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FEB 2 3 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

EULA MAE HIETT,

Petitioner,

v.

MISSOULA COUNTY PUBLIC
SCHOOLS,

Respondent/Insurer.

WCC No. 2001-0278

**STATE FUND'S UNOPPOSED
MOTION TO INTERVENE, WITH
SUPPORTING BRIEF**

COMES NOW the Montana State Fund ("State Fund"), through counsel, and hereby moves to intervene in the above-referenced matter. For the reasons stated herein, the State Fund requests this Court to grant its motion.

INTRODUCTION

As the Court is aware, in *Hiett v. Missoula County Pub. Schs.*, 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. As a result of the Montana Supreme Court's decision in *Ruhd v. Liberty Nw. Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561 ("*Ruhd II*"), this Court is responsible for enforcing the global common fund, should one exist in this case. Therefore, the State Fund, as the Plan III insurer, seeks to intervene in this matter to protect its own interests in the outcome of the *Hiett* litigation.

ARGUMENT

I. INTERVENTION IS PROPER UNDER THE PROCEDURAL RULES OF THIS COURT.

Rule 24.5.309 of the Procedural Rules of the Workers' Compensation Court governs intervention:

- (1) Intervention in a pending proceeding shall be governed by the considerations set forth in Rule 24(a) and (b) of the Mont. R. Civ. P
- (2) Unless otherwise permitted by order of the court, a motion to intervene must be served within 30 days of the service of the petition by the court. The motion shall state the grounds upon which intervention is sought. A copy of the motion, supporting brief and any affidavits shall be served upon all parties. Any party to the dispute shall have 10 days following service to serve an answering brief. The court, in its discretion, will determine whether or not to allow intervention.

Although more than thirty days have elapsed since Hielt filed her Petition, the express language of Rule 24.5.309 gives this Court the discretion to allow a party to intervene at any step of the proceeding. See *Uninsured Employers' Fund v. American Intl. Group*, WCC No. 2000-0062, 20000 ML 2579, ¶ 4. Intervention is proper under Rule 24.5.309 because of the impact *Hielt* may have on the State Fund's financial viability, and the State Fund wishes to participate in the post-remand briefing process in this common fund case. Recognizing the uniqueness of common fund litigation, this Court has previously allowed insurers to intervene during post-remand proceedings in common fund cases. See *Schmill v. Liberty Nw. Ins. Corp.*, WCC No. 2001-0300, Order Permitting Intervention (May 21, 2003). Lastly, during the conference on December 16, 2004, no parties voiced an objection to the State Fund's intent to intervene. Therefore, the State Fund requests this Court to allow it to intervene under Rule 24.5.309.¹

CONCLUSION

This Court has the discretion to allow intervention under Rule 24.5.309. The State

¹ If this Court declines to allow the State Fund to intervene under Rule 24.5.309, then the State Fund requests intervention under Montana Rules of Civil Procedure 24.

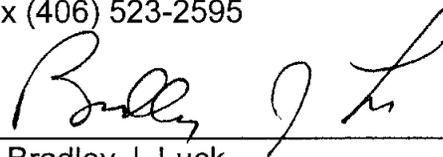
Fund's legally protectable interests in the outcome of *Hielt* make intervention proper under the rules of this Court. In addition, the State Fund's desire to participate in the post-remand litigation, including the claim for global common fund attorney fees, makes intervention proper, especially in light of the holding in *Ruhd II*. Lastly, no parties have voiced an objection to the State Fund's intent to intervene. Accordingly, the State Fund requests this Court to allow it to intervene.

DATED this 22 day of February, 2005.

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By



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CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Intervenors, hereby certify that on this 22 day of February, 2005, I mailed a copy of the foregoing *State Fund's Unopposed Motion to Intervene, with Supporting Brief*, postage prepaid, to the following persons:

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