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**FILED**

FEB 17 2010

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

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Common Fund Attorneys

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ALEXIS RAUSCH, et al.,	)	WCC No. 9907-8274R1
	)	
Petitioner,	)	<b><u>STIPULATION FOR PAYMENT OF</u></b>
	)	<b><u>COMMON FUND FEES BY</u></b>
-vs-	)	<b><u>MONTANA ASSOCIATION OF</u></b>
	)	<b><u>COUNTIES' WORKERS'</u></b>
MONTANA STATE FUND, et al.	)	<b><u>COMPENSATION TRUST</u></b>
	)	
Respondent.	)	
	)	

COME NOW Norman Grosfield, Attorney for Montana Association of Counties Workers' Compensation Trust (MACOWCTr), and Monte Beck, Lon Dale, and Stephen Roberts, common fund attorneys, and by stipulation, request an order from this Court approving the payment of certain common fund attorneys' fees as further identified.

## FACTUAL BACKGROUND

1. Grant Hark, Peggy Mallo, and Perry Mock (deceased) all received injuries resulting in permanent total disability awards paid by Montana Association of Counties Workers' Compensation Trust (MACOWCTr).

2. The attorneys establishing the common fund for impairment benefits pursuant to the Montana Supreme Court decisions in *Rausch, et al. v. State Compensation Ins. Fund*, 2002 MT 203, and *Ruhd v. Liberty Northwest v. Fish, Frost, Rausch, as Intervenors*, 2004 MT 236 are entitled to common funds fees.

3. That MACOWCTr received notice of lien by copy of Judge McCarter's lien notice of January 23, 2003, but failed to withhold common fund attorney's fees from the permanent total disability awards to Grant Hark, Peggy Mallo, and Perry Mock (deceased).

4. Grant Hark was injured November 17, 1997, and was given a 9% permanent total disability award of \$5,544.00 in November, 2004. Mr. Hark was under 60 years of age at the time of his injury, so a common fund attorney fee should have been withheld in the amount of \$831.60 (15% of \$5,544).

5. Peggy Mallo was injured January 16, 2000, and was given a 25% impairment award of \$18,514.42 in May of 2004. Ms. Mallo was under 60 years of age at the time of her injury, so a common fund attorney fee should have been withheld in the amount of \$2,777.16 (15% of \$18,514.42).

6. Perry Mock was injured February 16, 2004, and was given a 8% impairment award of \$7,305.00 in August of 2004. Mr. Mock was under 60 years of age at the time of his injury, so a common fund attorney fee should have been withheld in the amount of \$1,095.75 (15% of \$7,305.00).

As MACOWCTr failed to withhold common fund attorney's fees from the impairment awards of the above-named individuals, counsel for MACOWCTR has agreed and stipulates to payment by MACOWCTr, of the 15% common fund attorney fees set forth above without any obligation for repayment from any of the claimants or their estates.

Further, notice to Grant Hark, Peggy Mallo, or the Estate of Perry Mock is not required as no monies have been withheld from their permanent partial disability awards, and no liability for reimbursement exists.

WHEREFORE, the parties hereby request:

1. That the Worker's Compensation Court order Montana Association of

Counties' Workers' Compensation Trust to pay the amount of Four Thousand seven hundred four and 51/100 dollars (\$4,704.51) to the common fund attorneys as the total of the sums itemized in this stipulation for the designated claimants;

2. That notice to Grant Hark, Peggy Mallo, or the Estate of Perry Mock, is not required as common fund attorneys' fees were not withheld from their permanent total disability awards.

3. That the common fund attorneys' fees in the amount of \$4,704.51 shall be paid to Milodragovich, Dale, Steinbrenner & Nygren, P.C.'s Trust Account for equal distribution to the common fund attorneys.

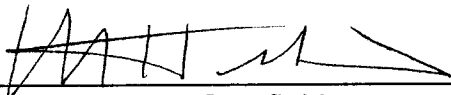
4. That the amount specified be paid by MACoWCTr within ten (10) business days of the Order of this Court

DATED this 11<sup>th</sup> day of February, 2010.

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February 11, 2010

Hon. James Jeremiah Shea  
Workers' Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537

Re: Rausch, et al. v. Montana State Fund, et al.

Dear Judge Shea:

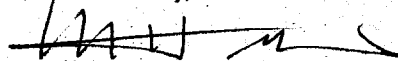
Enclosed is a stipulation entered into between Petitioner's counsel and the MACO Workers' Compensation Trust. This involves payment of certain attorney fees to counsel because the Trust failed to withhold common fund fees when the impairment awards were paid to the named claimants.

The Trust agrees to pay the agreed upon fees without any obligation for repayment from any of the claimants. Thus, no notice to the claimants would be required.

We would appreciate it if you would proceed to sign the enclosed order. Enclosed are envelopes for mailing out the signed order.

If you have any questions, please contact either Lon Dale or myself. We appreciate the Court's consideration of this matter.

Sincerely,



Norman H. Grosfield  
Attorney for the MACOWCTr.

Enclosures

c: Lon J. Dale