

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 48A-1

WCC No. 9309-6893

MONTANA SCHOOLS GROUP
WORKERS COMPENSATION RISK
RETENTION PROGRAM

Petitioner

vs.

DEPARTMENT OF LABOR AND INDUSTRY
EMPLOYMENT RELATIONS DIVISION

Respondent.

ORDER DENYING ATTORNEY FEES

Summary: After successful appeal, and three months after judgment was entered by the Workers' Compensation Court, self-insurance association of school districts filed motion for award of attorney fees and costs.

Held: While the Court retained jurisdiction to resolve disputes that may arise out of the rulemaking process ordered by the Court, jurisdiction was not retained for other purposes. Moreover, neither the notice of appeal nor appellant's brief requested attorney fees or costs. The motion for fees and costs is not timely and is denied.

Topics:

Attorney Fees: Timeliness of Request. While the Court retained jurisdiction to following judgment on appeal to resolve disputes that may arise out of the rulemaking process ordered by the Court, jurisdiction was not retained for other purposes. Where neither the notice of appeal nor appellant's brief requested attorney fees or costs, and where appellant's motion for fees and costs was filed more than three months after judgment, the motion is not timely and is denied.

Costs: WCC Costs. While the Court retained jurisdiction to following judgment on appeal to resolve disputes that may arise out of the rulemaking process ordered by the Court, jurisdiction was not retained for other purposes. Where neither the notice of appeal nor appellant's brief requested attorney fees or costs, and where

appellant's motion for fees and costs was filed more than three months after judgment, the motion is not timely and is denied.

On June 16, 1995, this Court entered its Order on Appeal. That Order set forth this Court's judgment which was certified as final for purposes of appeal. The judgment also sets forth a statement that the Court "retains continuing jurisdiction to resolve any disputes which may arise in the carrying out of this judgment." That retention of jurisdiction, however, pertains only to the Court's direction that the Department of Labor and Industry adopt rules and recompute the workers' compensation assessment owed by Montana Schools Group (MSG).

On September 20, 1995, MSG filed Appellant's Motion for an Award of Attorney Fees and Costs, along with a supporting brief.

I find it unnecessary to solicit or consider any opposing brief since the motion for attorney fees is untimely. Judgment was entered over three months ago. While I retained jurisdiction to resolve disputes which may arise out of the rule making process and the redetermination of the amount owed by MSG, I did not retain jurisdiction over any other matters. At the time I entered judgment, MSG had not specifically requested attorney fees or costs. See NOTICE OF APPEAL (September 21, 1993); appellant's brief (October 28, 1993) at 22-23; APPELLANT'S SUPPLEMENTAL BRIEF (February 16, 1995). While it had requested "such other and further relief as is appropriate" in both its NOTICE OF APPEAL and APPELLANT'S BRIEF, it did not specifically mention attorney fees or costs, or make any argument which would support such an award. It is too late to do so after entry of judgment.

The motion is **denied**.

Dated in Helena, Montana, this 27th day of September, 1995.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Allan B. Chronister
Mr. Daniel B. McGregor