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**FILED**

**'JUL 11 2003**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA  
IN AND FOR THE AREA OF BOZEMAN  
BEFORE THE WORKERS' COMPENSATION JUDGE**

<p>KELLY WILD,  Petitioner,  vs.  MONTANA STATE COMPENSATION INSURANCE FUND,  Respondent.</p>	<p>WCC Number: 2001-0286  <b>STATEMENT OF SCOPE OF ATTORNEY'S LIEN</b></p>
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COMES NOW, Lucas J. Foust and James G. Hunt, and provide a statement regarding the specific scope of the attorney's lien proposed in the event this Court should grant common fund and/or class status to a group of claimants in the above-entitled matter.

This statement concerning the attorney's lien focuses on the Montana Supreme Court's most recent decision in *Wild vs. Montana State Fund*, 68 P.3d 855(2003). In *Wild*, the Montana Supreme Court held that an independent contractor exemption form cannot be conclusive as to whether an individual is an employee or an independent contractor. As a basis for its holding, the Montana Supreme Court relied upon Section 39-71-409, MCA, which prohibits workers from

waiving enrollment in the workers' compensation benefit program under the Workers' Compensation Act. The Supreme Court's holding in *Wild* explained that the conclusive language under Section 39-71-401, MCA, was contrary to public policy as specifically set out in Section 39-71-105, MCA. As the Montana Supreme Court explained in *Wild*:

“The Act is worthless if employers are provided a means of opting out of the Act by what amounts to be a transparent sham. For an employer to give the individual being hired the choice of being an employer or an IC for an increase in pay simply encourages employers to avoid their obligations under the Act and precipitates exactly the sort of problems that Section 39-71-409, MCA (prohibiting workers from waiving their rights under the Act) was designed to avoid.”

The Montana Supreme Court went so far as to state that the practice “allows employers to prey on blue collar laborers, few of whom are foresighted enough (or in some cases financially able) to reject the offer of a few extra dollars per hour in order to obtain the protections from the Act that may, one day, save them and their families from financial ruin.”

Since its inception in 1983, the conclusive language of Section 39-71-401, MCA, has provided an opportunity for employees to opt out of the workers' compensation program and employers an opportunity to shirk their responsibilities. Because of the “conclusive” language of Section 39-71-401, MCA, an unknown number of workers have been prevented from raising workers' compensation claims since the enactment of this statute. Accordingly, both signed counsel provide the following statement of the scope of attorney's lien:

1. A lien is asserted against any entity providing workers' compensation benefits to Montana workers at any time since 1983. This lien specifically covers any individual who, while in possession of an independent contractor exemption form, was actually an employee, and should have been enrolled in the workers' compensation program. This includes but is not limited to the Montana State Fund, Liberty Northwest Insurance Co., and all other registered workers' compensation carriers enrolled in the state of Montana since 1983.

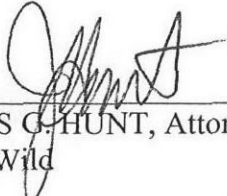
2. This lien shall extend to all workers' compensation claimants in Montana who have in the past and will in the future (for a reasonable period of time) benefit from the Montana Supreme Court's decision in *Wild vs. Montana State Fund*, 68 P.3d 855 (2003).
3. The amount of the claimed lien is 25% of the funds which any insurer will be required to pay following the *Wild* decision. This includes all benefits to which an individual is required to receive pursuant to Section 39-71-101, *et. seq.*, MCA, or Section 39-72-101, *et. seq.*, MCA (hereinafter the Acts).
4. Subsequent to the Montana Supreme Court's decision in *Wild*, any worker who sustained a workplace injury during the course and scope of his or her employment and was in fact an employee rather than an independent contractor is now eligible for workers' compensation benefits pursuant to the Acts. The 25% lien which we are setting forth in this case should be attached to any sum received as a result of the *Wild* decision.
5. This lien is being set out on any claims which are submitted for a reasonable future time period involving the conclusive language in Section 39-71-401, MCA.
6. In addition, in the event a subrogation lien is effected by medicaid, a health insurance provider, or third party insurer against any of the defendants in this matter as a result of the Montana Supreme Court's decision in *Wild*, we set out a 25% lien against any benefit those parties may receive.

Counsel for future claimants respectfully requests this court allow for proportionate deduction of costs associated with contacting various litigants.

DATED this 11 day of July, 2003.

FOUST LAW OFFICE and  
HUNT & MOLLOY LAW FIRM

BY: \_\_\_\_\_

  
JAMES G. HUNT, Attorneys for  
Kelly Wild

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11<sup>th</sup> day of July, 2003, a true and correct copy of the foregoing **STATEMENT OF SCOPE OF ATTORNEY'S LIEN** was mailed, postage prepaid, to the following:

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