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FILED

APR 17 2003

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA

ROBERT FLYNN,

Petitioner,

v.

STATE COMPENSATION
INSURANCE FUND,

Respondent.

WCC No. 2000-0222

**MOTION FOR STAY AND
DIRECTION ON
IMPLEMENTATION**

COMES NOW the State Compensation Insurance Fund ("State Fund"), through counsel, and respectfully requests that the Court enter an Order staying the retroactive implementation of the decision of the Montana Supreme Court in this matter. The State Fund also requests direction from the Court concerning the entitlement or other date to be used for purposes of prospective implementation of the decision. In support of the motion and request, the State Fund states as follows:

1. STAY

The parties have been directed to present and brief their positions in regards to issues still to be determined in this action. The State Fund intends to brief the issue of retroactive application of the decision of the Montana Supreme Court and argue that the decision should not be applied retroactively. The State Fund also contends that common fund fees should not be awarded in this action and will brief that issue.

Determinations of retroactive application and entitlement to common fund fees are significant. Claimant appears to contend that the decision applies to claims arising from and after July 1, 1974. The identification, adjustment and payment of such claims creates a significant burden upon the State Fund that will not be necessary if the decision is not retroactive. In addition, if the State Fund was required to make payment on such claims, the retroactivity issue would be rendered moot.

The State Fund is being contacted repeatedly by Claimants and their counsel seeking payment on pending claims. Absent a stay, it is expected that litigation will be commenced in this Court on numerous claims. It is also anticipated that claims of unfair claims practices may be made against the State Fund if it delays payments pending a determination on retroactivity unless the Court approves such handling with a stay.

The retroactivity issue is a significant one. This Court will entertain briefing, an evidentiary hearing and argument before the matter is submitted. Following decision, an appeal from one side or the other is likely. As such, the process of determination may be lengthy and a stay is necessary to maintain the status quo while the rights and obligations of the parties are determined.

2. DIRECTION ON IMPLEMENTATION

The State Fund desires to begin applying the decision in this matter prospectively. However, a determination of the exact claims subject to prospective application is difficult, requiring direction from the Court.

Claimant's counsel is not claiming a common fund fee for Social Security awards ordered after the date of the decision. (Statement of Scope of Attorney's Lien 2 (Mar. 18, 2003).) However, the date of the lien claim is not necessarily dispositive of the proper entitlement date for prospective application. More importantly, such date may have no

bearing for purposes of prospective application.

The Workers' Compensation and Occupational Disease systems in Montana determine benefits based upon the law in effect at the time-of-injury or on the basis of an entitlement date. It makes some sense that the prospective application date here for injury claims would be for dates of injury beginning the day after the decision of the Montana Supreme Court in this action. For occupational disease claims, it appears that a proper date would be the entitlement date, which may be properly determined by reference to Montana Code Annotated § 39-72-403 (2001) ("the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease."). For present purposes, the entitlement date for an occupational disease, then, may be the date the parties agree as the date of knowledge of the employment relatedness of the condition or perhaps the date the condition was first treated or first diagnosed as work related.

The State Fund believes that the noted entitlement date method is logical and consistent with Montana law. However, the State Fund wants to be sure that its prospective implementation is consistent with an approach approved by this Court and therefore seeks such direction at the outset.

On the basis of the above, the State Fund seeks the entry of an Order staying the implementation of the decision of the Montana Supreme Court retroactively and direction from the Court concerning the method for implementing the decision prospectively.

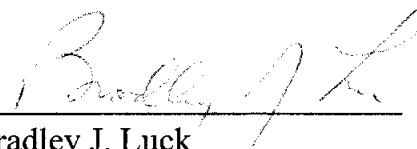
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RESPECTFULLY SUBMITTED this 16 day of April, 2003.

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By 
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CERTIFICATE OF MAILING

I, the undersigned, a representative of the law firm of GARLINGTON, LOHN & ROBINSON, PLLP, hereby certify that on the 16th day of April, 2003, I mailed a true and correct copy of the foregoing MOTION FOR STAY AND DIRECTION ON IMPLEMENTATION, postage prepaid, to the following:

Rex Palmer, Esq.
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Kristi Bidlake