

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**WCC No. 2001-0278**

---

**EULA MAE HIETT**

**Petitioner**

**vs.**

**MONTANA SCHOOLS GROUP INSURANCE AUTHORITY**

**Respondent/Insurer**

**MONTANA STATE FUND**

**Intervenor.**

---

**SUMMONS**

The State of Montana to the following Insurers and Self-Insureds:

**ACCIDENT FUND INSURANCE COMPANY OF AMERICA; ACE AMERICAN INSURANCE COMPANY; ACE FIRE UNDERWRITERS INS CO; ACE INDEMNITY INSURANCE COMPANY; ACE PROPERTY & CASUALTY INS CO; ACIG INSURANCE COMPANY; ADVANTAGE WORKERS COMP INS CO; AIG NATIONAL INSURANCE COMPANY; AIU INSURANCE CO; ALASKA NATIONAL INSURANCE CO; ALEA NORTH AMERICA INSURANCE COMPANY; ALLIANZ GLOBAL RISKS US INSURANCE CO; ALLIED MUTUAL INSURANCE CO; ALLSTATE INSURANCE CO; AMCO INSURANCE COMPANY; AMERICAN & FOREIGN INS CO; AMERICAN ALTERNATIVE INS CORP; AMERICAN AUTOMOBILE INS CO; AMERICAN CASUALTY CO OF READING PA; AMERICAN ECONOMY INS CO; AMERICAN EMPLOYERS INSURANCE CO; AMERICAN GUARANTEE & LIABILITY INS CO; AMERICAN HARDWARE MUTUAL INS CO; AMERICAN HOME ASSURANCE CO; AMERICAN INSURANCE CO; AMERICAN INTERNATIONAL PACIFIC INS CO; AMERICAN INTERSTATE INS CO; AMERICAN MANUFACTURERS MUTUAL INSURANCE; AMERICAN MOTORISTS INSURANCE CO; AMERICAN PROTECTION INSURANCE CO; AMERICAN SAFETY CASUALTY INS CO; AMERICAN STATES INS CO; AMERICAN ZURICH INSURANCE CO; AMERISURE MUTUAL INSURANCE CO; ARCH INSURANCE COMPANY; ARGONAUT INSURANCE CO; ARGONAUT MIDWEST INS CO; ARGONAUT NORTHWEST INS CO; ASSOCIATED INDEMNITY CORP;**

