177 Mont. 166, 580 P.2d 1379 (1978). As previously discussed, the Supreme Court held in each of those cases that the common fund doctrine applied to the distribution of proceeds of third-party litigation to a subrogated workers' compensation insurer. Those cases, however, did not involve fees with respect to a claim for workers' compensation benefits, rather they involved fees for the successful prosecution of an action against a third-party. While the subrogation statute in *Butler* provided that "[a]ll expense of **prosecuting** such action shall be borne by the employee", the Court interpreted that section as applying only to the actual prosecution of the action by the employee and refused to construe the language as precluding an award of attorney fees from settlement or litigation proceeds. *Id*. at 86. Thus, as construed by the Court, the statute did not speak to attorney fees in successful litigation and the Court's equitable power to award attorney fees was not circumscribed by statute. Moreover, the invocation of the common fund doctrine was bolstered by the fact that subrogation has historically been deemed an equitable remedy. *See id.* at 85.

II. Applicability of Common Fund and Substantial Benefit Doctrine

Even if authority to make an equitable attorney fee award is not circumscribed by statute, petitioners' request stretches common fund and substantial benefit doctrines far beyond any previously recognized application. This Court declines to stretch the doctrine that far.

Initially, it is apparent that the common fund doctrine does not apply at all since there is no common fund. While *Murer II* may support numerous individual claims for additional benefits, those claims do not constitute a common fund. The fact that the claims are against a common insurer is also insufficient to create a common fund. The claims are not payable out of any particular assets of the State Fund and the Court has not ordered the State Fund to escrow an amount to satisfy claims that may be made pursuant to *Murer II.*

The petitioners' arguments under the substantial benefit doctrine also fail. The claims of others who may be affected by the precedent set in this case are individual claims which may vary factually and may involve other issues. *Murer II* did not create undisputed liability as to all of the claimants who may ultimately benefit by the decision.

One of the basic features of common fund and substantial benefit cases is the nature of the entitlements of the persons benefited by the litigation. Generally, that entitlement has been close to automatic. At least it has been subject only to simple verification and/or amenable to simple mathematical computation. *See Boeing*, 444 U.S. at 479. In *Boeing* the debenture owners merely had to establish their ownership of debentures. In *Greenough* the bondholders had only to establish their ownership of bonds.

In *Sprague* the trustees and their beneficiaries only had to establish their interests as trustees and beneficiaries. In *Mills* and *Hall* the benefit of the litigation was simply the vindication of the rights of equity owners of a corporation and of members of a union. In *Means* the efforts of lead counsel led to actual settlement of the claims of the benefiting plaintiffs. In each of these cases, the claims of the persons ultimately bearing the litigation expenses were fully resolved without the need for any additional or ancillary litigation.

The entitlements of the non-participating claimants in this case are not so readily determined. In *Murer v. State Compensation Mut. Ins. Fund*, 257 Mont. 434, 437, 849 P.2d 1036, 1038 (1993), the Supreme Court enumerated some of the differences among claimants:

> There would be many different situations among the estimated two thousand claimants who would be included within this class action so that the typicality of the Rule requirement could not be met. Claimants would include unrepresented claimants and those who are already represented by other attorneys, who are suffering either from an industrial injury or occupational disease; claimants whose cases are either open or have been settled; claimants who may be entitled to either a temporary total or permanent total wage supplement impairment, rehabilitation, or death benefits; and different rates for various claimants, depending on whether they were injured or were disabled by an occupational disease. There would be other variables relative to the award of attorney fees and the imposition of penalties with two thousand claimants and two hundred insurers. There are times when competent counsel are not able to fairly and adequately protect the interest of the class.

While only one insurer is now involved in the present case, and petitioners are seeking attorney fees only with respect to claims against that insurer, there are still approximately 1,100 claimants involved. (3/24/95 Tr. at 7.) Moreover, several of the claims in this case have additional issues which must be resolved, such as the effect of written settlements on some of the petitioners' entitlements.

And that is not the end of it. After remand, the petitioners renewed their request for class certification, indicating that other issues involving other claimants remain unresolved by *Murer II.* In the Stipulated Facts and Issues, Contentions and Contested Issues filed by the parties on March 1, 1995, the parties listed numerous unresolved issues. As to some of the issues, the parties could not even agree whether they were properly raised in this action. And, at a conference held with attorneys after remand, petitioners' attorneys indicated that there are numerous issues unresolved by *Murer II* which will require additional litigation. (3/24/95 Tr. at 21-22.) One of petitioners' attorneys advised the Court that unless the present action is expanded, "[T]here is going to be another lawsuit." (*Id*. at

39.) Indeed the Court and counsel discussed the possibility of counsel sitting down to "identify what are the [remaining] issues that need to be litigated, get the handful of claimants that represent those issues and bring one separate, clean case and do it outside of class certification." (*Id*. at 41-42.)

From all of this, it is clear that *Murer II* did not provide a neat resolution of all issues arising out of the freeze on benefits. Other issues need to be resolved to determine individual entitlements. Other petitions wait in the wings. Thus, the precedent established in *Murer II* is not equivalent to those precedents in which the courts have awarded attorney fees.

In common fund cases, the taxing of attorney fees can be justified by a legal fiction that the fees are assessed against the fund. *See Passtou, Inc. v. Spring Valley Center,* 501 A.2d 8 (D.C. App. 1985). In cases involving shareholders and union members, the assessment of fees against the corporation and union can be justified by the fact that the corporations and unions are the sum of their individual shareholders and members, and that the corporations and unions are likely to inform those individuals concerning the litigation. But where no common fund or common entity exists, and the case has not been certified as a class action, imposition of attorney fees amounts to the imposition of personal liability on absent class members, raising serious due process concerns. *Id.* Petitioners would answer those concerns by requiring the giving of notice to every potentially affected claimant. But such notice would have the effect of converting this action to a limited class action without the opportunity normally afforded members of a class to opt out. See Rule 23(c)(2), Mont.R.Civ.P.

The parties have not cited any common fund or substantial benefit case factually similar to the present one. I have looked for such cases involving insurers and precedents which are stare decisis with respect to similar claims of other individuals. The West key number system classifies common fund/substantial benefit cases under Attorney and Client, key number 155. Limiting a West Law search to this headnote, I searched for headnotes containing either the words "common fund" or "substantial benefit" in conjunction with "insurance" or "insurer" and "stare decisis." I conducted the search in the Allstates and AllFeds databases. The searches identified approximately a dozen and a half cases. None involved facts remotely similar to those in the present case. Many involved insurance subrogation issues.

Petitioners have failed to establish any entitlement to attorney fees under common fund or substantial benefit doctrines.

PARTIAL JUDGMENT

For the reasons set forth in the preceding discussion, petitioners' request for an award of attorney fees with respect to benefits which may become payable by the State Fund to non-party claimants on account of the precedent established in *Murer v. State Compensation Ins. Fund,* 267 Mont. 516, 885 P.2d 428 (1994), is **denied.** The notice of lien served by petitioners' attorneys on the State Fund with respect to such amounts is declared **null and void**.

Dated in Helena, Montana, this 7th day of August, 1995.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Allan M. McGarvey
Mr. Roger M. Sullivan
Mr. James H. Goetz
Mr. Bradley J. Luck
Mr. Ira Eakin
Mr. Larry W. Jones
Mr. Charles G. Adams (Courtesy Copy)
Mr. Mark E. Cadwallader (Courtesy Copy)
Mr. Chuck Edquest (Courtesy Copy)
Mr. Thomas M. Keegan (Courtesy Copy)
Ms. Janice S. VanRiper (Courtesy Copy)