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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

**IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA
WC COURT NO. 2003-0840**

CATHERINE E. SATTERLEE,
Petitioner,

vs.

LUMBERMAN'S MUTUAL CASUALTY
COMPANY,
Respondent/Insurer for
BUTTREY FOOD & DRUG,
Employer.

WC Claim No.: 788CU041791

JAMES ZENAHLIK,
Petitioner,

vs.

MONTANA STATE FUND,
Respondent/Insurer for
EAGLE ELECTRIC,
Employer.

WC Claim No.: 03-1997-06362-9

JOSEPH FOSTER,
Petitioner,

vs.

MONTANA STATE FUND,
Respondent/Insurer for
ALLEN ELECTRIC,
Employer.

WC Claim No.: 3-95-17425-3

SATTERLEE'S REPLY BRIEF REQUESTING AN ORDER ALLOWING DISCOVERY

In her initial brief, Satterlee did not even mention the cost of this case. Instead, Respondents, at their first opportunity, inundated us with a tidal wave of scary numbers. The Respondents have the temerity to argue huge numbers to the Court, yet they contend that these numbers are immaterial. The State Fund has even argued that the economic evidence was "pivotal." Now, Respondents do not want to be challenged on these figures and object to discovery.

The State Fund's questionable affidavits have been filed, yet the State Fund asks this Court to deny Satterlee her right to challenge those affidavits. Even the most recent reply brief from the State Fund argues the numbers are immaterial and then spends three pages arguing the numbers. It also filed yet another (third) affidavit from David Gengler, the State Fund's in-house actuary. If this Court allows these affidavits to go unchallenged, there can be no doubt that the State Fund will argue these affidavits to the Supreme Court over Satterlee's continuing objection. Obviously, the Respondents believe the numbers are critical; so critical, in fact that they want these numbers to remain unchallenged.

The Court should not accept the Respondent's numbers. Given the scant evidence, the cost of Satterlee may be less than \$35 million. Many claimants have settled or died and many other claimants will not be found. Satterlee should be allowed discovery to determine whether the numbers offered by the insurers are correct. Without discovery, the Respondents will argue the economic impact of Satterlee based upon questionable and irregular arithmetic to which Satterlee objected at her first opportunity.

If cost is as an important factor as argued by Respondents, discovery is necessary to answer the questions raised. What would be the impact on insurers' rates of providing PTD benefits to injured workers beyond age 65? If the premium increases of \$20 a month for employers, is it a sufficient savings to justify a violation of equal protection? Would an increase of \$200 a month result in unreasonably high rates? And how would any increase be offset by earnings on existing reserves? In other words, will Satterlee disrupt the financial stability of the system? This Court should allow Satterlee the opportunity to show that Respondents are using financial scare tactics.

This matter is not ready for appeal if this Court denies Satterlee the right to conduct discovery. Without discovery, the Montana Supreme Court could only address one of the two bases for this Court's constitutionality ruling. As such, it is a piecemeal appeal that the Montana Supreme Court may not favorably entertain. See, e.g., *In re the Marriage of Armstrong*, 2003 MT 277, 317 Mont. 503, 78 P.3d 1203 (2003); *Kohler v. Croonenberghs*, 2003 MT 260, 317 Mont. 413, 77 P.3d 531 (2003); *Weinstein v. Univ. of Montana*, 271 Mont. 435, 898 P.2d 101 (1995).

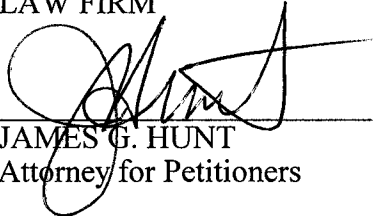
Satterlee is not asking for burdensome or irrelevant discovery. The insurers have consistently asserted in court documents and the public press that Satterlee will cost work comp insurers outrageous sums of money. After making these unfounded assertions, the insurance companies object when Satterlee asks to challenge them.

An appeal of this Court's constitutionality ruling is inevitable. This discovery must be completed at the trial court level to avoid a piecemeal appeal. Satterlee respectfully ask this Court to give her the opportunity to disprove the insurance company numbers.

DATED this 29th day of August, 2006.

HUNT LAW FIRM

BY:



JAMES G. HUNT
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on 29th day of August, 2006, I served a copy of the foregoing **SATTERLEE'S REPLY BRIEF REQUESTING AN ORDER ALLOWING DISCOVERY**, on the following:

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