ASSOCIATED LOGGERS EXCHANGE; ASSURANCE COMPANY OF AMERICA; ATLANTIC MUTUAL INSURANCE CO; AUTOMOBILE INS CO OF HARTFORD; BANKERS STANDARD INSURANCE CO; BENCHMARK INSURANCE COMPANY; BIRMINGHAM FIRE INS CO OF PA; BITUMINOUS CASUALTY CORP; BITUMINOUS FIRE & MARINE INS CO; CALIFORNIA COMPENSATION INS CO; CAMDEN FIRE INSURANCE ASSOCIATION; CASUALTY RECIPROCAL EXCHANGE; CENTENNIAL INSURANCE CO; CENTRE INSURANCE COMPANY; CENTURY INDEMNITY CO; CHARTER OAK FIRE INSURANCE CO; CHUBB INDEMNITY INS CO; CHURCH MUTUAL INSURANCE CO; CINCINNATI INSURANCE COMPANY; CLARENDON NATIONAL INS CO; COMMERCE & INDUSTRY INSURANCE CO; COMMERCIAL INS CO OF NEWARK NJ; CONNECTICUT INDEMNITY CO; CONTINENTAL CASUALTY CO; CONTINENTAL INSURANCE CO; CONTINENTAL WESTERN INS CO; COREGIS INSURANCE COMPANY; COSTCO WHOLESALE CORP; COUNTRY CASUALTY INS CO; CREDIT GENERAL INSURANCE CO; CUMIS INSURANCE SOCIETY INC; DISCOVER PROPERTY & CASUALTY INS CO; ELECTRIC INSURANCE CO; EMCASCO INSURANCE COMPANY; EMPLOYEE BENEFITS INS CO; EMPLOYERS FIRE INSURANCE CO; EMPLOYERS INS OF WAUSAU MUTUAL CO; EMPLOYERS MUTUAL CASUALTY CO; EVEREST NATIONAL INS CO; EXPLORER INSURANCE COMPANY; FAIRFIELD INSURANCE COMPANY; FAIRMONT INSURANCE CO; FARMERS INSURANCE EXCHANGE; FARMINGTON CASUALTY CO; FARMLAND MUTUAL INSURANCE CO; FEDERAL EXPRESS CORP; FEDERAL INSURANCE CO; FEDERATED MUTUAL INSURANCE CO; FEDERATED RURAL ELECTRIC INS EXCHANGE; FEDERATED SERVICE INSURANCE CO; FEDEX GROUND PACKAGE SYSTEM INC; FIDELITY & CASUALTY CO OF NEW YORK; FIDELITY & DEPOSIT CO OF MARYLAND; FIDELITY & GUARANTY INS CO; FIDELITY & GUARANTY INS UNDERWRITERS; FIRE & CASUALTY INS CO OF CONN; FIREMANS FUND INS CO; FIREMANS FUND INS CO OF WISCONSIN; FIREMENS INS CO OF NEWARK NJ; FIRST LIBERTY INSURANCE CORPORATION; FIRST NATIONAL INS CO OF AMERICA; FLORISTS MUTUAL INSURANCE CO; FLYING J INC; FREMONT COMPENSATION INS CO; FREMONT IND CO OF THE NORTHWEST; FREMONT INDEMNITY CO; FREMONT INDEMNITY CO; FRONTIER INSURANCE COMPANY; GENERAL CASUALTY CO OF WISCONSIN; GENERAL INS CO OF AMERICA; GLENS FALLS INSURANCE CO; GLOBE INDEMNITY CO; GRANITE STATE INSURANCE CO; GREAT AMERICAN ALLIANCE INS CO; GREAT AMERICAN ASSURANCE CO; GREAT AMERICAN INS CO OF NEW YORK; GREAT AMERICAN INSURANCE CO; GREAT NORTHERN INSURANCE CO; GREAT WEST CASUALTY CO; GREENWICH INSURANCE COMPANY; GROCERS INSURANCE COMPANY; GUIDEONE MUTUAL INS CO; GULF INSURANCE CO; HANOVER INSURANCE CO; HARTFORD ACCIDENT & INDEMNITY CO; HARTFORD CASUALTY INSURANCE CO; HARTFORD FIRE INSURANCE CO; HARTFORD INS CO OF THE MIDWEST; HARTFORD UNDERWRITERS INS CO; HIGHLANDS INSURANCE CO; HOLCIM (US) INC; THE

