

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 107A

WCC No. 9508-7376

BRIAN OSTWALD,

Petitioner,

vs.

PLUM CREEK MANUFACTURING,

Respondent/Employer.

ORDER AND JUDGMENT GRANTING ATTORNEY FEES AND COSTS

Claimant seeks attorney fees in the amounts of \$3,237.50 for Mr. David W. Lauridsen and \$1,640.00 for Mr. Chas. C. Dearden, for a total of \$4,877.50 in fees. Respondent objects to these amounts because the hourly rate upon which they are based exceed \$75 per hour.

Respondent argues that the Division rule fixing an hourly maximum of \$75 must be applied. That rule states in part:

24.29.3802 ATTORNEY FEE REGULATION (1) This rule is promulgated under the authority of sections 39-71-203 and 39-71-613, MCA, to implement regulation of the fees charged to claimants by attorneys in workers' compensation cases as provided in section 39-71-613, MCA.

(4) The fee schedule set forth in subsection (3) [contingent percentage fee arrangement] does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate **not exceeding \$75.00 per hour**, but the total fee charged may not exceed the schedule set forth in subsection (3) except as provided in subsection (7). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour. [Emphasis added.]

The rule became effective on November 11, 1988, and implemented the second sentence of 39-71-614(2), MCA (1987), which provides:

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and

current hourly rate for legal work performed in this state, **subject to a maximum established by the division.** [Emphasis added.]

It has long been the rule that the law in effect on the date of a worker's injury governs the worker's entitlement to compensation. Section 39-71-614, MCA (1987) was amended in 1989 by changing the reference from the "division" to "department." All other aspects of the statute remain the same and govern. Since this case involves a 1994 injury, claimant's attorney fees cannot exceed the \$75.00 maximum established by the department.

Respondent further objects to a total of 9.8 hours claimed by Mr. Dearden. Respondent argues that .6 hours spent on August 25, 1995, were "simply related to the association of a second attorney." It next objects to .1 hour on September 5, 1995 and .1 hour on September 28, 1995 as being duplicative of activity performed by Mr. Lauridsen. Finally, it objects to the 6 hours on November 21, 1995 for the deposition of Dr. Sechrest and the 3 hours at trial on December 12, 1995, for the reason that Mr. Lauridsen took the deposition and was responsible for the trial. The Court agrees and disallows 9.8 hours claimed by Mr. Dearden.

Respondent objected to the \$100.00 charge for the November 27, 1995 conference call with Dr. Sechrest. Claimant withdrew that cost.

IT IS HEREBY ORDERED that the Plum Creek Manufacturing shall pay \$1,942.50 (\$75 x 25.9) in attorney fees, along with an additional \$191.20 in costs to Mr. Lauridsen and \$495.00 (\$75 x 6.6) in attorney fees to Mr. Dearden.

This ORDER and JUDGMENT is final.

Dated in Helena, Montana, this 12th day of June, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Chas. C. Dearden
Mr. David W. Lauridsen
Mr. Kelly M. Wills
Submitted: May 20, 1996