

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 62A

WCC No. 2000-0207

DEBRA STAVENJORD

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER AMENDING DECISION ON COMMON FUND RETROACTIVITY

*Appealed to Supreme Court 09/21/04
Reversed and Remanded at 2006 MT 257*

Summary: Following the decision in *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, petitioner moved to amend the common fund decision in this case to apply common fund fees globally.

Held: *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, held that common fund fees are global, i.e., they apply to all benefits paid as a result of the precedent in the case irrespective of the insurers involved. Accordingly, the common fund fees in this case shall be global.

Topics:

Attorney Fees: Common Fund. Common fund fees are global, i.e., they apply to all benefits paid as a result of the precedent in the case irrespective of the insurers involved. Accordingly, the common fund fees in this case shall be global.

¶1 On August 27, 2004, I issued my Decision on Common Fund Retroactivity in this case. In that decision, I held that the *Stavenjord* decision, *Stavenjord v. State Comp. Ins. Fund*, 2001 MTWCC 25, *aff'd*, 2003 MT 67, 314 Mont. 466, 67 P.3d 229, applies retroactively only with respect to those claims arising on and after June 30, 1987, where

maximum medical improvement (MMI) was reached after June 3, 1999, and that the common fund is limited to such claims. However, I rejected the “global lien” asserted by the claimant’s attorney.

¶2 Thereafter, the Montana Supreme Court decided *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, in which it held that the common fund doctrine applies globally to all affected claimants irrespective of their responsible insurers. In light of that decision, my decision in this case must be amended to hold that the common fund lien is global and applies to all claimants who are benefitted by the *Stavenjord* decision irrespective of the insurer.

¶3 SO ORDERED.

DATED in Helena, Montana, this 16th day of September, 2004.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas J. Murphy - U.S. Mail & FAX
Mr. David A. Hawkins - U.S. Mail & FAX
Mr. Bradley J. Luck - U.S. Mail & FAX
Submitted: September 9, 2004