

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 36

WCC No. 2003-0840

---

CATHERINE E. SATTERLEE, et al.

Petitioners

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers.

---

*Appealed to Supreme Court 12/01/06  
Appeal Dismissed Without Prejudice 12/11/07 Re Rule 54(b) Certification  
Re-Appealed to Montana Supreme Court 07/01/08  
Affirmed 11/03/09*

ORDER DENYING PETITIONERS' MOTION TO ALLOW DISCOVERY AND  
GRANTING RESPONDENTS' CROSS-MOTION FOR PARTIAL SUMMARY  
JUDGMENT

**Summary:** In its July 12, 2006, Order, this Court granted Petitioners leave to file a motion and brief pursuant to Mont. R. Civ. P. 56(f) to state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment for Respondents. Additionally, the Court continued Respondents' cross-motion for partial summary judgment.

**Held:** Petitioners' motion for an order allowing discovery is denied. Respondents' cross-motion for partial summary judgment is granted.

**Topics:**

**Summary Judgment: Discovery.** In a Rule 56(f) dispute, the burden is on the party seeking to conduct additional discovery to put forth sufficient facts to show that evidence exists which may preclude summary judgment. *Environmental Contractors, LLC v. Moon*, 1999 MT 178, ¶ 21, 295 Mont. 268, 983 P.2d 390.

**Summary Judgment: Discovery.** Although Petitioners have explained how the discovery they seek may controvert Respondents' economic figures, Petitioners have not explained how the sought-after discovery may preclude a grant of summary judgment in favor of Respondents in light of the fact that the Court's constitutional analysis was not grounded on the specific economic analyses proffered by Respondents.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-710.** Section 39-71-710, MCA, ensures that PTD claimants are compensated commensurately with the wages they were earning when they left the workforce for what otherwise would have been their remaining "work life." PTD benefits thus do not become the pension program the Legislature never intended to create.

### **Petitioners' Motion For An Order Allowing Discovery**

¶ 1 This action concerns the constitutionality of § 39-71-710, MCA, as it pertains to permanent total disability (PTD) benefits. On January 3, 2006, Petitioners moved for reconsideration of the Court's Order Denying [Petitioners'] Motion for Partial Summary Judgment.<sup>1</sup> In its July 12, 2006, Order granting reconsideration,<sup>2</sup> the Court granted Petitioners leave to file a motion and brief pursuant to Rule 56(f), Mont. R. Civ. P.<sup>3</sup> In this motion, the Court required Petitioners to identify specifically: (1) the discovery they are seeking; and (2) how the proposed discovery may preclude summary judgment in favor of Respondents. The Court also continued Respondents' cross-motion for partial summary judgment pending the complete briefing of Petitioners' motion.<sup>4</sup>

---

<sup>1</sup> 2005 MTWCC 55.

<sup>2</sup> Order Granting Petitioners' Motion for Reconsideration, Continuing Respondents' Cross-Motion for Summary Judgment, and Granting Petitioners Leave to File a Motion and Brief Pursuant to Mont. R. Civ. P. 56(f), 2006 MTWCC 29.

<sup>3</sup> Rule 56(f), Mont. R. Civ. P. is identical to ARM 24.5.329(8).

<sup>4</sup> Joining the Montana State Fund in the cross-motion for partial summary judgment is Lumberman's Mutual Casualty Company; Liberty Mutual Insurance Group Companies; Royal & Sunalliance; ASARCO, Inc.; Benefits; Continental Casualty Co.; Golden Sunlight Mines; Northwest Healthcare, Corp.; Northwestern Energy, LLC; F.H. Stoltze Land & Lumber Co.; Rosauers; Safeway; AIG National Insurance Co.; AIU Insurance Company; American Alternative Insurance Corp.; American Home Assurance Company; American General Corp.; American Guarantee & Liability Insurance Company; American International Insurance Co.; American International Pacific Insurance Company; American International Specialty Lines Insurance; American Reinsurance Company; American Zurich Insurance Co.; Assurance Company of America;

