

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 Intervener Insurers:

FILED

JAN 20 2006

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

AIG National Insurance Co.
AIU Insurance Company
American Alternative Insurance Corp.
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 Zurich Insurance Co.
Assurance Company of America
Birmingham Fire Insurance Company
Bituminous Casualty Corp.
Bituminous Fire & Marine Insurance Company
Centre Insurance Company
Clarendon National Insurance Company
Colonial American Casualty & Surety
Commerce & Industry Insurance Company
Dairyland Insurance Company
Evanston Insurance Company
Everest National Ins. Co.
Fairfield Ins. Co.
Farmers Insurance Exchange
Fidelity & Deposit Co. of Maryland
General Reinsurance Corp.
General Security Insurance Company
General Security National Insurance Company
Genesis Insurance Company
Grain Dealers Mutual Insurance Company
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.

DOCKET ITEM NO. 2916

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
Old Republic Insurance Co.
Old Republic Security Assurance Company
P P G Industries Inc.
Penn Star Insurance Company
Property & Casualty Insurance Co. of Hartford
Republic Indemnity
SCOR Reinsurance Company
Sentinel Insurance Company Ltd.
Sentry Insurance Mutual Co.
Sentry Select Insurance Company
Stillwater Mining 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 Casualty Insurance Company
Zurich American Insurance Co.
Zurich American Insurance Co. of Illinois

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

**INTERVENERS' RESPONSE TO
MOTION FOR RECONSIDERATION**

COME NOW the above listed Intervener Insurers ("Insurers"), and submit this brief in opposition to *Petitioners' Motion for Reconsideration* ("Motion").

BACKGROUND

Petitioners in this case moved for partial summary judgment requesting that this Court find section 39-71-710, MCA's denial of PTD benefits upon retirement to be an unconstitutional denial of equal protection. As the Court is aware, it rejected Petitioners' arguments, holding that:

The Legislature's decision to terminate PTD benefits who are defined as "retired" is rationally related to the legitimate governmental interests of providing PTD benefits to claimants for the time period of their "work life," maintaining affordable insurance for employers, and continuing to offer comprehensive workers' compensation benefits to employees at reasonable rates.

(Order Denying Motion for Partial Summary Judgment of December 12, 2005, ¶ 32 ("Order").) The Court certified its decision as final for the purposes of appeal.

Petitioners also request, for the first time, that the Court rescind its certification of the Order as final for appeal so they may conduct discovery on the economic cost of extending PTD benefits for the lifetime of injured workers.

ARGUMENT

Petitioners' Motion should be denied because the additional discovery requested would not establish any disputed issue of *material* fact. Calculating "the actual cost" of lifetime PTD benefits (Mot. at 2) is unnecessary to assess whether section 39-71-710, MCA's limitation on PTD benefits violates equal protection. Rather, as the Court's Order reflects, the analytical inquiry is whether the law's limitation of PTD benefits at retirement is rationally related to the legitimate governmental interests of providing PTD

benefits to claimants for their "work life," maintaining affordable insurance for employers, and continuing to offer comprehensive workers' compensation benefits to employees at reasonable rates. Additionally, Petitioners' request that the Court rescind its certification of the Order as final for appeal should be denied as untimely under section 24.5.348(4)(a), A.R.M. This request should be denied because, among other reasons, Petitioners failed to make the request prior to the Court's Order.

I. NO ADDITIONAL FACTS ARE NECESSARY TO UPHOLD THE CONSTITUTIONALITY OF SECTION 39-71-710, MCA'S LIMITATION ON PTD BENEFITS TO THE WORK LIFE OF CLAIMANTS.

As the Court recognized, "there are no consequential facts which are in dispute" to preclude the conclusion that section 39-71-710, MCA, is constitutional as it applies to PTD benefits. (Order at 3.) The Court noted that the legislature did not intend PTD benefits to serve as a "pension program." (*Id.* at 8.) "Rather, the 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 9.)

