

AUG - 4 2005

OFFICE OF
WORKERS COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CATHERINE E. SATTERLEE, et al.,

Petitioners,

vs.

LUMBERMAN'S MUTUAL CASUALTY
COMPANY, et al.

Respondent/Insurer.

WCC No. 2003-0840

MOTION FOR EXTENSION OF TIME

COMES NOW the above-listed Interveners ("Moving Interveners") and move this Court for an extension of time to respond to Petitioner's motion for summary judgment. Petitioners' attorneys Tom Murphy and James Hunt were not available for consultation regarding this motion.

Pursuant to this Court's *Notice of Opportunity to Appear and Intervene* of April 19, 2005, the Moving Interveners joined this action in June of 2005. On June 20, 2005, this Court issued a *Notice of Briefing Schedule* establishing July 25, 2005, as the due date for responses to Petitioners' motion for summary judgment. During a Court Conference on July 14, 2005, attorneys for the State Fund and Petitioners stated that an agreement had been reached extending the response deadline to August 8, 2005. In an e-mail dated July 27, 2005, Jackie Bockman, Deputy Clerk for this Court, confirmed that August 8, 2005, was the deadline for response briefs.

The Moving Interveners have attempted to comply with the August 8, 2005 deadline for responding to Petitioner's motion for summary judgment. However, in drafting the response it has become apparent that the Moving Interveners have been significantly prejudiced by the short period of time with which they have been involved in this case (less than 60 days) and the resulting lack of opportunity to conduct discovery and fact investigation. The Moving Interveners intend to demonstrate that § 39-71-710's denial of PTD benefits to retirees is not an unconstitutional denial of equal protection because it is rationally related to the legislature's legitimate objective of providing workers' compensation benefits at reasonable costs to employers. Facts supporting this position would be the increase in employer insurance premiums in the absence of § 39-71-710's limitation on PTD benefits and whether those increases result in an unreasonable cost to employers. Unfortunately, the briefing schedule has not permitted the Moving Interveners sufficient time to locate, collect, and evaluate such facts. Clearly, the research and expert analysis involved in establishing what workers' compensation insurance premiums would be had the legislature not enacted § 39-71-710 is not something that can be done in the short period of time imposed by the current briefing schedule.

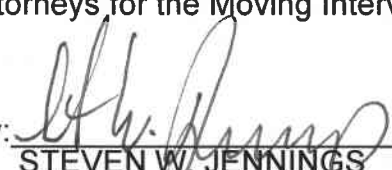
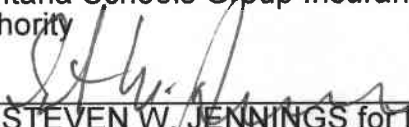
Due process requires that a trial be held according to the state's settled course and modes of judicial procedure. *Marchant v. Pennsylvania R. Co.*, 153 U.S. 380 (1894); *Minder v. Georgia*, 183 U.S. 559 (1902). A fair trial and the fair administration of justice are the basic requirements of due process. *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971); *Groppi v. Wisconsin*, 400 U.S. 505 (1971). Montana's settled modes of judicial procedure in the Workers' Compensation Court are found in § 24.5.300, A.R.M. et. seq. Those regulations contemplate an opportunity for all parties to conduct adequate discovery and fact investigation. Because the current briefing schedule does not permit the Moving Interveners sufficient time for discovery and fact investigation to develop facts in support of their argument, due process requires an extension of the current briefing schedule.

Moreover, Petitioners will not be prejudiced by the requested extension of time. In an e-mail of July 27, 2005, Jackie Bockman advised all parties to this action that the "[o]ral argument currently scheduled for August 22, 2005, is hereby VACATED and will be reset at a later date." This e-mail was in response to the recent change on the bench and in anticipation of newly appointed Judge Shea's arrival in September. The new date for oral argument has not yet been established. Thus, it will likely be two months before Petitioner's motion for summary judgment is even heard and considered by this Court. Under these circumstances (i.e.; the absence of prejudice to Petitioners and the significant prejudice to the Moving Interveners), due process requires that an extension of time be granted.

