

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**

**MAR 22 2004**

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.

**CHRIS' AFFIDAVIT OF  
UNCONTROVERTED FACTS**

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

Christopher Sandru, Petitioner herein, states that the following personal information is known by him, under oath, to be true and correct to the best of his knowledge and belief:

1. It is common knowledge that I, as head bartender at the Elks Club in Missoula, MT, made relatively low hourly wages, but good tips, at my job, and that I worked in such a manner that I received good tips, averaging \$300/week, in addition to my hourly wage of \$6.50-\$7.50/hr for approximately 40 hours/week work, or a weekly wage of \$300/week.

2. I often and regularly disclosed my tips to Linda Stamos, the Elks Club manager, which is why she expressly wrote to the Insurer that I average \$300.00 tips per week. I also reported and disclosed this information to my employer when I signed the First Report of Injury on 6/30/03, and also to the Insurer's employee or agent, Sandy Scholl, when interviewed after my injury. Sandy Scholl's claims file contains several references to my tip income, and she taped an interview with me, which covered all of this information.

3. To establish and document the above statements, attached hereto as Exhibits "A-F," are true copies of the following documents:

- A. First Report of Injury signed 6/30/03 by Chris;
- B. Linda Stamos letter dated 6/26/03;
- C. Scholl claims file, p. 33 of 40;
- D. Scholl claims file, p. 32 of 40;
- E. Scholl claims file, p. 30 of 40;
- F. Scholl "taped" interview of Chris re: tip income, 6/26/03.

4. I have disclosed to the Insurer my statement of my bank deposits for the period 4/1/03 – 6/30/03, attached hereto as Exhibit “G,” which shows deposits that are substantially over and above the total amount of my 5 paychecks. I have indicated 4 entries for deposit, which included mostly cash from tips from the Elks.

5. I have disclosed to the Insurer my bank (MFCU) loan application dated 7 May 03, showing “\$2200” employment income from the “Elks Lodge,” with Start Date of “4 May 03,” and “40+” hours of work, attached hereto as Exhibit “H.” 40+ hours of work at \$6.50/hr is only \$260/week, or slightly over \$1,000/month, which is only 50% of my representative income to obtain a loan. The rest of the income (at least 50%) is TIPS, and the Elks knew about my tips. My latest week worked, from 6/17/03 – 6/21/03, with my raise at \$7.50/hour is more accurately reflective of my earning power than the first weeks worked, and the last week should be included in benefits computation.

6. I have disclosed to the Insurer proof of payment of my house rent of \$525/mo., using cash, from tips. See 3 Receipts, attached hereto as Exhibit “I,” for May, June and July, 2003, from my Landlord.

7. I have disclosed to the Insurer my previous bartender history for tip income. Attached hereto as Exhibit “J,” is the information from The Overland Express in 1999, and The Bridge in 2000, showing The Overland’s agreement with “his(Chris) \$ amount as stated,” and tip income reported “through the accounting software we use in the restaurant.” (The Bridge). Both establishments show I made well over \$100.00 per week tips, and I was not “head bartender,” but a “host,” “table busser” and some “bartending.” These two restaurants credit me with at least 8% to 15% tips based on sales, which is the usual reporting manner for tips in the industry.

8. Attached hereto as Exhibit “K,” is my Form 4137 attached to my tax returns for 2003, showing \$2,100.00 tips from the Elks Club, not the \$98.06 the Elks Club reports on my final paycheck. Also attached as Exhibit “L,” is my W-2 Form from the Elks Club, made up by the Elks Club after I reported \$300/week tips, and also 2003 Form 4137, for my real total of \$2,198.00. The Elks Club refused to correctly state my tips, even after I reported the correct amount, which amount is acknowledged by Linda Stamos, Elks Club manager, in her letter dated 6/26/03. Apparently, it makes no difference to the Elks Club what I reported for tips; they continue to put down the unexplained and incomprehensible amount of \$98.06, which figure the Elks has never explained or indicated how it was calculated. Also, the “Payroll Policy” of \$1.00 taxes withheld for each hour for tips, is confusing.