Despite the Order's clear line of reasoning, Petitioners apparently contend that they successfully manufactured a genuine issue of material fact by submitting affidavits challenging the State Fund's evidentiary submissions on the financial impact to it if PTD benefits were extended for the lifetime of claimants. While Petitioners' affidavits challenge the State Fund's economist's conclusions as overstated and without foundation, they do not and cannot controvert the inevitable proposition that making PTD a "lifetime" benefit would increase the cost to employers and insurers to provide comprehensive workers' compensation benefits. In sum, the dueling affidavits are a red herring, and Petitioners' Motion should be denied so that they may pursue an appeal should they so desire.

II. PETITIONERS' REQUEST TO RESCIND THE CERTIFICATION OF THE ORDER AS FINAL FOR APPEAL MUST BE DENIED BECAUSE IT IS NOT TIMELY.

Petitioners' Motion does not actually request that this Court reconsider its Order. Rather, Petitioners request that this Court vacate its certification that the Order is final for the purpose of appeal so that Petitioners may pursue additional (and immaterial) discovery. The Petitioners' request, however, flies in the face of this Court's rules, which expressly set forth procedures governing requests that decisions not be certified as final. Specifically, this Court's rules state as follows:

A party to the dispute may submit, ***with party's proposed findings and conclusions or otherwise at any time prior to issuance of the***

decision and certification, a request that the decision not be certified as final. Such a request must include a showing of the good cause upon which the request is based.

§ 24.5.348(4)(a), A.R.M (emphasis supplied). Such a rule exists for the very purpose of prohibiting litigants from wasting this Court's and opposing parties' resources by seeking a dispositive ruling and then, upon receiving an unfavorable ruling, requesting that it not be final so that the litigant may have another run at the entire proceeding - the very tactic attempted by Petitioners in this case. Petitioners should not be afforded a second bite at the apple after discovering the worm in their case on summary judgment. By waiting until after the Court's Order was issued before requesting that it not be certified as final, Petitioners have failed to comply with this Court's rules. Petitioners' Motion should be denied.

CONCLUSION

Petitioners' motion must be denied. The Court's analysis of whether section 39-71-710, MCA's limitation on PTD benefits violates equal protection accurately focused on the statute's relation to the state's legitimate interests in providing workers' compensation benefits for the work life of an injured worker and in simultaneously providing benefits to workers at a reasonable cost to the State's employers. The projected impact of extending PTD benefits has no bearing in the constitutional analysis, obviating the need for any further discovery by Petitioners. Petitioners' Motion must therefore be denied because discovery is unnecessary and because Petitioners' request that the Court's Order not be treated as final was untimely.

Dated this 20th day of January, 2006.

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

By: 

STEVEN W. JENNINGS

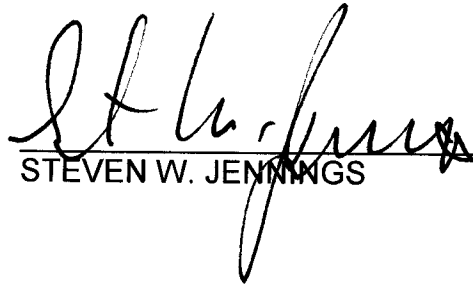
Attorneys for Intervener Insurers listed above

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 20th day of January, 2006, 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. LAM DIN III
MICHAEL J. LANSING #

KENNETH K. LAY
JOHN R. LEE *
JARED M. LE FEVRE
STEVEN J. LEHMAN
JULIE A. LICHT
DENISE D. LINFORD #
JASON P. LOBLE
CHRIS MANGEN, JR.
WILLIAM J. MATTIX
JOE C. MAYNARD, JR.
JOHN H. MAYNARD
JOSEPH P. MAZUREK
IAN McINTOSH
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. RATHERT *
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. YOUNG

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

January 20, 2006

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 clients, enclosed please find Interveners' Response to Motion for Reconsideration for filing in the above-referenced matter. Please conform the cover sheet and return in the envelope provided.

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