

Charles W. Schuyler  
MARSILLO & SCHUYLER, PLLC  
103 So. 5<sup>th</sup> Street East  
Missoula, MT 59801  
(406) 543-8261  
(406) 543-8263 fax

**FILED**

**DEC 24 2003**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

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

**CHRISTOPHER SANDRU,**  
**Petitioner,**

**WCC NO. 2003-0908**

**vs.**

**MOTION FOR LEAVE TO  
AMEND PETITION AND TO  
DETERMINE THE CLASS  
OF CLAIMANTS**

**ROCHDALE INSURANCE CO.**  
**Respondent/Insurer.**

The Petitioner moves for leave to amend his Petition filed in this action, to change the case caption to state "Petitioner, for himself and all persons similarly situated," and further to add the following allegations (or essentially similar thereto) to the Petition for Hearing and Request for Emergency Trial:


1. "The Petitioner brings this claim on behalf of himself and all persons similarly situated, pursuant to Rule 23, M.R.Civ.P., and also pursuant to this Court's quasi-class proceedings as established in the context of the workers compensation laws of the State of Montana. The Petitioner represents that class of claimants who have received wage loss benefits following a workers compensation injury, and which claimants earned "tips" reported to or known by the employer to be income, but said tips or a portion thereof were excluded by the insurer in the computation of wage loss benefits or wage loss awards to the detriment of the claimants. The class includes all claimants who have been improperly denied benefits by the above-named insurer, or any other insurer, as a result of failure to include "tips" income in the determination of wage loss benefits or awards paid or payable to any such claimant, within the limitation period prescribed by Section 39-71-601, MCA;" and
2. "Petitioner further alleges recovery of attorney fees from all members of the class, and also recovery of interest, and penalty awards as applicable, from the subject

insurers, out of the common fund created by recovery of the subject benefits on behalf of the Petitioner and the class members.”

The petitioner further moves the Court for leave to allow, at such time as the Court deems appropriate (say, at such time as the Petitioner’s Petition is granted) and to authorize discovery in order to determine the size and the members of the class, and to allow the notification of the State Fund and other insurers of the existence of the class, and to certify the class. The Petitioner’s counsel has contacted opposing counsel concerning this motion, and opposing counsel indicates that he objects to same.

Counsel notes for the purposes of this Motion for Leave to Amend that the deadline for the Motion was December 5, 2003, but that counsel has only recently become aware of the latest quasi-class action recent legal developments now pending in the Court. Further, this amendment does not prejudice the insurer in any way, as to a determination of the merits of the Sandru case, and is made now in the interest of justice, and for good cause shown.

DATED this 23<sup>rd</sup> day of December, 2003.

  
**CHARLES W. SCHUYLER**  
Attorney for Petitioner(s),  
Christopher Sandru, et al

**CERTIFICATE OF SERVICE**

I, the undersigned hereby certify that on the 23<sup>rd</sup> day of December, 2003, I mailed a true and correct copy of the foregoing, postage prepaid, to the following:

Steven W. Jennings, Esq.  
Crowley, Haughey, Hanson,  
Toole & Dietrich, P.L.L.P.  
P.O. Box 2529  
Billings, MT 59103-2529

