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FILED

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ATTORNEYS FOR RESPONDENT/INSURER

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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

CATHERINE E. SATTERLEE, et al.

Petitioners,

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers

**AMICI MONTANA MUNICIPAL INSURANCE AUTHORITY, MONTANA SCHOOLS
GROUP INSURANCE AUTHORITY AND MONTANA ASSOCIATION OF COUNTIES'
BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR RECONSIDERATION**

INTRODUCTION

Montana Municipal Insurance Authority, Montana Schools Group Insurance Authority and Montana Association of Counties appeared in this case and filed an amicus brief on behalf of the city, school and county employers and employees they serve. The Cities, Schools and Counties oppose Petitioners' motion for reconsideration because it is without merit. The Court properly addressed the constitutional issue before it based on the facts Petitioners claimed were undisputed and Petitioners are attempting to reargue issues they previously addressed in their Reply Brief. These issues were properly addressed by the Court and reconsideration should be denied.

PERTINENT FACTS

This was no rush to judgment. Petitioners filed an Amended Petition For Hearing two and a half years ago on July 25, 2003. They filed a Second

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Amended Petition For Hearing almost a year and a half ago on August 12, 2004. They filed their Motion For Partial Summary Judgment and Brief on February 18, 2005 claiming there were no genuine issues of material fact, and their Reply Brief on September 22, 2005. Oral arguments on the motions of the parties were conducted on October 7, 2005. The Court issued its opinion on December 12, 2005. Petitioner had ample opportunity to present undisputed evidence pertinent to their case. They also had ample opportunity to challenge the evidence presented by the Respondents and amici, and, in fact, they did present evidence by affidavit challenging some of the facts asserted by the Respondents in their Reply Brief.

ARGUMENT

The primary rule of motions for reconsideration is: do not reargue your case. Sandru v. Rochdale Insurance Company, 2004 MTWCC 49A. Petitioner's motion for reconsideration violates this rule and should be denied.

Petitioners certified to the Court on multiple occasions there were sufficient undisputed facts to justify partial summary judgment in their favor. The facts set forth in the Factual Background of this Court's decision appear to mirror the pertinent portion of Petitioner's undisputed facts necessary for the Court to make its decision. There is no direct reference to the facts Petitioners claim are disputed and the Court has sufficient undisputed facts to reach the correct result based on the applicable law.

Petitioners are really trying to reargue facts which they previously disputed and which the Court either considered or discarded in arriving at its opinion. Petitioners imply the Court accepted the disputed facts at face value, but nothing in the opinion remotely suggests disputed facts had any significant impact. On the contrary, the opinion demonstrates the Court relied on only those facts which could be reasonably ascertained from the evidence presented and appropriately applied the heavy burden of demonstrating the unconstitutionality of the statute beyond a reasonable doubt. All doubts must be resolved in favor of the constitutionality of the statute.

But, it was not necessary for the Court to resolve disputed evidence to reach its opinion the statute was constitutional. Petitioners relied entirely on the Reesor decision and ignored the second Rausch decision at their peril. The Court appropriately determined Reesor did not address the issue raised in the second Rausch decision. Petitioners were not done in by uncomfortable facts, but by the appropriate application of pertinent legal authority within the strict standard of constitutional interpretation.

Even if Petitioners were not rearguing their prior position, the Court recently ruled it is improper to present evidence on reconsideration which could and should

have been presented before or during the hearing. Thompson v. State of Montana, 2006 MTWCC 1. There is no compelling reason why Petitioners did not present their facts previously. Petitioners cannot hold back evidence when responding to a summary judgment motion and then seek reconsideration after an adverse ruling. Wiard v. Liberty Northwest, 2001 MTWCC 31A, ¶ 5. In the present case, the evidence Petitioners wish to “discover” will not change the Court’s ruling. Id.

The facts Petitioners wish to dispute, and have already disputed, clearly has little bearing on the Court’s decision because the same result would be reached regardless. Petitioners just want another opportunity to reargue their case when the appropriate avenue is appeal to the Montana Supreme Court. Their motion for reconsideration should be denied.

DATED this 13th day of January, 2006.

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CERTIFICATE OF SERVICE

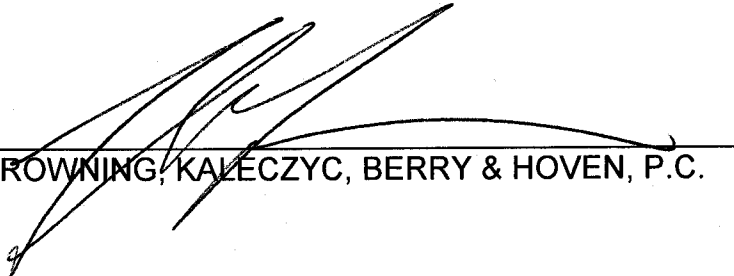
I hereby certify that on the 15th day of January, 2006, a true and correct copy of the foregoing was this day deposited in the United States mail, postage prepaid, addressed to:

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