HOME INDEMNITY CO; HOME INSURANCE CO; HOMELAND CENTRAL INSURANCE CO; HOUSTON GENERAL INSURANCE CO; INDEMNITY INS CO OF NORTH AMERICA; INDIANA LUMBERMENS MUTUAL INS CO; INSURANCE COMPANY OF NORTH AMERICA; INSURANCE COMPANY OF STATE OF PA; INSURANCE COMPANY OF THE WEST; J H KELLY LLC; KANSAS CITY FIRE & MARINE INS CO; THE KROGER CO; LEGION INSURANCE CO; LES SCHWAB TIRE CENTERS OF MONT INC; LIBERTY INSURANCE CORP; LIBERTY MUTUAL FIRE INSURANCE CO; LIBERTY MUTUAL INSURANCE CO; LIBERTY NORTHWEST INS CORP; LM INSURANCE CORPORATION; LUCENT TECHNOLOGIES INC; LUMBER MUTUAL INSURANCE CO; LUMBERMENS MUTUAL CASUALTY CO; LUMBERMENS UNDERWRITING ALLIANCE; MACO WORKERS COMP TRUST; MARKEL INSURANCE COMPANY; MARYLAND CASUALTY CO; MHA WORKERS COMP TRUST; MID CENTURY INSURANCE CO; MIDDLESEX INSURANCE COMPANY; MILLERS FIRST INSURANCE COMPANY; MISSOULA COUNTY; MISSOULA COUNTY WC GROUP INS AUTHORITY; MITSUI SUMITOMO INS CO OF AMERICA; MITSUI SUMITOMO INS USA INC; MONTANA CONTRACTOR COMP FUND; MONTANA ELECTRIC & TELEPHONE POOL; MONTANA HEALTH NETWORK WC INS TRUST; MONTANA LOGGERS EXCHANGE; MONTANA MUNICIPAL INS AUTHORITY; MONTANA RESOURCES; MONTANA SCHOOLS GROUP INS AUTHORITY; MONTANA STATE FUND; MUS SELF-FUNDED WORK COMP PROGRAM; NATIONAL AMERICAN INSURANCE CO; NATIONAL FARMERS UNION PROP & CAS; NATIONAL FIRE INS CO OF HARTFORD; NATIONAL INDEMNITY COMPANY; NATIONAL SURETY CORP; NATIONAL UNION FIRE INS OF PITTSBURGH; NATIONWIDE AGRIBUSINESS INS CO; NATIONWIDE MUTUAL FIRE INSURANCE CO; NATIONWIDE MUTUAL INSURANCE CO; NEW HAMPSHIRE INSURANCE CO; NIAGARA FIRE INSURANCE CO; NN INSURANCE COMPANY; NORTH AMERICAN SPECIALTY INS CO; NORTH RIVER INSURANCE CO; NORTHBROOK INDEMNITY CO; NORTHERN ASSURANCE CO OF AMERICA; NORTHERN INS CO OF NEW YORK; NORTHWESTERN CORPORATION; NORTHWESTERN ENERGY LLC; NORTHWESTERN NATIONAL CASUALTY CO; OLD REPUBLIC INSURANCE CO; ONE BEACON AMERICA INSURANCE CO; ONE BEACON INSURANCE COMPANY; PACIFIC EMPLOYERS INSURANCE CO; PACIFIC INDEMNITY CO; PENNSYLVANIA MANUFACTURERS ASSOC; PENNSYLVANIA NATIONAL MUTUAL CASUALTY; PETROLEUM CASUALTY CO; PHARMACIST MUTUAL INSURANCE COMPANY; PHICO INSURANCE CO; PHOENIX INSURANCE CO; PLATTE RIVER INSURANCE COMPANY; PLUM CREEK MGMT CO LP; PLUM CREEK TIMBER CO INC; PROTECTIVE INSURANCE CO; QUANTA INDEMNITY COMPANY; REDLAND INSURANCE COMPANY; REGENT INSURANCE CO; RELIANCE INSURANCE CO; RELIANCE NATIONAL INDEMNITY CO; RELIANCE NATIONAL INSURANCE CO; REPUBLIC INDEMNITY CO OF AMERICA; REPUBLIC INDEMNITY CO OF CA; REPUBLIC WESTERN INSURANCE CO; ROCHDALE INSURANCE COMPANY; ROSEBURG FOREST PRODUCTS CO; ROYAL

**INDEMNITY COMPANY; ROYAL INS CO OF AMERICA; SAFECO INSURANCE CO OF ILLINOIS; SAFECO INSURANCE COMPANY OF AMERICA; SAFEGUARD INSURANCE COMPANY; SAFETY FIRST INSURANCE COMPANY; SAFETY NATIONAL CASUALTY CORP; SAFEWAY INC; SEABRIGHT INSURANCE COMPANY; SECURITY INS CO OF HARTFORD; SECURITY NATIONAL INS CO; SENTRY INSURANCE MUTUAL CO; SENTRY SELECT INSURANCE COMPANY; SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM; SOMPO JAPAN INSURANCE COMPANY OF AMERICA; ST PAUL FIRE & MARINE INS CO; ST PAUL GUARDIAN INSURANCE CO; ST PAUL MERCURY INSURANCE CO; ST PAUL PROTECTIVE INSURANCE COMPANY; STANDARD FIRE INSURANCE CO; STAR INSURANCE CO; STATE FARM FIRE & CASUALTY CO; STILLWATER MINING CO; SUPERIOR NATIONAL INS CO; TECHNOLOGY INSURANCE CO INC; THE INSURANCE COMPANY; TIG INSURANCE CO; TIG PREMIER INSURANCE CO; TOKIO MARINE & FIRE INSURANCE CO; TRANSCONTINENTAL INSURANCE CO; TRANSPORTATION INS CO; TRAVELERS CAS & SURETY CO OF AMER; TRAVELERS CASUALTY & SURETY CO; TRAVELERS CASUALTY CO OF CONN; TRAVELERS CASUALTY INS COMPANY OF AMERICA; TRAVELERS COMMERCIAL INS CO; TRAVELERS IND CO OF AMERICA; TRAVELERS INDEMNITY CO; TRAVELERS INDEMNITY CO OF CT; TRAVELERS INSURANCE COMPANY; TRAVELERS PROPERTY CASUALTY COMP OF AMERICA; TRINITY UNIVERSAL INS CO OF KANSAS; TRINITY UNIVERSAL INSURANCE CO; TRUCK INSURANCE EXCHANGE; TWIN CITY FIRE INSURANCE CO; ULICO CASUALTY COMPANY; UNITED PACIFIC INSURANCE CO; UNITED STATES FIDELITY & GUARANTY CO; UNITED STATES FIRE INSURANCE CO; UNITED WISCONSIN INS CO; UNIVERSAL UNDERWRITERS INS CO; UNIVERSITY OF GREAT FALLS; US SPECIALTY INSURANCE COMPANY; UTICA MUTUAL INSURANCE CO; VALIANT INSURANCE COMPANY; VALLEY FORGE INSURANCE CO; VALOR INSURANCE COMPANY INC; VANLINER INSURANCE CO; VIGILANT INSURANCE CO; VILLANOVA INSURANCE COMPANY; VIRGINIA SURETY COMPANY INCORPORATED; THE WAGGONERS TRUCKING; WATKINS & SHEPARD TRUCKING INC; WAUSAU BUSINESS INSURANCE CO; WAUSAU UNDERWRITERS INS CO; WEST AMERICAN INSURANCE COMPANY; WESTPORT INSURANCE CORP; XL SPECIALTY INSURANCE COMPANY; ZENITH INSURANCE COMPANY; ZURICH AMERICAN INS CO OF ILLINOIS; and ZURICH AMERICAN INSURANCE CO**

