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<http://wcc.dli.state.mt.us>

Workers' Compensation Court

Mike McCarter
Judge

November 21, 2003

Mr. Larry W. Jones
Attorney at Law
700 S.W. Higgins Ave., Suite 108
Missoula, MT 59803-1489

Re: Jeremy Ruhd v. Liberty Northwest Insurance Corporation
WCC No. 2002-0500

Dear Mr. Jones:

I have your e-mail asking for instructions regarding the Notice of Claim of Attorney Lien in *Hiett v. Missoula County Public Schools*. That notice is currently being mailed to all insurers and self-insurers who provided workers' compensation coverage in Montana since 1993.

You correctly note that in *Ruhd V. Liberty Northwest*, 2003 MTWCC 38, I rejected a claim of common fund fees as to injured claimants covered by insurers who were not a party to that case. I have characterized such claims as "global" ones since they pertain to all claimants and insurers and not just to the parties to the particular case. In on-the-record conversations with counsel in *Hiett*, I have indicated to counsel in that case that it is unlikely I will reconsider my *Ruhd* decision, especially in light of the pending appeal in *Ruhd*.

However, until the issue is addressed by the Supreme Court, I am also approving continued notices to insurers of global lien claims. That is to protect both the attorneys in these cases and the insurers. Insurers who do not hold back amounts claimed through the lien may be subject to additional liability to the attorneys in the common fund cases, or put to the effort of attempting to recoup the fees from claimants, in the event the Supreme Court reverses my holding in *Ruhd*. Therefore, it seemed to me, and still does, that it is better to permit notices of the global liens go out under Court auspices and thereby authorize insurers to withhold the claimed amounts until the matter is finally decided by the Supreme Court.

Re: Jeremy Ruhd v. Liberty Northwest Insurance Corporation

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I hope this answers your question. I will publish this letter, along with your email query, on our Web site, and will also email this letter, along with the text of your email query, to all attorneys practicing before this Court so that they have the guidance I am providing herein. I note that what I have said in this letter is a matter of record and reflects what I have said in on-the-record conferences with counsel in the various common fund cases.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McCarter". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mike McCarter
Judge

MM:cw

c: Mr. Geoffrey C. Angel

All attorneys practicing before the Court via email and Web site
Attachment: Mr. Jones' email query

Wilson, Clara

From: Brown, Cindy(LNW) [Cindy.Brown@llawoffice.com]
Sent: Thursday, November 20, 2003 1:53 PM
To: 'Wilson, Clara'; Bradley J. Luck (E-mail); Chris Ragar; Dave Lauridsen; David A. Hawkins (E-mail); Dean Blackaby; Dufrechou, Jay; Gleed, Carol; Greg E. Overturf (E-mail); James G. Hunt (E-mail); Kessner, Patricia; Jones, Larry(LNW); Laurie Barnhart-Cutler (Angel) (E-mail); Lawrence A. Anderson (E-mail); Leo Ward; Lesofski & Walstad; Lindgren, Mickey; Lon J. Dale (E-mail); Lucas J. Foust (E-mail); Mark E. Cadwallader (E-mail); Mike McCarter (E-mail); Monte D. Beck (E-mail); Nancy Butler (E-mail); Oliver H. Goe (E-mail); Rex Palmer (E-mail); Rick Davenport; Steve Roberts; Strauss, Peter; Sydney McKenna; Thomas E. Martello (E-mail); Thomas J. Harrington (E-mail); Thomas J. Murphy (E-mail); Victor Halverson; 'marsilius@bresnan.net'
Subject: RE: Eula Mae Hielt v. MSGIA, WCC No. 2001-0278

RE: Hielt v. Missoula Co. Public Schools, WCC No.
2001-0278

Dear Judge McCarter:

I received the attached Notice of Claim of Attorney Lien and the e-mail from Ms. Wilson stating this had been signed.

As you know in the case of Ruhd v. Liberty Northwest Ins. Corp. you issued a decision, now on appeal, in which you held that the common fund claim applied only to the named insured. Because of that ruling I am asking the Court's guidance on what, if anything, it is instructing or requesting Liberty to do? Perhaps this will be addressed at a hearing or conference call.

If the Court will entertain a briefing schedule, I would like to file a brief proposing any attorney fee liens based on a common fund theory against Liberty Northwest by the attorney who represented Ms. Hielt.

By a copy of this e-mail to the persons identified in the e-mail of November 17, 2003 from Ms. Wilson I am notifying of this communication with you.

Larry W. Jones
Law Office of Jones & Garber
An Insurance Company Division
(406) 543-2433
larry.jones@llawoffice.com

This e-mail, and any attachments thereto, is intended only for the use of the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please notify me via return e-mail and via telephone at (406) 543-2433 and permanently delete the original and any copy of any e-mail and any printout thereof.

-----Original Message-----

From: Wilson, Clara [mailto:cwilson@state.mt.us]
Sent: Monday, November 17, 2003 10:47 AM
To: Bradley J. Luck (E-mail); Chris Ragar; Cindy K. Brown Felton (J-G) (E-mail); Dave Lauridsen; David A. Hawkins (E-mail); Dean Blackaby; Dufrechou, Jay; Gleed, Carol; Greg E. Overturf (E-mail); James G. Hunt (E-mail); Kessner, Patricia; Larry W. Jones (E-mail); Laurie Barnhart-Cutler (Angel) (E-mail); Lawrence A. Anderson (E-mail); Leo Ward; Lesofski & Walstad; Lindgren, Mickey; Lon J. Dale (E-mail); Lucas J. Foust (E-mail); Mark E. Cadwallader (E-mail); Mike McCarter (E-mail); Monte D. Beck (E-mail); Nancy Butler (E-mail); Oliver H. Goe (E-mail); Rex Palmer

(E-mail); Rick Davenport; Steve Roberts; Strauss, Peter; Sydney McKenna;
Thomas E. Martello (E-mail); Thomas J. Harrington (E-mail); Thomas J. Murphy
(E-mail); Victor Halverson; Wilson, Clara
Subject: Eula Mae Hiatt v. MSGIA, WCC No. 2001-0278

Attached is an order the Court signed today in the above matter.

<<Hiatt Notice of Claim of Att. Lien.doc>>