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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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MONTANA WORKERS' COMPENSATION COURT

<p>CATHERINE E. SATTERLEE, et al.,</p> <p>Petitioners,</p> <p>vs.</p> <p>LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.</p> <p>Respondents.</p>	<p>WCC No.: 2003-0840</p> <p>BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR RECONSIDERATION</p>
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Respondent Putman & Associates, adjustor for Royal & Sunalliance, and Intervenors ASARCO, Inc., Benefits, Continental Casualty Co., Golden Sunlight Mines, Northwest Healthcare, Corp., Northwestern Energy, LLC, F.H. Stoltze Land & Lumber Co. and Safeway hereby submit this brief in opposition to Petitioners' Motion for Reconsideration.

INTRODUCTION

On December 12, 2005, this Court denied Petitioners' Motion for Partial Summary Judgment on the basis that Petitioners had not established beyond a reasonable doubt that the portion of § 39-71-710, MCA, relating to permanent total disability ("PTD") benefits violates the Montana Constitution's Equal Protection Clause. The Court held that § 39-71-710, MCA, passes equal protection muster because the Legislature's decision to terminate an insurer's liability for PTD benefits when a claimant receives or becomes eligible to receive retirement benefits is rationally related to the legitimate government interest in containing the cost of the workers' compensation system while ensuring PTD claimants are compensated in an amount that bears a reasonable relationship to the actual wages lost as a result of their work-related injuries. (See Order Denying Mot. for Partial Summ. J. at ¶¶ 21-23). The Court certified its Order as final to allow Petitioners to appeal immediately to the Montana Supreme Court. (*Id.* at 33).

Petitioners now urge the Court to de-certify its Order, allow them to conduct discovery to obtain evidence regarding the "actual cost" to the workers' compensation system of a decision in their favor and then allow them a second bite at the summary judgment apple. The Court should deny Petitioners' Motion for Reconsideration in the first instance because it does nothing more than rehash arguments previously asserted and promise to present evidence that could have been presented prior to the Court's decision. The Court should additionally deny Petitioners' Motion because they have failed to establish that the evidence they seek to obtain through discovery would materially affect the Court's conclusion that they failed to meet the heavy burden of proof necessary to establish that § 39-71-710, MCA, is unconstitutional.

LAW AND ARGUMENT

- I. **Petitioners' Motion for Reconsideration should be denied because it does nothing more than repeat arguments Petitioners previously made and promise to present evidence that Petitioners could have presented earlier.**

Petitioners argue that their Motion for Reconsideration should be granted because they disagree with the evidence presented by Respondents regarding the economic effect of requiring insurers to pay lifetime benefits to PTD claimants and do not believe that a ruling in their favor would bankrupt the State Fund or the entire workers' compensation system. Petitioners claim that they should be allowed to conduct discovery in order to shore up their allegation that "the financial viability of the workers' compensation system is not at stake." (See Pet'rs' Mot. for Recons. at 2).

The Court should reject Petitioners' arguments in the first instance because the same arguments have already been presented to, and rejected by, this Court. It is well-

settled that a Motion for Reconsideration cannot be used by a party as a vehicle to reargue his case. See *Hiett v. Montana Sch. Group Ins. Auth.*, 2001 MTWCC 66, ¶ 2 (noting that it is improper for a party to reargue her position in a motion for reconsideration). This Court has specifically emphasized that if a party disagrees with the Court's resolution of an issue, the party's remedy is an appeal, not a motion for reconsideration. *Id.*

Here, as in *Hiett*, Petitioners' Motion for Reconsideration merely restates the same arguments they made in support of their Motion for Partial Summary Judgment. (See Pet'rs' Reply Br. in Support of Mot. for Partial Summ. J. at 10-15). Petitioners, in fact, point out that they "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'" in their Reply Brief in Support of Motion for Partial Summary Judgment and that they have "consistently questioned the State Fund's affidavits and economic data." (See Pet'rs' Mot. for Recons. at 2). Indeed, Petitioners presented expert affidavit testimony regarding the alleged inaccuracy of the economic evidence presented by Respondents in support of their Motion for Partial Summary Judgment. This Court has already heard and considered Petitioners' arguments regarding the accuracy of the economic evidence presented by Respondents and should decline to do so a second time.

Additionally, although Petitioners now claim they need to conduct discovery to demonstrate the "actual cost" of requiring insurers to pay lifetime benefits to PTD claimants, it should be noted that it was Petitioners who moved for summary judgment and chose to do so without the benefit of discovery. The heavy burden of demonstrating that § 39-71-710, MCA, is unconstitutional rested with Petitioners. See *Stratemeyer v. Lincoln County*, 259 Mont. 147, 153, 855 P.2d 506, 510 (1993) ("The 'heavy burden', however, rests with the party challenging the statute."). Certainly, Respondents' argument that 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 goal of containing workers' compensation costs could not have taken Petitioners by surprise. Petitioners have not provided any compelling excuse as to why they did not prepare to meet their heavy burden of proof by conducting adequate discovery prior to moving for summary judgment. At the very least, after the Petitioners received Respondents' affidavits, they should have requested that the Court to hold their Motion for Partial Summary Judgment in abeyance in order to allow them to conduct discovery to obtain the evidence they now contend is "material." See, e.g., *Searer v. State Fund*, 2005 MTWCC 7.

