

**FILED**

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OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

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

|   |                                      |
|---|--------------------------------------|
| <b>CATHERINE E. SATTERLEE,</b><br>Petitioner,<br>vs.<br>LUMBERMAN'S MUTUAL CASUALTY<br>COMPANY,<br>Respondent/Insurer for<br>BUTTREY FOOD & DRUG,<br>Employer.  | <b>WC Claim No.: 788CU041791</b>     |
| <b>JAMES ZENAHLIK,</b><br>Petitioner,<br>vs.<br>MONTANA STATE FUND,<br>Respondent/Insurer for<br>EAGLE ELECTRIC,<br>Employer.                                   | <b>WC Claim No.: 03-1997-06362-9</b> |
| <b>JOSEPH FOSTER,</b><br>Petitioner,<br>vs.<br>MONTANA STATE FUND,<br>Respondent/Insurer for<br>ALLEN ELECTRIC,<br>Employer.                                    | <b>WC Claim No.: 3-95-17425-3</b>    |
| <b>DORIS BOWERS,</b><br>Petitioner,<br>vs.<br>PUTMAN & ASSOCIATES,<br>Adjusters for<br>ROYAL & SUNALLIANCE,<br>Respondent/Insurer for<br>TIDYMANS,<br>Employer. | <b>WC Claim No.: 290044312000</b>    |

DOCKET ITEM NO. 283

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PETITIONERS' MOTION FOR RECONSIDERATION

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On December 12, 2005, this Court denied Satterlee's Motion for Partial Summary Judgment and Brief in Support. Assuming that the parties want to pursue the legal issue directly to the Montana Supreme Court, this Court certified its Order for purposes of appeal. (§33). However, as the Court's ruling demonstrates, the present case involves some contentious factual issues. Rather than allowing the State Fund to rely on a presumption that its affidavits are correct, Satterlee asks the Court for permission to conduct discovery.

The Court allowed any party twenty days in which to request a rehearing from the Order Denying Motion for Partial Summary Judgment. (§34). Satterlee hereby asks the Court to remove certification for appeal because Satterlee believes discovery is necessary to show the Court that the financial viability of the workers' compensation system is not at stake. Therefore, this matter is not ripe for final certification for purposes of appeal.

In Satterlee's Reply Brief in Support of Motion for Partial Summary Judgment, she argued that the affidavits presented by the State Fund and other Respondents had "significantly overstated" the financial impact of a decision in favor of Satterlee and therefore the figures presented were not "uncontroverted." (See Reply Brief, pp. 3, 10, and 14). Satterlee disputed the affidavits. Specifically, Satterlee does not agree that the workers' compensation system will become incapable of working successfully if the Court were to find in her favor.

Based on a presumption favoring the affidavits of the opposing party, it appears from its decision that the Court accepted Respondents' affidavits and arguments that the workers' compensation system's financial viability is at stake. For instance, the Court held:

¶21 The Legislature's decision to terminate an insurer's liability for PTD benefits when a claimant receives or is eligible to receive retirement benefits is rationally related to the government's valid interest in ensuring that employers are able to provide workers' compensation coverage at reasonable rates, thus maintaining the financial viability of the workers' compensation system.

As the above quote demonstrates, the Court considered the financial impact of Satterlee on the workers' compensation system. Therefore, evidence is necessary to show the real financial impact. Satterlee has consistently questioned the State Fund's affidavits and economic data. Satterlee does not agree that this case will "bankrupt" the State Fund or the system. In order to show this, Satterlee asks the Court to allow her discovery to demonstrate the actual cost of a favorable decision. Following discovery, Satterlee will present the Court with factual evidence that will be material to the issue at bar. At the oral argument, the State Fund observed:

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8           Quickly on to the effects. We've  
9 provided for the Court a lot of financial data.  
10 I'm not going to harp on the numbers, but it's  
11 important when we consider the economic impact of  
12 a decision invalidating 710 for permanent total  
13 disability benefits. It will bankrupt the State  
14 Fund, and it will bankrupt the system. We'll be

15 in for another go around in some manner parallel  
16 to what happened after 1987.

...

24 As an aside, there's been some question  
25 about the evidentiary nature of these affidavits.

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1 We believe they're solid. The data is there. We  
2 filed a clarification that responded to the expert  
3 hired by the claimant. But if there's any  
4 question about that data, we'll bring those people  
5 in for the Court for an evidentiary hearing, and  
6 they can say the exact same thing on the record,  
7 because it's so pivotal. We can't have this case  
8 move forward without that information being part  
9 of the record, because it's pivotal that that be  
10 part of the consideration.

Thus, there are material facts in dispute, and Satterlee asks this Court to allow discovery. Because there are controverted facts on material issues, this matter is ripe for final certification for purposes of appeal. Therefore, Satterlee asks that this Court remove final certification for appeal, allow discovery, and reconsider its Order denying Satterlee's Motion for Partial Summary Judgment after discovery is completed.

DATED this 3<sup>rd</sup> day of January, 2006.

HUNT LAW FIRM

BY: 

JAMES G. HUNT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of January, 2006, I served a copy of the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** on the following:

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