Bradley J. Luck
Thomas J. Harrington
GARLINGTON, LOHN & ROBINSON, PLLP
199 West Pine • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595

Thomas E. Martello, Esq.
Greg E. Overturf, Esq.
David Hawkins, Esq.
Montana State Fund
P. O. Box 4759
Helena MT 59604-4759

Attorneys for Respondent/Insurer, Montana State Fund

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CATHERINE E. SATTERLEE, et al. Petitioners, v. LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al. Respondents/Insurers.	WCC No. 2003-0840 **MONTANA STATE FUND'S ANSWER BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND BRIEF IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW the Respondent/Insurer, Montana State Fund ("State Fund"), pursuant to Administrative Rules of Montana 24.5.329 and this Court's briefing schedule, and hereby files its Answer Brief In Opposition to Petitioners' Motion for Partial Summary Judgment And Brief In Support of Cross-Motion for Summary Judgment. For the reasons stated herein, the State Fund requests this Court deny Petitioners' motion and instead grant summary judgment in favor of the State Fund regarding the constitutionality of Montana Code Annotated § 39-71-710 with respect to

permanent total disability ("PTD") benefits and rehabilitation benefits.

STATEMENT OF ADDITIONAL UNCONTROVERTED FACTS

For purposes of summary judgment, the State Fund does not take issue with the facts the Petitioners (hereinafter referred to as "Satterlee") presented in support of the motion for partial summary judgment. However, additional facts are relevant to this Court's consideration of the constitutionality of Montana Code Annotated § 39-71-710. Pursuant to Administrative Rules of Montana 24.5.329(3), the State Fund has filed a separate pleading containing the additional facts which are necessary for a proper consideration of the constitutional issue presented through briefing.

For the Court's convenience, the State Fund sets forth several facts which have heightened applicability to the pending legal issues. If *Satterlee* invalidates § 710 as applied to PTD benefits, the prospective costs associated with that decision would force the State Fund to raise its workers' compensation insurance rates by an estimated 11-21%, which correlates to an annual premium increase of $21.6-$41.4 million for the State Fund's policyholders in Montana. State Fund's Statement Additional Uncontroverted Facts 2, 10 (Aug. 8, 2005) ("SOF"). Statewide, Montana employers would pay approximately $60 million more for their workers' compensation insurance each year as a result of the prospective costs of *Satterlee*. SOF 10. In addition, if *Satterlee* applies retroactively, the increase in benefits costs for the State Fund is estimated at $161 million. SOF 1, 10. The increase in benefits costs to the Old Fund (the Old Fund is responsible for claims occurring on or before June 30, 1990) is estimated at $105 million, and the liability for Old Fund claims falls upon the taxpayers of Montana. The Old Fund is currently unfunded by approximately $7 million, and the money which is necessary to administer and pay the Old Fund's claims must be transferred from the State's General Fund. SOF 1, 10-11.

A retroactive application of *Satterlee* would eliminate the State Fund's surplus, causing the State Fund to become severely crippled or insolvent. SOF 9. The elimination of the State Fund's surplus would result in a significant rate increase over many years in an attempt to restore surplus to target levels. SOF 9. If the State Fund attempted to recapture its depleted surplus in one year and restore surplus to the statutory minimum amount, the State Fund would have to increase its rates by an additional 60%, which translates into more than $120 million in increased premium. SOF 10. If the State Fund attempted to recapture its depleted surplus over a three-year period, it would have to increase its rates by approximately 16%. SOF 10. This rate increase would be in addition to the rate increases caused by prospective application of *Satterlee*. SOF 9. It would also be in addition to the rate increases caused by the

prospective and retroactive application of the other common fund cases. SOF 14. Collectively, the benefit cost estimates associated with retroactively applying the common fund cases of *Satterlee*, *Reesor*, *Stavenjord* and *Schmill* range from $152-$209 million for the State Fund and $100-$125 million for the Old Fund. SOF 14. Notably, the estimates do not include the significant claims-related and administrative expenses associated with retroactively implementing each decision. SOF 14.

The State Fund's estimates are specific to the State Fund and the Old Fund, but the estimates can easily be extrapolated to the workers' compensation system in its entirety. If that is done, it becomes evident that a substantial system-wide increase in premiums would be necessary to cover the liabilities associated with *Satterlee* and the common fund cases. Consequently, the cost of doing business in Montana would skyrocket, and many carriers could either become insolvent or cease their business operations in this State. Thus, the common fund cases, and *Satterlee* in particular, pose a very real threat to the destruction of the workers' compensation system in Montana, which would leave many injured workers and their families without a prompt and guaranteed recourse for workplace injuries. This scenario is exactly why the Legislature first enacted the Workers' Compensation Act in Montana nearly a century ago, and maintaining an affordable workers' compensation system is but one of the many legitimate governmental objectives that exist for terminating PTD benefits upon a claimant's eligibility for retirement benefits. Accordingly, § 710 is constitutional and Satterlee's motion for partial summary judgment should be denied.

