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FILED

FEB 8 2006

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Mr. Thomas E. Martello
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Mr. David Hawkins
Montana State Fund
P. O. Box 4759
Helena MT 59604-4759

Attorneys for Respondent/Insurer, Montana State Fund

THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA
WCC No. 2003-0840

CATHERINE E. SATTERLEE,
Petitioner,

v.

LUMBERMAN'S MUTUAL CASUALTY
COMPANY,
Respondent/Insurer.

WC Claim No. 788CU041791

**MOTION TO STRIKE AND
MEMORANDUM IN SUPPORT**

JAMES ZENAHLIK,
Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer.

WCC Claim No. 03-1977-06362-9

JOSEPH FOSTER,
Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer.

WCC Claim No. 3-95-17425-3

DORIS BOWERS,
Petitioner,

v.

PUTNAM & ASSOCIATES,
Respondent/Insurer.

WCC Claim No. 290044312000

DOCKET ITEM NO. 307

COMES NOW the Montana State Fund ("State Fund") and moves the Court to strike Satterlee's Reply to Respondents' Brief in Opposition to Southerly's (sic) Motion for Reconsideration (Feb. 1, 2006) ("Satterlee's Reply") as being violative of the Rule of this Court. The State Fund also moves the Court to strike the Second Affidavit of David Johnson, CPA, and its attachments. In support of the Motion, the State Fund States as follows:

Satterlee filed a Motion for Summary Judgment. The Court denied the Motion finding that Montana Code Annotated § 39-71-710, passed constitutional muster in relation to its application to permanently totally disabled claimants, effectively granting the cross motion of the State Fund. Satterlee filed a motion seeking reconsideration and to reopen the record to pursue a course she had chosen not to follow prior to the filing (apparently because she had mistakenly decided to submit "the case to the Court upon the belief that the Court would decide in her favor" (Satterlee's Reply, at 2.))

The Motion was briefed by Satterlee. Several Respondents filed objections with supporting briefs, arguing among other things that Satterlee was improperly attempting to reopen the record to present facts she had the opportunity to explore before submission and that she failed to follow several rules of this Court in relation to the Motion. In Response Satterlee now files a new pleading not allowed by this Court or its Rules. Apparently out of concern that her motion to reopen the record would not be granted she improperly attempts an end run by filing another affidavit from her CPA contending that the previous record was deficient.¹

Montana Administrative Rules § 24.5.337, states:

(1) Any party may move for reconsideration of any order or decision of the workers' compensation court. The motion shall be filed within 20 days after the order or decision is served. The opposing party shall have ten days thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such response, the motion will be deemed submitted for decision unless the court requests oral argument.

¹ The record indicates that the same CPA filed his first affidavit while Satterlee was satisfied that the Court could properly decide this matter based upon each party's submissions. The State Fund filed a counter affidavit before argument outlining the errors in the CPA's analysis. The present affidavit appears to be another analysis and tactic felt to be unnecessary until after the decision of this Court.

(2) Within 20 days of the issuance of any order or final decision, the court may, on its own motion and for good cause, reconsider the order or decision.

(3) If the motion request reconsideration of an appealable order or judgment, the original order or judgment shall not be final until and unless the court denies the motion.

As noted in *Fleming v. International Paper Company*, 2005 MTWCC 57:

The Rule does not allow for a reply brief to be filed by the moving party. Accordingly the motion to file a reply brief must be denied.

Fleming at 3.

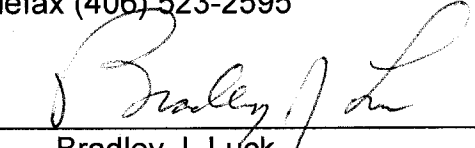
Consistent with the initial request to rehash the thoroughly presented arguments, Satterlee ignores the rules of this Court in filing a Reply. She steps beyond that in her attempt to supplement the record without authorization to do so. This questionable tactic should not be condoned, nor should its fruits be considered here or on appeal. The only proper remedy is to strike both filings.

DATED this 6 day of February, 2006.

Attorneys for Respondent/Insurer, Montana
State Fund:

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By


Bradley J. Luck

CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Respondent/Insurer, Montana State Fund, hereby certify that on this 6th day of February, 2006, I mailed a copy of the foregoing **MOTION TO STRIKE AND MEMORANDUM IN SUPPORT**, postage prepaid, to the following persons:

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February 6, 2006

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Patricia Kessner, Clerk
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537


RE: Satterlee, et al v. Montana State Fund, et al.
WCC No. 2003-840

Dear Ms. Kessner:

Enclosed for filing please find State Fund's Motion to Strike and Memorandum in Support in the above-mentioned matter. Thank you for your assistance. If you have any questions, please call.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP


Bradley J. Luck

BJL:rad

Enc.

c: Mr. James G. Hunt (w/enc.)
Mr. Michael P. Heringer (w/enc.)
Mr. Larry W. Jones (w/enc.)
Mr. Bryce R. Floch (w/enc.)
Mr. Thomas Murphy (w/enc.)