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FILED

FEB 23 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

EULA MAE HIETT,)	WCC No. 2001-0278
)	
Petitioners,)	
)	
vs.)	MOTION TO INTERVENE
)	AND SUPPORTING BRIEF
MISSOULA COUNTY PUBLIC SCHOOLS,)	
)	
Respondent.)	

MOTION

COMES NOW Liberty Northwest Insurance Corporation (hereinafter "Liberty") pursuant to ARM 24.5.309 and Rule 24(a) of the Montana Rules of Civil Procedure requesting that Liberty be allowed to intervene in this matter for the reasons set forth with particularity in the brief that appears immediately below.

BRIEF

ARM 24.5.309 incorporates by reference Rule 24(a) of the Montana Rules of Civil Procedure. Pursuant to that rule a party may intervene as a matter of right "(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

In Hiatt v. Missoula County Public Schools, 2003 MT 213, 317 Mont. 95, 75 P.3d 341, the Montana Supreme Court clarified what constitutes "primary medical care." On remand, petitioner's counsel is seeking common fund attorney fees. In Ruhd v. Liberty Northwest Ins.

Corp., 2004 MT 236, 322 Mont. 478, 97 P.3d 561 this Court is responsible for enforcing the global common fund, should one exist in this case. Therefore, Liberty Northwest Insurance Corporation, as a plan II insurer, asks to intervene in this case.

This Court in Schmill v. Liberty Northwest Ins. Corp., WCC No. 2001-0300, Order Permitting Intervention filed May 21, 2003, has previously allowed insurers to intervene during post-remand proceedings in common fund cases.

During a telephone conference call with the Court on December 16, 2004, no parties voiced an objection to Liberty's intent to intervene.

For the reasons stated above, Liberty believes it has satisfied the requirements of Rule 24(a) of the Montana Rules of Civil Procedure, incorporated by reference in ARM 24.5.309, and requests the Court to issue an order allowing Liberty to intervene and participate fully as a party in the litigation that has been initiated by the petitioner.

DATED this 22ND day of February, 2005.



Larry W. Jones
Attorney for Respondent/Insurer

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2005, I served the original of the foregoing MOTION TO INTERVENE AND SUPPORTING BRIEF, by FAX (406) 444-7798 and first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

Sydney E. McKenna
Tornabene & McKenna, PLLC
P. O. Box 7009
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Via FAX 327-8706 & U.S. Mail

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Cindy Brown Felton