

Geoffrey R. Keller
 Shane P. McGovern
 Matovich & Keller, P.C.
 2812 First Avenue North, Suite 225
 P.O. Box 1098
 Billings, Montana 59103-1098
 Telephone: (406) 252-5500
 Facsimile: (406) 252-4613
 Attorneys for Respondent/Insurers:
 Safeco Insurance Company of Illinois
 Safeco Insurance Company of America
 American Economy Insurance Company
 American States Insurance Company
 American Preferred Insurance Company
 First National Insurance Company of America
 General Insurance Company of America

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CATHERINE E. SATTERLEE, et al.,
 Petitioners,

vs.

LUMBERMAN'S MUTUAL CASUALTY
 COMPANY, et al.

Respondents/Insurers.

WCC No. 2003-0840

**RESPONDENTS' BRIEF IN
 OPPOSITION TO PETITIONER
 SATTERLEE'S MOTION AND
 BRIEF FOR AN ORDER ALLOWING
 DISCOVERY**

COME NOW the above listed insurers ("Respondents") and submit this brief in opposition to Petitioner Satterlee's Motion and Brief for an Order Allowing Discovery.

I. BACKGROUND

This common fund action concerns the constitutionality of § 39-71-710, MCA's limitation on permanent total disability ("PTD") benefits, which is triggered when a permanently and totally disabled claimant receives, or becomes eligible to receive, retirement benefits. On December 12, 2005, this Court denied Petitioners' motion for

partial summary judgment. *Order Denying Motion for Partial Summary Judgment*, 12/12/05. Although the Court certified its decision as final for the purpose of appeal, Petitioners moved for reconsideration, requesting that the Court remove its certification for appeal and permit Petitioners to engage in further factual discovery. *Petitioners' Motion for Reconsideration*, 1/3/06.

On July 12, 2006, the Court issued an order granting Petitioners' request to remove the final certification and continuing State Fund's cross-motion for summary judgment. *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)*, 7/12/06 ("Order 7/12/06"). The Court directed Petitioners to specifically identify (1) the discovery they seek, and (2) how the proposed discovery could preclude summary judgment in favor of respondents. *Id.*, ¶ 18.

Petitioners have failed to identify how any of their proposed discovery could conceivably alter the Court's holding that § 39-71-710, MCA's limitation on PTD benefits is rationally related to the admittedly legitimate governmental interests in reasonable rates and setting workers' compensation benefits commensurate with an injured employee's "work life." *Order Denying Motion for Partial Summary Judgment*, 12/12/05. Because the discovery requested will not establish or controvert any material fact, summary judgment should be entered in Respondents' favor.¹

II. ARGUMENT

A. **The Discovery Proposed by Petitioner Has No Bearing on the Analysis of Whether § 39-71-710, MCA's Limitation of PTD Benefits Bears a Rational Relationship to Legitimate Governmental Interests in Reasonable Rates and Benefits Commensurate with an Injured Employee's "Work Life."**

The discovery requested by Petitioners cannot conceivably impact the constitutionality of § 39-71-710, MCA. As noted by the Court already, whether the statute is constitutional depends on (1) whether the statute's objectives are legitimate, and (2) whether the statute's objectives bear a rational relationship to a legitimate governmental interest. See *Order Denying Motion for Partial Summary Judgment*, 12/12/05, ¶ 13. The Court specifically admonished Petitioners to consider this analytical framework in attempting to justify any request for discovery over disputed economics:

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

¹ As a procedural formality, Respondents have contemporaneously filed a motion requesting joinder in the State Fund's Cross-Motion for Summary Judgment.

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*.

Order 7/12/06, ¶ 15 (emphasis added).

In their motion, Petitioners fail to address, much less explain, how the expensive and burdensome discovery they seek will relate to the legal analysis of whether § 39-71-710 is constitutional. Instead, Petitioners imply that the Court has fallen victim to "unfounded financial scare tactics." *Satterlee's Motion* at 2. Petitioners seek permission to conduct broad discovery because they believe that the "State Fund exaggerated its figures, and that the cost of Satterlee will be less than the [State Fund's] current surplus." *Id.* at 5. Whether all, or merely most, of the State Fund's surplus would be depleted if § 37-71-710's limitation on PTD benefits were to be struck down is not material to that statute's constitutionality. It certainly does not serve as a basis for discovery against the hundreds of other insurers that are involved in this action.

