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FILED

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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

EULA MAE HIETT,

Petitioner/Appellant,

v.

MISSOULA COUNTY PUBLIC
SCHOOLS,

Respondent/Insurer/Employer.

WCC No. 2001-0278

**MOTION AND BRIEF FOR
APPLICATION OF THE COMMON
FUND DOCTRINE**

COMES NOW the Claimant/Petitioner, Eula Mae Hiett, and moves the Court to apply the Common Fund Doctrine in this case so that medical benefits will be provided to her and to other claimants who were not parties to this action, and appropriate attorney fees will be distributed among those claimants benefiting from the decision of the Montana Supreme Court in this litigation.

ARGUMENT

As a result of the recent decision of the Montana Supreme Court in *Hiett v. Missoula County Public Schools*, 2003 MT 213 (decided August 14, 2003), Mrs. Hiett submits that a common fund has been established, increased and/or preserved for permanently partially disabled and permanently totally disabled workers' compensation claimants with dates of injury onset between July 1, 1993 and the present, who have been denied medical benefits after reaching maximum medical improvement and who are not otherwise lawfully precluded from obtaining such benefits. This common benefit will provide medical benefits to Mrs. Hiett and other workers' compensation claimants who are not parties to this action.

Therefore, in accord with the law of Montana, Mrs. Hiett requests this Court apply the Common Fund Doctrine to this action, which would provide the most efficient method available to deliver the medical benefits to her and to other uninvolved claimants.

This Court recently acknowledged the viability of the Common Fund Doctrine in *Flynn v. State Compensation Insurance Funds*, 2003 MTWCC 55 in August 5, 2003, *Murer v. State Compensation Mutual Insurance Fund*, 283 Mont. 210, 223, 942 P.2d 69, 76 (1997):

[W]hen a party, through active litigation, creates a common fund which directly benefits an ascertainable class of non-participating beneficiaries, these non-participating beneficiaries can be required to bear a portion of the litigation costs, including reasonable attorney fees. Accordingly, the party who creates the common fund is entitled, pursuant to the common fund doctrine, to reimbursement of his or her reasonable attorney's fees from that fund.


Mrs. Hiett engaged in complex and lengthy litigation that resulted in legal precedent, which directly benefits a substantial number of claimants who were neither parties to nor involved in *Hiett* litigation. The undersigned attorney incurred legal costs and fees in establishing the right to medical benefits which claimants are legally entitled to receive. The absent claimants will receive the benefit of the counsel's efforts even though they were not required to intervene, file suit, risk expenses or hire an attorney. *Murer*, 942 P.2d at 77.

Since Mrs. Hiett's active litigation created a common fund that directly benefits an ascertainable class of non-participating beneficiaries, those non-participating beneficiaries should bear a portion of the costs including reimbursement of her reasonable attorney fees from that fund. See *Murer*, 942 P.2d at 76.

CONCLUSION

Pursuant to the common doctrine doctrine, Mrs. Hiett should be entitled to common fund attorney fees. Accordingly, this Court should supervise payment of *Hiett* benefits to absent claimants, and find that Mrs. Hiett's attorneys are entitled to reasonable attorney fees for the establishment, increase and/or preservation of the common fund involved in this case.

DATED this 18th day of August 2003.



SYDNEY E. MCKENNA

Attorney for Petitioner, Eula Mae Hiett

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the 18 day of August 2003, I mailed a true and accurate copy of the foregoing, postage prepaid, to the following persons:

Leo Ward
Attorney at Law
P.O. Box 1697
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Carl A. Holland