

WORKERS' COMPENSATION COURT

Hearing No. 3366
Volume XVI

Helena, Montana
October 22, 2003

EULA MAE HIETT

Sydney E. McKenna

vs.

MSGIA

Leo S. Ward

WCC No. 2001-0278

A status conference was held on Wednesday, October 22, 2003, at the Workers' Compensation Court, Helena, Montana, with the above counsel. The court reporter in this matter was Ms. Debbie Eickhoff. A transcript of the conference will be prepared and posted on the Court's WEB site.

Mr. Ward advised the Court that MSGIA does not intend to challenge the retroactivity of the *Hiett* decision or the common fund lien with respect to permanently partially disabled claimants. He further said that MSGIA is presently in the process of determining which permanently partially disabled claimants are entitled to additional medical benefits on account of the *Hiett* decision with a view to paying those benefits.

On her part, Ms. McKenna indicated that she seeks common fund fees retrospectively only, i.e, with respect to secondary medical benefits denied prior to the date of the Supreme Court decision in *Hiett*. However, Ms. McKenna is claiming a global lien with respect to claimants of other insurers who are entitled to additional medical benefits as a result of the *Hiett* decision, again on a retrospective basis only. She will draft a notice and order to be sent to insurers writing Montana workers' compensation insurance since July 1, 1993. The notice will be prepared for the Court's signature and contain notice of her lien claim and authorize the insurers to withhold the amount of the lien claimed until the validity of the global lien is finally adjudicated. Mr. Ward will be provided a copy and opportunity to comment and provide proposed revisions. The Court will then review and finalize the notice. The Court will request the Department for mailing labels and provide Ms. McKenna with Court envelopes with the labels and the original order. Ms. McKenna will be responsible for copying the order and mailing.

Mr. Ward suggested that the Montana Hospital Association and the Montana Physicians' Association be provided with notice of the lien and the nature of the claim, and that they be provided an opportunity to be heard regarding the claim. Ms. McKenna does not oppose such notice. The Court will draft a proposed notice for counsels' consideration.

The singular issue remaining in this case is whether the common fund extends to medical benefits denied permanently totally disabled claimants on account of the secondary medical benefits rule. MSGIA takes the position that since the claimant was permanently partially disabled any common fund extends only to PDT claimants. Judge McCarter asked if there is any difference in entitlement based under secondary benefits rule based on permanent disability status – PPD versus PTD status and indicated that if there is none then the *Hiett* decision probably benefits both PPD and PTD claimants and both classes would be encompassed in any common fund analysis as were the various classes of claimants in *Murer*. Mr. Ward agreed to attempt to determine if there are significant numbers of PTD claimants who might be effected by the decision and then determine whether to pursue the issue.

Mr. Ward will report back to the Court in four weeks (November 19, 2003) concerning progress in identifying affected claimants and whether MSGIA will resist including PTD claimants. Meanwhile, Ms. McKenna will prepare and circulate a proposed notice to other insurers.

Counsel are to report back to the Court by November 21, 2003, of their progress on the various matters addressed above.

PATRICIA J. KESSNER
Clerk of Court

By: Mickey E. Lindgren
Deputy Clerk of Court