More importantly, Petitioners do not dispute that a finding of unconstitutionality would have a "general negative economic impact on the workers' compensation system." See *id.* In fact, "**Satterlee concedes that the financial impact will be significant . . .**" *Satterlee's Motion* at 3. Petitioner therefore admits the rational relationship between the statute's objective and the government's legitimate interests. With no disputed issue of material fact to decide, all that remains is for the Court to enter summary judgment in Respondents' favor.

B. Even if Petitioners Did Not Concede a Significant Financial Impact, the Statute's Constitutionality Is Measured By Its Rational Relation to Legitimate State Interests -- Not the Financial Impact of a Court's Decision.

The exact amount of a ruling's financial impact has no bearing on whether the challenged statute bears a rational relation to the State's legitimate interests. In measuring the constitutionality of the statute, the appropriate level of scrutiny is a rational basis analysis. *Order*, ¶ 12. "To withstand rational basis scrutiny, the law or state action need be only rationally related to furthering a legitimate state purpose." *Gulbrandson v. Carey* (1995), 272 Mont. 494, 503, 901 P.2d 573, 579. Under a rational basis analysis, a statute will be upheld if the court can conceive of *any* possible legitimate purpose to which the statute might be rationally related. See *State v. Sanders* (1984), 208 Mont. 283, 289, 676 P.2d 1312, 1315 ("Generally, a classification

will not be held to be invidious if *some* rational basis can be found to support it.”) (citations omitted) (emphasis added).

This Court has already found a rational relationship between § 39-71-710's limitation on PTD benefits and the two legitimate governmental goals of cost containment and reasonable wage replacement specifically enumerated in the Workers' Compensation Act. See § 39-71-105(1), MCA. The Court accurately looked to the statute itself to find this rational relationship:

The Legislature's decision to terminate an insurer's liability for PTD benefits when a claimant receives or is eligible to receive retirement benefits is rationally related to the government's valid interest in ensuring that employers are able to provide workers' compensation coverage at reasonable rates, thus maintaining the financial viability of the workers' compensation system.

Order Denying Motion for Partial Summary Judgment, 12/12/05, ¶ 21.

[T]he 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.”

Id. at ¶ 22. This ends the inquiry. Dueling economic or actuarial projections are unnecessary red herrings in the rational basis analysis.

Whether the economic impact of this case is more or less than that asserted by the State Fund does not change the conclusion that it is rational to expect a limitation on PTD benefits to protect the system's ability to provide wage replacement benefits commensurate with an employee's “work life” at reasonable rates for employers. Indeed, were Petitioners to prove that a decision in their favor would have no effect on the State Fund's solvency or financial position whatsoever, such proof would still not render it irrational to expect that § 39-71-710's PTD limitation would help contain costs and protect the system's ability to provide commensurate wage replacement benefits at reasonable rates.

Moreover, even if Petitioners could retract their concession and prove that § 39-71-710's PTD limitation would have no relation to costs or rates, that proof would also be irrelevant. Under the rational basis test, it is irrelevant if the statute perfectly, efficiently, or completely accomplishes a legitimate governmental purpose. *McClanathan v. Smith* (1980), 186 Mont. 56, 67-68, 606 P.2d 507, 513 (“Perfection in making classifications is neither possible nor necessary. Neither is mathematical nicety or perfect equality.”). Rather, when the rational basis test is applied to a statute that

creates classifications, the statute will be upheld if the classification is rationally related to the achievement of legitimate objectives. *Id.* (“[W]here the goals of a classification are legitimate, and the classification is rationally related to the achievement of those goals, the statute should be constitutionally upheld.”). See also *State v. Shook*, 2002 MT 347, ¶ 18, 313 Mont. 347, ¶ 18, 67 P.3d 863, ¶ 18 (“[Appellant] further asserts that [the legislative] purposes could be accomplished by other legitimate means. While there may be other means to [accomplish such purposes]..., we simply disagree this invalidates the regulation. When a law is assessed for a rational basis, exact precision or efficiency is not necessary.”) (citations omitted). As this Court has held, it is rational to believe that limiting PTD benefits upon retirement advances the goals of cost containment and protecting the systems ability to provide reasonable wage replacement. It is irrelevant whether the PTD limitation perfectly accomplishes those goals (by preserving the State Fund’s optimal financial condition) because such legislative perfection is not necessary under a rational basis analysis.

