

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 39A-2

WCC No. 9206-6487

JACK MURER, et al.,

Petitioners

vs.

MONTANA STATE COMPENSATION INSURANCE FUND, et al.,

Respondent.

ORDER STAYING ATTORNEY FEE RULING,
AUTHORIZING CONTINUED WITHHOLDING OF LIEN AMOUNTS

Summary: State Fund requested direction from the Court given dilemma faced following Court's order dissolving lien filed by attorneys for claimants seeking attorneys fees on benefit increase of non-party claimants. Insurer feared that if this Court's decision against common fund fees is reversed on appeal, and State Fund had not withheld attorney fees, it could be required to pay those fees to attorneys later, after those amounts were already disbursed to claimants.

Held: State Fund ordered to withhold fee amounts pending appeal by claimants. **See *Murer et al. v. Montana State Fund et al.*, 283 Mont. 210 (1997), in which this Court's decision on common fund fees was reversed.**

Attorney Fees: Common Fund. Although the Workers' Compensation Court denied attorneys' request for common fund fees on benefits distributed to non-party claimants following decision in *Murer et al. v. State Compensation Insurance Fund*, 267 Mont. 516 (1994) (*Murer II*), the insurer was authorized to withhold attorneys fees from distribution to these claimants pending appeal. Otherwise, the insurer risked making full distribution to claimants, then being ordered to pay fees to attorneys without having withheld fee amounts.

Common Fund Litigation. Although the Workers' Compensation Court denied attorneys' request for common fund fees on benefits distributed to non-party claimants following decision in *Murer et al. v. State Compensation Insurance Fund*, 267 Mont. 516 (1994) (*Murer II*), the insurer was authorized to withhold attorneys fees from distribution to these claimants pending appeal. Otherwise, the insurer risked making full distribution to claimants, then being ordered to pay fees to attorneys without having withheld fee amounts.

Petitioners in this matter have been pursuing an assessment of attorney fees against all additional benefits which the State Fund may owe non-party claimants on account of the Supreme Court decision in *Murer v. State Compensation Mut. Ins. Fund*, 267 Mont. 516, 885 P.2d 428 (1994) (*Murer II*). In pursuing their attorney fee claim, the petitioners notified the State Fund that they are claiming a 20% lien on all such additional benefits. The State Fund has heretofore honored the lien by withholding 20% of *Murer II* benefits owed to claimants.

On August 7, 1995, this Court denied petitioners' request for attorney fees and ordered the lien dissolved. Order Denying Attorney Fees under Common Fund Doctrine. The Court's order has created a dilemma for the State Fund. Petitioners intend to appeal the attorney fee determination. The State Fund's failure to continue withholding the 20% claimed by petitioners may subject it to an additional 20% liability if petitioners prevail on appeal. On the other hand, the Court's Order obligates the State Fund to disburse the 20% it has been withholding on account of the lien. In the face of the dilemma, on September 14, 1995, the State Fund filed a Request for Direction Regarding Continued Withholding of the 20%.

Following receipt of the request, the Court wrote to all counsel and requested their comments. It received three responses. Petitioners' response confirmed their intent to appeal my ruling. They agreed that it is appropriate for the State Fund to continue withholding the disputed amount. Intervenors response states that "[i]ntervenors have no objection to the State Compensation Mutual Insurance Fund's request for direction." In their response, Liberty Northwest and Liberty Mutual state that they are not withholding the 20% and that the matter is therefore "mute" [sic] for them.

Having considered the request and the responses, the Court finds good cause to stay its order dissolving the lien and to authorize the State Fund to continue to withhold the disputed 20%. Therefore,

IT IS HEREBY ORDERED that this Court's August 7, 1995 Order dissolving the petitioners' lien is **stayed**. FURTHER, the State Fund is authorized to continue withholding the 20% claimed by petitioners until further order of this Court or the Supreme Court.

Dated in Helena, Montana, this 25th day of September, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

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c: Mr. Allan M. McGarvey
Mr. Roger M. Sullivan
Mr. James H. Goetz
Mr. Bradley J. Luck
Mr. Ira Eakin
Mr. Larry W. Jones

Mr. Charles G. Adams (Courtesy Copy)
Mr. Mark E. Cadwallader (Courtesy Copy)
Mr. Chuck Edquest (Courtesy Copy)
Mr. Thomas M. Keegan (Courtesy Copy)
Ms. Janice S. VanRiper (Courtesy Copy)