If Petitioners' Motion for Reconsideration is granted, the practical result will be that a party may move for summary judgment without conducting discovery, receive an adverse decision from the Court and then be permitted to conduct discovery and take a second shot at summary judgment. Such a result would not advance the goals of

judicial efficiency and finality of decisions and should not be embraced by this Court. Petitioners' Motion for Reconsideration should accordingly be denied.

II. Petitioners' Motion for Reconsideration should be denied because they have failed to establish that the evidence they wish to obtain through discovery will materially affect the Court's decision.

Petitioners argue that they need to conduct discovery in order to obtain evidence that will establish that requiring insurers to pay lifetime benefits to PTD claimants will not bankrupt the State Fund or affect the viability of the workers' compensation system. They contend that after they obtain such evidence, the Court should reconsider its Order denying Petitioners' Motion for Partial Summary Judgment. The fatal flaw in Petitioners' argument is that they have utterly failed to show that the evidence they seek to obtain would change this Court's decision that they did not meet their burden of proving beyond a reasonable doubt that § 39-71-710, MCA, is unconstitutional.

Petitioners claim that this Court "accepted" Respondents' affidavits regarding the economic effect of requiring insurers to pay lifetime benefits to PTD claimants and likewise "accepted" Respondents' argument that finding § 39-71-710, MCA, unconstitutional would bankrupt the workers' compensation system. Petitioners apparently believe the Court determined they had not met their burden of proving that § 39-71-710, MCA, is unconstitutional based upon a mistaken belief that to hold otherwise would result in the failure of the entire workers' compensation system. Petitioners have misunderstood this Court's decision.

In denying Petitioners' Motion for Partial Summary Judgment, this Court did not conclude that it was necessary to hold § 39-71-710, MCA, constitutional in order to prevent the State Fund or the workers' compensation system from going bankrupt. Rather, this Court pointed out that the Legislature had intended § 39-71-710, MCA, to provide benefits to those individuals who had suffered a loss in their earning capacity but had not intended the statute to constitute a "pension program." (See Order Denying Mot. for Partial Summ. J. at ¶ 20). The Court thus held that Petitioners had not proved § 39-71-710, MCA, was unconstitutional beyond a reasonable doubt because 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 legitimate state interests in containing the cost of the workers' compensation system while ensuring that PTD claimants are compensated in an amount commensurate with the actual wages they would have earned during their work lives. (*Id.* at 23).

Petitioners cannot establish that evidence regarding the "actual cost" of requiring insurers to pay lifetime benefits to PTD claimants would materially alter the conclusion reached by this Court. Even if, as Petitioners claim, the affidavits offered by Respondents "overstate" the financial impact of declaring § 39-71-710, MCA, unconstitutional, it cannot be reasonably disputed that requiring insurers to pay lifetime

benefits to PTD claimants would result in **some** increase in the cost of the workers' compensation system. That the increase might be less than estimated by Respondents or might not be enough to bankrupt the system, however, has no bearing on the Court's conclusion that the termination of an insurer's liability for PTD benefits when a claimant receives or is eligible to receive retirement benefits is rationally related to the state's interests in containing the cost of the workers' compensation system and providing PTD claimants wage loss benefits that bear a reasonable relationship to the actual wages they would have earned during their work lives.

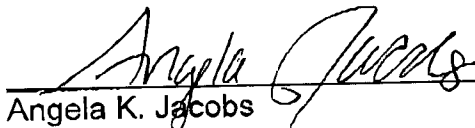
It appears that Petitioners have fallen prey to the same faulty reasoning that they have accused Respondents of: focusing only upon the economic impact of requiring insurers to pay lifetime benefits to PTD claimants. However, this Court decided that the different treatment of the two classes created by § 39-71-710, MCA, was justified not only by economic considerations but also by independent legitimate distinctions that validate such treatment. (See Order Denying Mot. for Partial Summ. J. at ¶¶ 22-23). As such, Petitioners cannot show that the evidence they seek to obtain through discovery would compel a different conclusion than the one already reached by this Court. The Court should thus deny the Petitioners' Motion for Reconsideration.

CONCLUSION

Petitioners' Motion for Reconsideration is an improper attempt to obtain a summary judgment "do over." Moreover, the evidence Petitioners now claim they need to conduct discovery to obtain would not materially affect this Court's decision to deny the Petitioners' Motion for Partial Summary Judgment. This Court should accordingly deny Petitioners' Motion for Reconsideration and reject Petitioners' request to conduct discovery.

DATED this 13 day of January, 2006.

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CERTIFICATE OF SERVICE

I, Angela K. Jacobs, do hereby certify that on the 13 day of January, 2006, I served a copy of the foregoing **BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR RECONSIDERATION** in the above matter by mailing a copy thereof, first class postage prepaid to:

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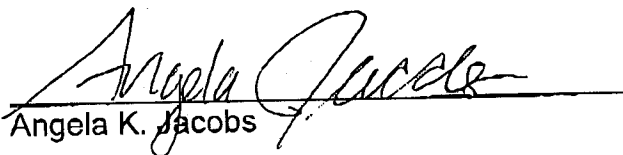
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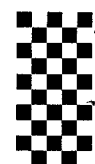
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Urgent For Review Please Comment Please Reply

Please find the attached Brief in Opposition to Petitioners' Motion for Reconsideration for fax filing in *Satterlee, et al. v. Lumberman's Mutual Casualty Company, et al., case.*

The original is being mailed to you today.

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