WHEREFORE, the Moving Interveners hereby request that this Court issue an order granting a thirty (30) day extension for the Moving Interveners to respond to Petitioner's motion for summary judgment.

Montana Municipal Insurance Authority, Montana Association of Counties, and Montana Schools Group Insurance Authority joins in this motion. Their attorney, Leo Ward, has authorized the undersigned to sign this motion on his behalf.

Dated this 4th day of August, 2005.

<p>CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH P.L.L.P. Attorneys for the Moving Interveners</p> <p>By:  STEVEN W. JENNINGS</p>	<p>LEO WARD, Attorney for Montana Municipal Insurance Authority, Montana Association of Counties, and Montana Schools Group Insurance Authority</p> <p>By:  STEVEN W. JENNINGS for Leo Ward</p>
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Steven W. Jennings
Crowley, Haughey, Hanson,
Toole & Dietrich P.L.L.P.
P. O. Box 2529
Billings, MT 59103-2529
(406) 252-3441
Attorneys for:

AIG National Insurance Co.
AIU Insurance Company
American Alternative Insurance Corp.
American Economy Insurance Company
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 States Insurance Company
American States Preferred
American Zurich Insurance Co.
Assurance Company of America
Birmingham Fire Insurance Company
Centre Insurance Company
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Evanston Insurance Company
Everest National Ins. Co.
Fairfield Ins. Co.
Farmers Insurance Exchange
Fidelity & Deposit Co. of Maryland
First National Insurance Company
General Insurance Company
General Reinsurance Corp.
General Security Insurance Company
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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

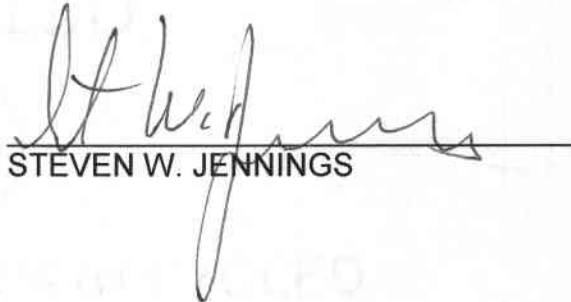
Hartford Accident & Indemnity Co.
Hartford Casualty Insurance Co.
Hartford Fire Insurance Co.
Hartford Insurance Co. of the Midwest
Hartford Underwriters Insurance Co.
Illinois National Insurance Co.
Insurance Company of the State of Pennsylvania
Markel Insurance Company
Maryland Casualty Company
Mid-Century 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
P P G Industries Inc.
Penn Star Insurance Company
Property & Casualty Insurance Co. of Hartford
Republic Indemnity
Safeco Insurance Company of America
Safeco Insurance Co. of Illinois
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 Insurance Company
Zurich American Insurance Co.
Zurich American Insurance Co. of Illinois

CERTIFICATE OF SERVICE

I, STEVEN W. JENNINGS, one of the attorneys for the law firm of Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., hereby certify that on the 4th day of August, 2005, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Mr. James G. Hunt
Hunt & Molloy Law Firm
310 Broadway
Helena, MT 59601

Mr. Thomas J. Murphy
Murphy Law Firm
PO Box 3226
Great Falls, MT 59403-3226


STEVEN W. JENNINGS

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH P.L.L.P.

ATTORNEYS AT LAW

500 TRANSWESTERN PLAZA II • 490 NORTH 31ST STREET • BILLINGS, MONTANA 59101
P.O. Box 2529 • BILLINGS, MONTANA 59103-2529
TEL (406) 252-3441 • FAX (406) 252-5292
www.crowleylaw.com

