

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 15

WCC No. 9412-7192

**DANIELA BLOWERS, individually and on behalf of
Galen Lee Blowers, II, a minor**

Petitioner

vs.

MONTANA INSURANCE GUARANTY ASSOCIATION

Respondent/Insurer for

POOL WELL SERVICING COMPANY

Respondent/Employer.

ORDER JOINING ADDITIONAL PARTY, REQUIRING GUARDIAN AD LITEM,
REQUIRING PARTIES TO FILE REPORT WITH COURT,
AND VACATING TRIAL SETTING

Summary: Following insolvency of its insurer, employer-respondent began paying death benefits directly to petitioner. Respondent now asks for joinder of the Montana Insurance Guaranty Association.

Held: Joinder is granted. Court also stays further proceedings until petitioner applies for and secures appointment of a guardian ad litem for the minor beneficiary. Where petitioner is demanding lump-sum conversion of death benefits, she must present a lump-sum proposal to respondents containing economic justification for her request. Trial will not be set until a written report summarizing the demand and justification is filed with the Court.

Topics:

Benefits: Death Benefits: Guardian ad Litem. Where widow of deceased worker seeks lump sum conversion of benefits on behalf of herself and her minor child, a guardian ad litem must be appointed on behalf of the minor before the Workers' Compensation Court will address the merits of her request.

Benefits: Lump Sums: Generally. Where widow of deceased worker seeks lump sum conversion of benefits on behalf of herself and her minor child, she must present lump-sum proposal to respondents detailing her demand and the economic justifications for the lump-sum request.

Guardians and Conservators: Guardian ad Litem. Where widow of deceased worker seeks lump sum conversion of benefits on behalf of herself and her minor child, a guardian ad litem must be appointed on behalf of the minor before the Workers' Compensation Court will address the merits of her request.

Insurers: Insolvency. Where respondent-employer has been paying death benefits directly to beneficiaries of deceased worker due to insolvency of its insurer, Court grants respondent's motion to join Montana Insurance Guaranty Association into case seeking lump sum conversion of death benefits.

Procedure: Joining Third Parties. Where respondent-employer has been paying death benefits directly to beneficiaries of deceased worker due to insolvency of its insurer, Court grants respondent's motion to join Montana Insurance Guaranty Association into case seeking lump sum conversion of death benefits.

Petitioner's husband, Galen Lee Bowers, was fatally injured on May 8, 1985, in an industrial accident. On her own behalf and on behalf of her minor son, petitioner is seeking a lump-sum conversion of future death benefits.

Respondent was Bowers' employer. In its response to the petition, it alleges that it has paid death benefits directly to the petitioner since its own insurer became insolvent. It asks that the Montana Insurance Guaranty Association be joined as a party to this action. No opposition has been received, and the motion is therefore **granted**.

In reviewing the file, the Court has also determined that two additional matters should be addressed. First, the interests of the minor child should be represented by a guardian ad litem. *Hock v. Lienco Cedar Products*, 194 Mont. 131, 623 P.2d 1174 (1981). Therefore, further proceedings in this matter are **stayed** until such time as the petitioner applies for and secures the appointment of a guardian ad litem.

Second, the response states, "Petitioner has not presented Respondent with an economic justification for conversion of death benefits to date." Lump-sum proposals should be fully presented to the insurer before any action is filed with this Court. Therefore, petitioner shall **file** a written report with the Court summarizing the demand made upon the respondent and the information provided to respondent in connection with the demand.

This matter will not be set for trial until the respondent and the Montana Insurance Guaranty Association have been provided with sufficient information to enable them to make an informed decision regarding the demand.

In light of the foregoing, it is further **ordered** that the trial setting and scheduling order are **vacated**. A new trial date and pretrial deadlines will be set upon compliance with this Order.

Dated in Helena, Montana, this 28th day of February, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Geoffrey R. Keller