9. Attached as Exhibit “M,” is a letter and envelope dated 2/10/04, which I received from Guy & Krista Kempthorne, Elks Club customers, who tipped me \$200.00 in the form of a credit card slip which I personally handled or ran through the card machine, and gave to the Elks Club, for processing. The Elks knew about this \$200.00 tip, as reported by me. This one tip alone would double the entire 7 weeks tip amount reported by the Elks Club. I would usually then tip my bartender assistant, and Linda Stamos commented that I was generous.

I received many other such tips, by credit card charge, of which the Elks Club was aware, and which was reported to the Elks Club, but which the employer’s documentation does not

include. Also attached hereto as Exhibit "N," is a letter dated 3/10/04 that I received from Jarvis J. Ashley, a co-employee, documenting that Linda Stamos and the Elks Club was aware of high tippage to Chris Sandru for special events.

10. I started to work as Bartender at the Elks Club on or about 5/1/03, not 4/1/03, as stated by the Insurer. This start date of 5/1/03 is corroborated in the Elks Club "Employee Information" form supplied by the Insurer. Attached hereto at Exhibit "A," is a copy of the First Report of Injury that I signed on 6/30/03, with the items shaded in the middle of the form, as the only items requiring my attention, to my knowledge. I did not write in by hand the tip income information or supply any other information, on that form, other than what is indicated by the shading.

11. Mr. Jarvis Ashley's letter dated 3/10/04, referred to in #9 above, indicates there is an "Events Book" for collecting information on arrangements for weddings and special events, which Book would assist my recollection and documentation for the tips income information kept by the Employer. Attached hereto as Exhibit "O," is the Request for Production No. 1 and Response to see this Book. Also attached as Exhibit "P," is Mr. Jennings letter dated 3/8/04, stating there was no such "Events Notebook," and that "The Elks Lodge will not accommodate your request to view the events notebook during your visit on Thursday, March 11, 2004."

The Elks Lodge letter dated 3/3/04 by Linda Stamos states that "all of the gratuities billed to attached banquet invoices, do not pertain to bartender services." See Response to Request for Production No. 1, attached as Exhibit "N." Turning to the May 20, 2003, "Wamsley Funeral Reception" event, it is clear that there is a "Bar Tab - Paid w/CC for (\$178.80)." Clearly, the Bar Tab would likely include the tip paid to the bartender, such as Chris Sandru. This information contradicts the Elks Club facts and sworn discovery responses, and impeaches the Elks Club credibility. The missing "Events" book also casts doubt on the Elks Club and the Insurer's position that my tips are not sufficiently documented. That book is critical for that purpose, and I can only document as best I can, and the employer's lack of cooperation only hurts the employer's credibility before the Court.

12. I ran many credit card transactions for tips during the Frenchtown Bronco Calcutta, the Lambda Alliance Dance, and the Kempthorne wedding reception, etc. In the Supplemental Response to the Petitioner's Second Discovery Requests, Request for Production No. 2, attached hereto as Exhibit "Q," the Elks Club stated on January 30, 2004, that I ran \$63.25 for about 25 credit card transactions for tips during my shifts for my employment. As I indicated previously, this is incorrect, as I would often do about that much in credit card tips in only one busy shift. I averaged \$10.00 per hour in tips, as I have reported to the Elks Club and its Insurer in deposition last year, 2003, after which the Elks Club forwarded my W-2 Form in 2004, showing but \$98.06 tips. I worked some 30 shifts at about 8 hours plus each, or over 240 hours total, so that my tips would be above \$2,000.00.

DATED this 19 day of March, 2004.

  
CHRISTOPHER SANDRU

STATE OF MONTANA )

:ss.

County of Missoula )

On this 19<sup>th</sup> day of March, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared CHRISTOPHER SANDRU, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my notarial seal the day and year in the certificate first above written.



Dolly J. Willcutt  
Dolly J. Willcutt  
Notary for the State of Montana  
Residing at: Frenchtown MT  
My commission expires: Dec. 21, 2007

**CERTIFICATE OF SERVICE**

I, the undersigned hereby certify that on the 19<sup>th</sup> day of November, 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

Dolly J. Willcutt