

Robert E. Sheridan, Esq.
GARLINGTON, LOHN & ROBINSON, PLLP
199 W. Pine - P.O. Box 7909
Missoula, MT 59807-7909
Telephone: (406) 523-2500
Telefax: (406) 523-2595
Attorneys for Respondent/Insurer Putman & Associates

FILED

AUG 25 2003

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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

CATHERINE E. SATTERLEE,
Petitioner,

v.

LUMBERMAN'S MUTUAL
CASUALTY COMPANY,
Respondent/Insurer.

JAMES ZENAHLIK,
Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer.

JOSEPH FOSTER,
Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer.

DORIS BOWERS,
Petitioner,

v.

PUTNAM & ASSOCIATES,
Respondent/Insurer.

RESPONSE TO AMENDED PETITION FOR HEARING

COMES NOW, Royal and SunAlliance (Royal), and pursuant to Administrative Rules of Montana 24.5.302, presents the following response to the Amended Petition for Hearing.

1. **Respondent's Contentions:**

A. The mandatory mediation provisions of Montana law and the rules of this Court have not been followed in this matter. The Amended Petition filed on behalf of Doris Bowers should be dismissed without prejudice.

B. The provisions of Montana Code Annotated § 39-71-710 are not unconstitutional. It does not impermissibly delegate legislative power and it does not violate the equal protection provisions of the Montana or United States constitutions.

C. This matter is not proper for class certification.

D. Common fund treatment is not allowed under the laws of the State of Montana for this action.

2. **Uncontested facts:**

A. Petitioner, Doris Bowers, was injured on January 4, 2002 while in the scope and course of her employment for Tidyman's. At the time of Petitioner's injury, Tidyman's was enrolled under Plan II of the Montana Workers' Compensation Act and was insured for purposes of workers' compensation by Royal.

B. Petitioner's claim for benefits was accepted by Royal and it has paid indemnity and medical benefits to Petitioner.

C. Petitioner was born on August 8, 1928 and was 73 years old on the date of her injury on January 4, 2002. Petitioner has been advised by Royal that the only benefits to which she is entitled pursuant to the provisions of Montana Code Annotated § 39-71-710 are benefits for her impairment and medical benefits.

D. Pursuant to the provisions of Montana Code Annotated § 39-71-710, once a claimant is eligible for social security retirement benefits, the claimant is considered retired and the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award. In addition, the insurer is no longer liable for the payment of permanent total disability benefits or for rehabilitation benefits.

E. The issues presented in this case were previously before the Court in the case of *Alberta Black v. MDMC/Benefis Healthcare*. This Court ruled in its Findings of Fact, Conclusions of Law and Judgment on August 24, 2001 that the provisions of Montana Code

Annotated § 39-71-710 do not violate equal protection guarantees. This Court further held that claimants who are considered retired pursuant to Montana Code Annotated § 37-71-710 are not entitled to permanent partial disability benefits other than their impairment award.

3. Witnesses:

Respondent anticipates that the issues of law raised by Petitioners will be submitted to the Court for determination based upon a stipulated set of facts. Exhibits and witnesses will be necessary only if the parties are unable to stipulate to all necessary facts.

4. Medical records.

There are no issues in this case which require the exchange of medical records to resolve the issues placed before this Court.

WHEREFORE, Royal respectfully requests that Montana Code Annotated § 39-71-710 as enacted be declared constitutional and the claim of the Petitioner should be dismissed.

DATED this 22nd day of August, 2003.

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Telefax: (406) 523-2595

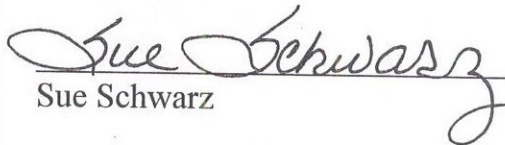
Attorneys for Respondent/Insurer Putman &
Associates

By: Robert E. Sheridan
Robert E. Sheridan

CERTIFICATE OF MAILING

I, the undersigned, a representative of the law firm of Garlington, Lohn & Robinson, PLLP, hereby certify that on the 22nd day of August, 2003, I mailed a copy of the foregoing **RESPONSE TO AMENDED PETITION FOR HEARING**, to the following:

James G. Hunt, Esq.
HUNT & MOLLOY LAW FIRM
P.O. Box 1711
Helena, MT 59624


Sue Schwarz