¶ 2 In the Order granting Petitioners leave, this Court stated:

In arguing whether the proposed discovery could preclude summary judgment, Petitioners should bear in mind that this Court's analysis of the constitutionality of § 39-71-710, MCA, as it relates to PTD benefits was not based on the specific economic analyses proffered by Respondents. In fact, the specific economic figures were neither considered nor referenced in the Court's Order. Rather, insofar as the financial impact of the constitutionality factored into the Court's analysis, the Court recognized that providing PTD benefits to injured workers beyond the time they were eligible for retirement benefits had a general negative economic impact on the workers' compensation system. Against that framework, the Court will entertain Petitioners' arguments that the disputed economics may preclude summary judgment.<sup>5</sup>

¶ 3 In a Rule 56(f) dispute, the burden is on the party seeking to conduct additional discovery to put forth sufficient facts to show that evidence exists which may preclude

---

Birmingham Fire Insurance Company; Bituminous Casualty Corp.; Bituminous Fire & Marine Insurance Company; Centre Insurance Company; Clarendon National Insurance Company; Colonial American Casualty & Surety; Commerce & Industry Insurance Company; Dairyland Insurance Company; Evanston Insurance Company; Everest National Ins. Co.; Fairfield Ins. Co.; Farmers Insurance Exchange; Fidelity & Deposit Co. of Maryland; General Reinsurance Corp.; General Security Insurance Company; General Security National Insurance Company; Genesis Insurance Company; Gain Dealers Mutual Insurance Company; Granite State Insurance Company; Great American Alliance Insurance Co.; Great American Assurance Co.; Great American Insurance Co.; Great American Insurance Co. of NY; Greenwich Insurance Company; Hartford Accident & Indemnity Co.; Hartford Casualty Insurance Co.; Hartford Fire Insurance Co.; Hartford Insurance Co. of the Midwest; Hartford Underwriters Insurance Co.; Illinois National Insurance Co.; Insurance Company of the State of Pennsylvania; Markel Insurance Company; Maryland Casualty Company; Mid-Century Insurance Co.; Middlesex Insurance Company; Millers First Insurance Company; Montana Health Network Worker's Compensation Insurance Trust; National Union Fire Insurance Company of Pittsburgh, PA; New Hampshire Insurance Company; Northern Insurance Co. of New York; North Star Reinsurance Corporation; Old Republic Insurance Co.; Old Republic Security Assurance Company; P P G Industries Inc.; Penn Star Insurance Company; Property & Casualty Insurance Co. of Hartford; Republic Indemnity; SCOR Reinsurance Company; Sentinel Insurance Company Ltd.; Sentry Insurance Mutual Co.; Sentry Select Insurance Company; Truck Insurance Exchange; Trumbull Insurance Co.; Twin City Fire Insurance Co.; Valiant Insurance Company; XL Insurance America Inc.; XL Ins. Co. of New York Inc.; XL Reinsurance America; XL Specialty Ins. Company; United National Casualty Insurance Company; Zurich American Insurance Co.; Zurich American Insurance Co. of Illinois; Safeco Ins. Co. of Illinois; Safeco Ins. Co. of America; American Economy Ins. Co.; American States Ins. Co.; American Preferred Ins. Co.; First National Ins. Co. of America; and Gen. Ins. Co. of America.

<sup>5</sup> 2006 MTWCC 29, ¶ 15.

summary judgment.<sup>6</sup> After considering Petitioners' arguments, the Court is unpersuaded that allowing additional discovery to challenge the specific economic figures proffered by Respondents may preclude summary judgment in this Court. Although Petitioners have explained how the discovery they seek may controvert Respondents' economic figures, Petitioners have not explained how the sought-after discovery may preclude a grant of summary judgment in favor of Respondents in light of the fact, as noted above, that the Court's constitutional analysis was not grounded on the specific economic analyses proffered by Respondents.

