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October 22, 2004

Hon. Mike McCarter
1625 11th Avenue
P.O. Box 537
Helena, MT 59624

*ALSO ADMITTED - COLORADO STATE BAR
**ALSO ADMITTED - STATE BARS OF CONNECTICUT
AND DISTRICT OF COLUMBIA

RE: Fisch, Frost, Rausch v. State Fund
Our File No. 6654/5

Dear Judge McCarter:

Please find enclosed a draft of the proposed Notice to Plan I and II insurers prepared for everyone's review and comment.

Perhaps you could suggest a time period for the comments.

Pursuant to the discussions at the October 5 meeting, we are planning on only sending the notice to the Plan I and Plan II carriers listed in Mark Cadwallader's letter of October 5, 2004, a copy of which was previously provided to the Court.

Sincerely,

MILODRAGOVICH, DALE,
STEINBRENNER & BINNEY, P.C.


Lon J. Dale

cc: Greg E. Overturf
Montana State Fund
P.O. Box 4759
Helena, MT 59604-4759

Bradley J. Luck, Esq.
Garlington, Lohn & Robinson
199 West Pine
P. O. Box 7909
Missoula, MT 59807-7909

Larry W. Jones
700 SW Higgins Ave, Ste. 108
Missoula, MT 59803-1489

Monte D. Beck
BECK, RICHARDSON & AMSDEN,
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1946 Stadium Drive, Suite 1
Bozeman, MT 59715

Stephen D. Roberts
1700 West Koch Street, Suite 5
Bozeman, MT 59715

Mark Cadwallader
MT Dept. of Labor and Industry
P.O. Box 1728
Helena, MT 59624-1728

Enclosure

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

NOTICE TO ACTIVE PLAN I AND II INSURERS

On August 31, 2004, the Montana Supreme Court decision of *Ruhd v. Liberty Northwest Ins. Corp.*, 2002 MT 203, 322 Mont. 478, 97 P.3d 561, 2004 MT 236 (2004), determined that, pursuant to *Rausch, et al. v. State Compensation Insurance Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25 (2002), three law firms were entitled to common fund attorneys' fees for impairment award benefits required by the Rausch decision to be paid to permanently totally disabled workers.

The purpose of this Notice is to advise insurers of their obligation to pay attorney fees pursuant to the referenced decisions. This Notice is also ancillary to the Lien Notice sent by this Court on January 23, 2003, a copy of which is attached.

IT IS HEREBY ORDERED that each insurer or self-insured provide written notification of the following:

- 1) the names and birth dates of all insured permanently totally disabled [PTD] claimants injured after July 1, 1987, their date of injury, and the impairment award including how it was calculated;
- 2) If an impairment award has not been determined for a PTD claimant, it is hereby further ordered that the impairment determination be made as soon as possible, with the three law firms to be advised of the same information itemized in Paragraph 1, and also when the claimant was referred for an impairment determination, and the name of the physician to whom the claimant was referred for an impairment determination;
- 3) the names of all temporary total disability (TTD) claimants who have been on temporary total for more than eighteen (18) months, along with a brief statement of the nature of their injuries and whether PTD classification is likely;
- 4) the names of claimants who have a date of injury subsequent to July 1, 1987 and for whom a settlement was made after the Rausch decision of September 5, 2002 and whose classification was TTD or PTD at the time of the settlement, and whether an impairment was paid as part of the settlement;
- 5) if any claimant injured after July 1, 1987, and before September 5, 2002, is converted to PTD status and an impairment award is determined, the insurer is ordered to notify the firms listed below of any such conversion, including all of the information requested in Paragraph 1; and,
- 6) all names and personal information supplied pursuant to this order shall be confidential and not a matter of public record. The parties and their attorneys shall not release any such confidential information without court authorization.

The addresses for the three law firms are as follows:

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Dated this _____ day of October, 2004.

Judge Mike McCarter