¶1 On August 14, 2003, the Montana Supreme Court held that primary medical services include services prescribed to “sustain medical stability” after a claimant has reached maximum medical improvement. *Hiett v. Missoula County Pub. Sch.*, 2003 MT 213, ¶ 35, 317 Mont. 95, 75 P.3d 341. Following that decision, the petitioner’s attorney, Ms. Sydney E. McKenna, filed a notice of her intent to claim a common fund attorney fee lien on all benefits paid by every workers’ compensation insurer and self-insured as a result of that decision. On November 17, 2003, this Court provided workers’ compensation insurers and self-insureds with a Notice of Claim of Attorney Lien, a copy of which is attached to this summons. No further proceedings were undertaken at that time in light

of the question as to whether a common fund attorney fee lien extends to benefits payable by insurers other than the insurer which is party to the original proceeding.

¶2 On August 31, 2004, the Montana Supreme Court determined that a common fund attorney fee lien indeed extends to all benefits payable to similarly situated claimants as a result of the Court's decision in *Rausch, Fisch, and Frost v. State Comp. Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, and irrespective of the insurer or self-insured. *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561. The lien is thus "global" and applies to all insurers and self-insureds who owe benefits as a result of the precedent set in the decision in chief.

¶3 In light of the *Ruhd* decision, Ms. McKenna has requested certification of this case as a common fund case and enforcement of her claimed lien. Numerous legal issues regarding the application and scope of the common fund have been tendered by the Montana State Fund, which is one of the insurers affected by the claimed lien. Further proceedings will require the Court to determine whether a common fund exists and the extent of that fund. **Resolution of those challenges will govern further common fund proceedings in this case and establish precedents which will affect all other insurers and self-insureds.**

¶4 **If you wish to be heard concerning Ms. McKenna's request for common fund certification and enforcement of her lien, you must cause your attorneys to file a notice of appearance on your behalf in this case. You will then be provided an opportunity to participate in the framing and argument of issues involved with the common fund request.**

¶5 Such appearance on your behalf must be filed on or before the **7th day of April, 2005. The failure of any insurer, self-insurer, or guaranty association to timely appear will constitute a waiver of that entity's right to participate in the proceedings, including the briefing process.**

¶6 The Notice of Appearance should be mailed to the Workers' Compensation Court, P.O. Box 537, Helena, Montana 59624-0537, or delivered to its offices at 1625 11<sup>th</sup> Avenue, Helena, Montana, 59601.

¶7 Copies of minutes of conferences and hearings, as well as of briefs, motions, orders, and other documents filed in this case will be posted in the "Common Fund" section on this Court's WEB site, [www.wcc.dli.mt.gov](http://www.wcc.dli.mt.gov).

DATED in Helena, Montana, this 22<sup>nd</sup> day of February, 2005.

(SEAL)

/s/ Mike McCarter  
JUDGE

Attachment: Notice of Claim of Attorney Lien