



### III. FINDINGS OF FACT

1. From October 1, 1985 through June 30, 2020, MACo was enrolled as a Plan 1 Employer under the Workers Compensation Act (Act).

2. On April 24, 2020, the Montana Department of Labor and Industry, Employment Relations Division (DLI), imposed an administrative fee of \$201,471.03 on MACo Workers' Compensation Trust (WCT). The administrative fee was noted as an "FY2021 ADMIN Assessment," "SAFETY Assessment," and "SIF Assessment." The amount of the SIF Assessment, which is at issue in this case, was \$21,143.13. MACo Ex. 1.

3. On July 2, 2020, MACo paid the SIF assessment in the amount of \$21,143.13 and notified DLI's Self Insurance Manager Adrienne McLean that the payment was being made under protest and requested to appeal the assessment.

4. On August 25, 2020, McLean notified the Office of Administrative Hearings (OAH) that MACo was disputing the SIF Assessment and requesting a hearing.

### IV. DISCUSSION

The workers' compensation system in Montana was created "to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease." Mont. Code Ann. § 39-71-105(1). The program seeks to "return a worker to work as soon as possible after the worker has suffered a work-related injury or disease." Mont. Code Ann. § 39-71-105(3). In addition, the program is "to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates." Mont. Code Ann. § 39-71-105(4).

In furtherance of these objectives, the Legislature formed the Subsequent Injury Fund (SIF) as a proprietary fund. *See* Mont. Code Ann. §§ 39-71-901 *et seq.* In short, SIF reimburses insurers who become liable for the subsequent injuries incurred by workers certified as disabled for incurred costs after 104 weeks of payments. Mont. Code Ann. §§ 39-71-903 through -905. The purpose of the SIF is found in the Montana Code, which provides:

A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or

disability must be paid compensation in the manner and to the extent provided in this chapter. . . .

Mont. Code Ann. § 39-71-907(1).

MACo argues that, as “an employer<sup>1</sup> formerly enrolled under compensation plan No. 1,” it should not be required to pay the SIF Assessment. It makes this argument on the basis that Mont. Code Ann. § 39-71-915 does not make any explicit provision for the SIF assessment to be levied against a formerly-enrolled employer. MACo points out that the absence of any explicit provision is in contrast with the provisions set forth in Mont. Code Ann. § 39-71-201(5)(b), which is included in the Administrative Provisions of the Workers’ Compensation Administrative Fund, and Mont. Code Ann. § 50-71-128(5)(b) of the Montana Occupational Safety and Health Act (OSHA).

DLI counters that Mont. Code Ann. § 39-71-915 requires plan 1 employers to pay into SIF based upon the plan 1 employers’ losses during the preceding calendar year. DLI notes that Mont. Code Ann. § 39-71-915 draws no distinction between a plan 1 employer currently providing active workers’ compensation coverage and one that is not. DLI argues an insurer is required to pay for the lifetime of the claim once the claim is accepted. DLI further argues that the duty to pay into SIF is based upon the insurer’s liability on the claims it has accepted and not whether it is an active insurer.

MACo argues in response that, if the legislature had intended to levy SIF assessments against formerly enrolled plan 1 employers, it would have made that explicit, as it did in other parts of the Act. MACo asserts, however, it is not seeking an exception be found, but rather that the Hearing Officer “ascertain and interpret the terms and substance” of the statutes at issue. *Ravalli Cnty. v. Erickson*, 2004 MT 35, ¶ 13, 320 Mont. 31, 85 P.3d 772 (citing Mont. Code Ann. § 1-2-101).

Montana Code Ann. § 39-71-915 provides in part:

**Assessment of insurer — employers — definition — collection. (1)**  
As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers'

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<sup>1</sup> Although the term “employer” is used in the Montana Code and is therefore used here in reference to MACo, it should be noted that it is somewhat of a misnomer here and, for purposes of the SIF assessment, a Plan No. 1 employer such as MACo is effectively an insurer.

Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

- (a) total compensation benefits paid; and
- (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount from April 1 of the previous year through March 31 of the current year paid by the fund plus the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

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(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” Mont. Code Ann. § 1-2-101. Similarly, the Montana Supreme Court has directed that all sections of the Workers’ Compensation Act “. . . must be considered together in such manner as to give effect to the Chapter as a whole.” *State ex rel.*

*Roundup Coal Mining Co. v. Industrial Accident Bd.*, 94 Mont. 386, 389-90, 23 P.2d 253, 255 (internal citations omitted).

MACo is correct when it notes that, contrary to the other parts of the Act, the SIF provisions make no explicit mention of “an employer formerly enrolled under compensation plan No. 1.” as do, SIF does, however, provide that the fund is maintained by imposing an assessment based upon the “proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected.” Mont. Code Ann. § 39-71-915(2). “Paid losses” is defined as “benefits paid during the preceding calendar year for injuries covered by the Workers’ Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses.” Mont. Code Ann. § 39-71-915(1). While Montana Code Ann. § 39-71-915 makes no explicit mention of “an employer formerly enrolled under compensation plan No. 1,” it is clear the Legislature did not intend liability for the SIF assessment to terminate upon the employer’s exit from the fund. It is therefore determined that MACo is statutorily responsible for the SIF assessment, even in the absence of an explicit provision regarding former plan No. 1 employers.

Notwithstanding statutory interpretation, both parties also argue public policy grounds with regard to MACo’s liability for the SIF assessment. At issue is the applicability of certain portions of the Act’s provisions which state in relevant part:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

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(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Mont Code Ann. § 38-71-105(1), (3).

MACo points to the “reasonable cost” limitation and argues that an employer hiring an employee who is determined to be disabled under the Act incurs additional costs and potential liabilities as a result of the duty to accommodate such an individual. MACo argues the additional challenges and potential liability for the employer stand in stark contrast to the Act’s “no-fault” approach of the Act.

MACo’s argument is not persuasive and appears to be contradictory. MACo confuses the obligations of a subsequent employer and its insurer—which have limited obligations under the Act—with its obligations as an effective insurer. MACo is responsible for SIF assessments to ensure those who have been certified as a person with a disability are able to be an active member of the workforce, which is a basic right of every citizen of the State of Montana. Nothing about the SIF assessment alters the Act’s “no fault” approach; rather, it merely enforces the obligations assumed by a plan No. 1 employer.

## V. CONCLUSION

It is therefore determined that MACo is responsible for paying the FY2021 SIF assessment in the amount of \$21,143.13. Further, MACo is responsible for paying future SIF assessments pursuant to its statutory obligations under Mont. Code Ann. § 39-71-915, as interpreted herein.

## VI. CONCLUSIONS OF LAW

1. The Office of Administrative Hearings’ authority to determine whether the Montana Association of Counties Workers’ Compensation Trust is legally responsible for paying the FY2021 SIF Assessment is set forth in Mont. Code Ann. § 39-71-2401(2).

2. The Montana Association of Counties Workers’ Compensation Trust is liable for the SIF assessment for FY2021. Mont. Code Ann. § 39-71-915.

3. The Montana Association of Counties Workers’ Compensation Trust is liable for future SIF assessments pursuant to Mont. Code Ann. § 39-71-915, as interpreted herein.

**VII. ORDER**

IT IS THEREFORE ORDERED that the Montana Association of Counties Workers' Compensation Trust is hereby required to pay the SIF Assessment for FY2021 in the amount of \$21,143.13, which it did on July 2, 2020. All future payments of the SIF Assessment shall be made pursuant to Mont. Code Ann. § 39-71-915, as interpreted herein.

DATED this 18th day of March, 2021.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN  
Caroline A. Holien  
Hearing Officer