¶ 4 In their brief, Petitioners assert that the Montana State Fund (State Fund) has exaggerated the economic impact of *Satterlee*. Petitioners challenge State Fund's "sky is falling" argument and seek additional discovery to show the Court that the financial viability of the workers' compensation system is not at stake. However, assuming for the sake of argument that Petitioners' assertions are accurate, this does not alter the Court's constitutional analysis. Even if Petitioners believe that Respondents have set forth exaggerated numbers, this fact alone does not persuade this Court to reopen discovery.

¶ 5 In analyzing the constitutionality of § 39-71-710, MCA, this Court neither considered nor referenced the specific numbers set forth by Respondents. In fact, the Court specifically noted that the economic impact was not the sole justification in the Court's decision. Rather, this Court noted that it was **a** justification that was considered in light of other independent distinctions which justified the disparate treatment of the classes at issue in the present case. Specifically, this Court held:

[S]ection 39-71-710, MCA, does not arbitrarily deny benefits to a class of claimants for the sole purpose of saving the government money. Rather, the statute places a reasonable limitation on PTD benefits in order to contain the cost of the system for employers while ensuring that PTD claimants are compensated commensurately with the wages they were earning when they left the workforce for what otherwise would have been their remaining "work life." At the same time, the termination of benefits achieves the rational result of ensuring that PTD benefits do not become the pension program the Legislature never intended to create.<sup>7</sup>

¶ 6 Petitioners have not persuaded this Court that the discovery they seek would preclude summary judgment in favor of Respondents. Although disputing Respondents' specific economic figures, Petitioners themselves concede that the financial impact of

---

<sup>6</sup> *Environmental Contractors, LLC v. Moon*, 1999 MT 178, ¶ 21, 295 Mont. 268, 983 P.2d 390.

<sup>7</sup> 2005 MTWCC 55, ¶ 23.

finding § 39-71-710, MCA, unconstitutional would be significant.<sup>8</sup> Even assuming, as Petitioners contend, that the financial viability of the workers' compensation system is not at stake, a rational basis still exists for the disparate treatment found in § 39-71-710, MCA. As the Court noted in its Order denying Petitioners' motion for partial summary judgment, this statute ensures that PTD claimants are compensated commensurately with the wages they were earning when they left the workforce for what otherwise would have been their remaining "work life." PTD benefits thus do not become the pension program the Legislature never intended to create. Therefore, the Court finds no reason to permit further discovery in this matter.

### **Respondents' Cross-Motion for Partial Summary Judgment**

¶ 7 Having found that further discovery would not provide a basis to preclude summary judgment, the Court turns to Respondents' cross-motion for partial summary judgment. In order to grant summary judgment, the Court must determine that no material facts are in dispute and a party is entitled to judgment as a matter of law.<sup>9</sup> Having determined the specific economic data that Petitioners seek is not material to the Court's holding that § 39-71-710, MCA, is constitutional, the Court sees no other material facts in dispute. Accordingly, Respondents' cross-motion for partial summary judgment regarding the constitutionality of § 39-71-710, MCA, is well-taken.<sup>10</sup>

### **ORDER**

¶ 8 Petitioners' motion for an order allowing discovery is **DENIED**.

¶ 9 Respondents' cross-motion for partial summary judgment is **GRANTED**.

¶ 10 This ORDER is certified as final for purposes of appeal.

¶ 11 Any party to this dispute may have twenty days in which to request reconsideration from this Order.

---

<sup>8</sup> Satterlee's Motion and Brief for an Order Allowing Discovery at 3.

<sup>9</sup> ARM 24.5.329; *Moore v. Does*, 271 Mont. 162, 895 P.2d 209 (1995).

<sup>10</sup> The Court has set forth a detailed analysis of the constitutionality of § 39-71-710, MCA, in its Order Denying [Petitioners'] Motion for Partial Summary Judgment, 2005 MTWCC 55. Accordingly, the Court does not restate it here.

DATED in Helena, Montana, this 15<sup>th</sup> day of November, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: E-Mailed to Satterlee Distribution List November 15, 2006  
Submitted: August 30, 2006

**Order Denying Petitioners' Motion to Allow Discovery and Granting  
Respondents' Cross-Motion for Partial Summary Judgment - Page 6**