

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**Supreme Court Cause No. DA 18-0400**

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MICHAEL NEISINGER,

Petitioner and Appellee,

v.

NEW HAMPSHIRE INS. CO.,

Respondent and Appellant,

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**MONTANA STATE FUND'S**  
**MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

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Montana State Fund (“State Fund”) respectfully moves this Court for leave to participate as *amicus curiae* in this matter. Pursuant to Mont. R. App. P. 12(7), State Fund states as follows:

**Statement of Interest**

State Fund is the largest workers’ compensation insurer in the state of Montana, writing approximately 60 percent of all direct premium among Montana workers’ compensation insurers. It provides coverage to approximately 24,000 Montana employers and processes approximately 9,000 claims per year. As a quasi-governmental nonprofit independent corporation, State Fund serves as Montana’s guaranteed market for workers’ compensation insurance, providing access to coverage for all of Montana’s employers.

State Fund is committed to providing high-quality, affordable workers’ compensation coverage for Montana employers and timely access to benefits for injured workers. The circumstances and timing under which a claimant may be required to participate in an independent medical examination (“IME”) directly and substantially impact State Fund’s ability to effectively and efficiently administer claims. Given the significant implications of this litigation relative to the use of IMEs, State Fund has a strong interest in participating as *amicus curiae* in this matter.

### **Issues on Which State Fund Wishes to Submit an *Amicus* Brief**

State Fund desires to file an *amicus* brief on the issue of the circumstances under which a claimant may be required to attend an IME, including the appropriate legal standard applicable to requiring an IME and related public policy implications.

### **Reasons an *Amicus* Brief is Desirable**

Employers, claimants and insurers all have an interest in the fair, equitable and efficient administration of workers' compensation claims. IMEs play an important role in that process. The lower court's decision addresses a novel legal issue with far-reaching consequences regarding parties' rights and obligations relative to IMEs going forward. As Montana's largest workers' compensation insurer, State Fund is well-positioned to inform the Court of its knowledge and understanding of the controlling law and workers' compensation practices, as well as the practical implications of the issue before the Court.

### **Identity of Party Whose Position State Fund Supports**

State Fund supports the position of Appellant New Hampshire Insurance Company.

### **The Parties' Position Regarding State Fund's Participation as *Amicus***

Counsel for both Appellee Michael Neisinger and Appellant New Hampshire Insurance Company have been contacted and have no objection to State Fund's *amicus* participation or the proposed briefing schedule.

**Proposed Filing Date for State Fund’s *Amicus Curiae* Brief**

If the Court grants this motion, State Fund will file its brief on or before October 19, 2018, the deadline for the filing of Appellant’s opening brief.

Based upon the foregoing, State Fund respectfully requests the Court to grant State Fund leave to appear as *amicus curiae* in this matter.

Dated this 2nd day of October, 2018.

MONTANA STATE FUND

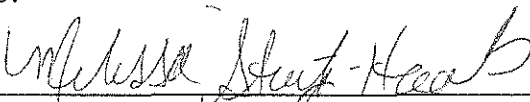
By: /s/ Nick Mazanec  
NICK MAZANEC  
Special Assistant Attorney General  
Attorneys for Montana State Fund

## CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing **MONTANA STATE FUND'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE** with the Clerk of the Montana Supreme Court; and that I have also served true and accurate copies of the foregoing upon the following via U.S. Mail, postage pre-paid and addressed as follows:

Thomas J. Murphy MURPHY LAW FIRM 619 2nd Ave. S. Great Falls, MT 59405 Email: <a href="mailto:tom@murphylawoffice.net">tom@murphylawoffice.net</a> <b>Delivered via E-Mail &amp; U.S. Mail</b>	Kelly M. Wills Shea A.B. Sammons WILLS LAW FIRM, PC 323 West Pine Street Missoula, MT 59802 Email: <a href="mailto:kmwills@willslawpc.com">kmwills@willslawpc.com</a> <b>Delivered via E-Mail &amp; U.S. Mail</b>
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Dated this 2nd day of October, 2018.

  
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Melissa Sturtz-Haab, Paralegal  
Montana State Fund  
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Helena, MT 59604-4759

## CERTIFICATE OF SERVICE

I, Nicholas Jon Mazanec, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 10-02-2018:

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Electronically Signed By: Nicholas Jon Mazanec  
Dated: 10-02-2018