Petitioners do not and cannot support their claim that discovery is necessary for the Court to decide whether § 39-71-710’s PTD limitation is constitutional. As long as it was rational for the legislature to have believed that the PTD limitation would contain costs and protect the system’s ability to pay reasonable wage replacement benefits, the required rational relationship between the statute and its purposes is present -- as this Court has already correctly determined. Petitioners’ motion for an order allowing discovery should be denied.

III. CONCLUSION.

Petitioners advance no reasons justifying the burdensome and expensive discovery they seek in this case. Petitioners admit that a decision in their favor would have a significant financial impact on the workers’ compensation system in Montana. They dispute only the degree of the financial impact -- whether it will break the State Fund’s back completely, or leave some surplus for future claimants. Because Petitioners do not and cannot propose any discovery that would challenge the rational connection between § 39-71-710’s PTD limitations and the objectives of cost containment and providing wage replacement, summary judgment should be entered in Respondents’ favor. Further discovery will accomplish nothing more than delaying this case at great cost to all parties.

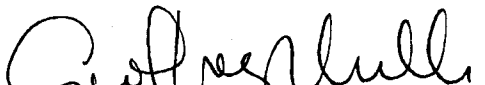
WHEREFORE, the above listed insurer Respondents respectfully request that this Court issue an Order;

1. denying Petitioners’ request for further discovery;
2. granting summary judgment in State Fund’s and Respondents’ favor holding that § 39-71-710, MCA’s limitation on PTD benefits is constitutional; and

3. declaring its Order final for the purposes of appeal.

Dated this 22ND of August 2006.

MATOVICH & KELLER, P.C.



GEOFFREY R. KELLER
2812 First Avenue North, Suite 225
P. O. Box 1098
Billings, MT 59103-1098

CERTIFICATE OF SERVICE

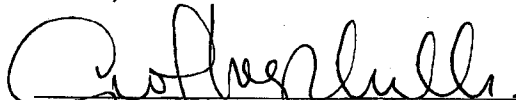
I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 22ND day of August 2006:

U.S. Mail
 FedEx
 Hand-Delivery
 Facsimile
 Email

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

U.S. Mail
 FedEx
 Hand-Delivery
 Facsimile
 Email

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



Geoffrey R. Keller

MATOVICH
& KELLER, P.C.
Attorneys at Law

*Carey E. Matovich
Geoffrey R. Keller
Brooke B. Murphy
Shane P. McGovern
Benjamin O. Rechtfertig
Jacquelyn M. Hughes*

August 22, 2006

Via Facsimile and U.S. Mail

Patricia Kessner
Clerk of Court
Workers' Compensation Court
P.O. Box 537
1625 11th Avenue
Helena, Montana 59624-0537

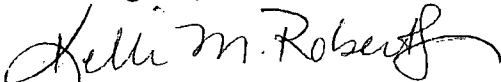
Re: Catherine Satterlee v. Lumberman's Mutual Casualty Company, et al
WWC No.: 2003-0840

Dear Ms. Kessner:

Enclosed you will find an original and one (1) copy of Respondents' Brief in Opposition to Petitioner Satterlee's Motion and Brief for an Order Allowing Discovery, the original and one (1) copy of Respondents' Notice of Joinder of Motion for Cross Summary Judgment, and a proposed Order granting the same. Please file the original documents and return a date stamped copy to this office in the enclosed postage prepaid envelope.

Should you have any questions regarding the foregoing, please feel free to contact me directly.

Best regards,



Kelli M. Roberts
Legal Assistant

Enclosures