

1 RONALD W. ATWOOD, P.C.
2 333 S.W. Fifth Avenue
3 200 Oregon Trail Building
4 Portland, Oregon 97204
5 Telephone: 503/525-0963
6 Facsimile: 503/525-0966

FILED

AUG - 8 2005

7 Of Attorneys for J.H. Kelly, LLC/
8 Louisiana Pacific Corporation

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

9 **IN THE WORKERS' COMPENSATION COURT**
10 **OF THE STATE OF MONTANA**

11 WCC No. 2003-0840

12 CATHERINE E. SATTERLEE,

13 Petitioner,

14 vs.

15 LUMBERMAN'S MUTUAL CASUALTY
16 COMPANY, et al.,

17 Respondent/Insurer,

18 MONTANA STATE FUND,

19 Intervenor.

**SUPPLEMENTAL RESPONSE TO MOTION
FOR PARTIAL SUMMARY JUDGMENT OF
RESPONDENTS J.H. KELLY, LLC AND
LOUISIANA PACIFIC CORPORATION**

20 On behalf of J.H. Kelly, LLC and Louisiana Pacific
21 Corporation, we are filing this supplemental response to Motion
22 for Partial Summary Judgment. While we recognize that this is
23 an unusual step, we are not taking it lightly.

24 The issue before you is the constitutionality of Section
25 39-71-710, MCA, which provides for the termination of certain
26 benefits upon retirement. The issue before you is whether

**Page 1 - SUPPLEMENTAL RESPONSE TO MOTION FOR PARTIAL SUMMARY
JUDGMENT OF RESPONDENTS J.H. KELLY, LLC AND LOUISIANA
PACIFIC CORPORATION**

Ronald W. Atwood, P.C.
Attorney at Law

DOCKET ITEM NO. 233

200 Oregon Trail Building
333 S.W. Fifth Ave.
Portland, OR 97204
(503) 525-0963

E-mail: ratwood@ronaldwatwood.com

1 *Reesor v. Montana State Fund*, 204 Montana 370, 325 Montana 1 ____
2 Pacific 3rd ____ (December 22, 2004) compels a particular result.

3 We are very mindful of the operation of *stare decisis*. As
4 indicated in our initial response, an initial reading of *Reesor*
5 would compel a grant of a Motion for Summary Judgment. Upon
6 further reflection, we ask that you not take that step.

7 Our initial response was filed in time for the original
8 briefing schedule and sent when it was because of an upcoming
9 vacation. We have now returned from that vacation and have had
10 an opportunity to review some additional material and come to
11 the opposite conclusion. We commend to your reading the brief
12 filed on behalf of the State Fund, as well as the brief filed by
13 Lumberman's Mutual. We agree with and adopt their arguments in
14 their entirety.
15

16 Two points should be raised. First, rational relationship
17 is the test of the constitutionality of a workers' compensation
18 statute. It is a relatively high burden for petitioners to show
19 that this particular statute is unconstitutional.

20 Second, there really is a difference between permanent
21 partial disability benefits on the one hand and permanent total
22 disability benefits and rehabilitation benefits on the other.
23 The Montana workers' compensation system is not a pension
24 system. It is not designed to be a system to provide benefits
25 after retirement. It is clear these benefits are to be provided
26

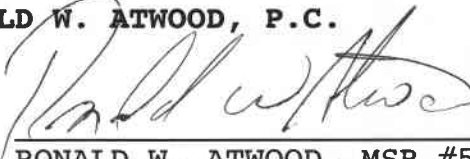
up to retirement and then to be substituted for Social Security income. The legislative choice does have a rational relationship to a legitimate government objective of preventing duplicate payments.

We urge you to deny the Motion for Summary Judgment.

Respectfully submitted this 8th day of August, 2005.

RONALD W. ATWOOD, P.C.

By:



RONALD W. ATWOOD, MSB #5959
of Attorneys for J.H. Kelly, LLC/
Louisiana Pacific Corporation

CERTIFICATE OF SERVICE

1 I hereby certify that I served the original **SUPPLEMENTAL**
2 **RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT OF RESPONDENTS**
3 **J.H. KELLY, LLC AND LOUISIAN PACIFIC CORPORATION** by causing it
4 to be mailed on the 8th day of August, 2005 to:

5 Workers' Compensation Court
6 P.O. Box 537
7 Helena, MT 59624-0537

8 I further certify that I have made service of a true copy
9 of the foregoing **SUPPLEMENTAL RESPONSE TO MOTION FOR PARTIAL**
10 **SUMMARY JUDGMENT OF RESPONDENTS J.H. KELLY, LLC AND LOUISIAN**
11 **PACIFIC CORPORATION** upon the parties hereto in the United States
12 Post Office at Portland, Oregon on the 8th day of August, 2005,
13 with postage thereon prepaid, addressed to:

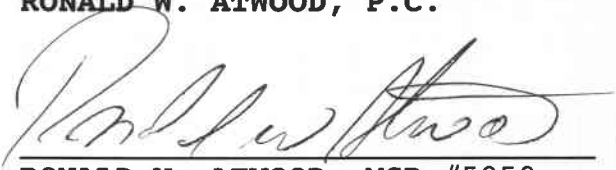
14 Mr. James G. Hunt
15 Hunt Law Firm
16 310 Broadway
17 Helena, MT 59624

18 A copy of the enclosed has also been sent electronically,
19 in .pdf format, to: jbockman@mt.gov.

20 I declare under penalty of perjury that the foregoing is
21 true and correct.

22 **RONALD W. ATWOOD, P.C.**

23
24
25
26
By:


RONALD W. ATWOOD, MSB #5959
of Attorneys for J.H. Kelly, LLC/
Louisiana Pacific Corporation

CERTIFICATE OF SERVICE

Ronald W. Atwood, P.C.
Attorney at Law

200 Oregon Trail Building
333 S.W. Fifth Ave.
Portland, OR 97204
(503) 525-0963

E-mail: ratwood@ronaldwatwood.com

Ronald W. Atwood*

Sara Turner
Legal Assistant

Eroy Lawless
Legal Assistant

* Licensed in Oregon,
Washington and Montana

Ronald W. Atwood, P.C.

Attorney at Law

200 Oregon Trail Building
333 S.W. Fifth Ave.
Portland, OR 97204-1748
(503) 525-0963

FAX (503) 525-0966

E-mail: ratwood@ronaldwatwood.com

August 8, 2005

VIA E-MAIL AND U.S. MAIL

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

Re: *Catherine E. Satterlee vs. Lumberman's Casualty
Company, et al.*
WCC No. 2003-0840

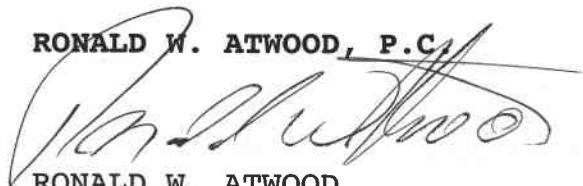
Dear Staff:

We have enclosed for filing the SUPPLEMENTAL RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT OF RESPONDENTS J.H. KELLY, LLC AND LOUISIANA PACIFIC CORPORATION in the above-captioned matter.

Thank you for your consideration of this matter.

Very truly yours,

RONALD W. ATWOOD, P.C.



RONALD W. ATWOOD
RWA/pjd

Enclosure

cc w/enc.: Mr. James G. Hunt
Ms. Barbara Jones
Mr. Rick Davenport
Mr. Guy Boileau