STEPHEN M. BARRETT
COLBY L. BRANCH * #
KATY A. BRANDIS
ALAN C. BRYAN #
ASHLEY BURLESON
DAVID L. CHARLES
PAUL C. COLLINS
GARY M. CONNELLEY
RENEE L. COPPOCK
MARCIA J. DAVENPORT
JASON A. DELMUE
MICHAEL S. DOCKERY
JOHN B. DUDIS, JR.
JON T. DYRE #
MARY SCRIM DYRE
SCOTT A. FISK
BRUCE A. FREDRICKSON *
MICHAEL W. GREEN

ROBERT C. GRIFFIN
PETER F. HABEIN
SCOTT D. HAGEL
NATHAN S. HANEY
KEVIN P. HEANEY
KENNETH G. HEDGE *
JAMES R. HINTZ
BRIAN HOLLAND
LARRY A. HOLLE
STEVEN W. JENNINGS
DANIEL D. JOHNS
DARIN W. JOHNSON
JOEL L. KALEVA
ALLAN L. KARELL
KIELY S. KEANE
PETER M. KIRWAN
WILLIAM D. LAMDIN III
MICHAEL J. LANSING #

KENNETH K. LAY
JOHN R. LEE *
JARED M. LE FEVRE
STEVEN J. LEHMAN
JULIE A. LICHTÉ
DENISE D. LINFORD #
JASON P. LOBLE
CHRIS MANGEN, JR.
WILLIAM J. MATTIX
JOE C. MAYNARD, JR.
JOHN H. MAYNARD
JOSEPH P. MAZUREK
IAN MCGINTOSH
DANIEL N. McLEAN
MATTHEW F. McLEAN #
ROBERT G. MICHELOTTI, JR.
STEVEN R. MILCH
KIMBERLY S. MORE

DONALD R. MURRAY, JR.
KRISTIN L. OMVIG
JEFFERY J. OVEN #
SHANE D. PETERSON *
HERBERT I. PIERCE III
FRED C. RATHER *
STEVEN P. RUFFATTO
GINA S. SHERMAN
SCOTTI M. SHINGLETON
JAMES P. SITES
GARTH H. SJUE *
LEONARD H. SMITH
CHRISTOPHER C. VOIGT #
DAVID M. WAGNER
NEIL G. WESTESEN
BRYAN P. WILSON
RONALD E. YOUDE

RETIRED
JAMES M. HAUGHEY
BRUCE R. TOOLE

OF COUNSEL
GEORGE C. DALTHORP
JOHN M. DIETRICH
DAVID L. JOHNSON
GARELD F. KRIEG
ARTHUR F. LAMEY, JR.
LOUIS R. MOORE *
MYLES J. THOMAS
FRED E. WHISENAND *

OFFICES
100 NORTH PARK AVENUE
SUITE 300, P.O. BOX 797
HELENA, MT 59624-0797
PHONE (406) 449-4165

111 EAST BROADWAY
P.O. BOX 1206
WILLISTON, ND 58802-1206
PHONE (701) 572-2200

431 FIRST AVENUE WEST
P.O. BOX 759
KALISPELL, MT 59903-0759
PHONE (406) 752-6644

45 DISCOVERY DRIVE
SUITE 200, P.O. BOX 10969
BOZEMAN, MT 59719-0969
PHONE (406) 556-1430

700 S.W. HIGGINS
SUITE 200
MISSOULA, MT 59803
PHONE (406) 829-2732

Attorneys are licensed in Montana unless otherwise noted, * also licensed in North Dakota, # also licensed in Wyoming, + not licensed in Montana

August 4, 2005

Workers' Compensation Court
PO Box 537
Helena, MT 59624-0537

RE: *Catherine E. Satterlee, et al. vs. Lumberman's Mutual Casualty Company, et al.*
WCC No. 2003-0840

Dear Clerk:

On behalf of our client insurance companies, enclosed please find a Motion for Extension of Time for filing in the matter referenced above, as well as a proposed Order to present to the Judge.

Thank you in advance for your assistance with this matter.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

Myrna Henschel, PLS

Myrna Henschel, Certified PLS
Legal Secretary to Steven W. Jennings

mlh

Enclosures

c (w/encl.): Mr. James Hunt
Mr. Thomas Murphy