ARGUMENT

Even in the absence of a formal cross-motion, this Court may grant summary judgment to a non-moving party when no issues of material fact are in dispute and the matter to be resolved is a legal one. *See* Dec. & S.J., *In re Telles*, 2005 MTWCC 21 (Apr. 22, 2005). *Accord Payne Realty & Housing, Inc. v. First Sec. Bank of Livingston* (1991), 247 Mont. 374, 807 P.2d 177; *Hereford v. Hereford* (1979), 183 Mont. 104, 107, 598 P.2d 600, 602 ("By the great weight of authority, no formal cross-motion is necessary for a court to enter summary judgment."). Therefore, the State Fund asserts that it is entitled to summary judgment on the legal issue presented in Satterlee's motion because no issues of material fact are in dispute and the constitutionality of § 710 is a question of law. *State v. Mathis*, 2003 MT 112, ¶ 8, 315 Mont. 378, ¶ 8, 68 P.3d 756, ¶ 8. Specifically, the State Fund requests this Court to conclude that § 710's termination of PTD and rehabilitation benefits when a claimant becomes eligible to receive retirement benefits does not constitute a violation of the Equal Protection Clause of the Montana Constitution.

A. SATTERLEE'S ABSOLUTE RELIANCE ON *REESOR V. MONTANA STATE FUND*, 2004 MT 370, 325 MONT. 1, 103 P.3D 1019, TO SUPPORT HER CONSTITUTIONAL ARGUMENT IS MISPLACED BECAUSE *REESOR* WAS LIMITED TO PERMANENT PARTIAL DISABILITY ("PPD") BENEFITS AND DOES NOT CONTROL

Satterlee claims that the Montana Supreme Court's decision in *Reesor* requires a holding that "[t]he age limitation on permanent total disability and rehabilitation benefits[1] set forth in § 39-71-710, MCA" is unconstitutional. Satterlee Br. 5-8 (Feb. 18, 2005). According to Satterlee, there is no distinction between the issues and analysis in *Reesor* and the issues and analysis in this litigation. However, as explained below in more detail in Section B(1), § 710's limitation on benefits is not age-dependent; instead, it is dependent on a claimant's eligibility to receive Social Security retirement benefits or retirement benefits from an alternative to Social Security (hereinafter collectively referred to as "qualifying retirement benefits"). Further, although the Montana Supreme Court ultimately held that § 710's limitation on PPD benefits was unconstitutional, *Reesor's* limited holding must be analyzed in connection with the narrow issue the Montana Supreme Court addressed. *Reesor*, ¶ 19. To do otherwise would give weight to dicta. As *Reesor* specifically states, the only appellate issue in that case was whether the limitation on PPD benefits set forth in Montana Code Annotated § 39-71-710 violated Montana's Equal Protection Clause. *Reesor*, ¶ 2. Therefore, as discussed below, *Reesor* does not control because there are significant differences between *Reesor* and *Satterlee*.

1. A Separate Constitutional Analysis Must be Performed in *Satterlee* Because PTD Claimants Are Not Similarly Situated with PPD Claimants.

Satterlee's brief is void of any analysis regarding the allegedly unconstitutional equal protection violation created by § 710's termination of PTD claimants when a claimant is eligible to receive qualifying retirement benefits. Instead, Satterlee blindly relies on *Reesor* to support her contention that § 710 cannot constitutionally terminate a claimant's PTD benefits when the claimant becomes eligible to receive qualifying retirement benefits. Satterlee's attempt to broaden the scope of *Reesor* and apply it to

---

[1] Although Satterlee claims the limitation on rehabilitation benefits is unconstitutional, her primary focus addresses § 710's limitation on PTD benefits. Likewise, the State Fund's Answer Brief focuses on PTD benefits, but the arguments raised herein are equally applicable to § 710's limitation on rehabilitation benefits.

PTD claimants fails to appreciate the significant differences between PTD claimants and PPD claimants. Those significant differences require this Court to conduct a separate constitutional analysis which is specific to PTD claimants.

Unlike PPD benefits, total disability benefits under Montana's Workers' Compensation Act ("WCA") are full wage loss benefits because entitlement to them requires a claimant to "suffer a total wage loss as a result of an injury" and have no "reasonable prospect of physically performing regular employment." *See* Mont. Code Ann. § 39-71-701; § 39-71-702 and § 39-71-116(24). As the Montana Supreme Court recently noted, the primary difference between the two groups is an obvious one that is established by the definition of each group: PPD claimants can return to work, while PTD claimants cannot. *See Rausch v. Montana State Fund*, 2005 WL 1332118, ¶ 20 (Mont. June 7, 2005) ("*Rausch II*"). In addition, after achieving MMI, a PPD claimant receives wage loss benefits which help restore the claimant to a pre-accident wage level, assuming there was a wage loss in connection with the injury. *Rausch II*, ¶ 23. A PPD claimant also receives benefits based on age, education, work restrictions and physical impairment. Mont. Code Ann. § 39-71-703. However, the PTD claimant who is unable to return to work receives workers' compensation benefits at a higher weekly rate which are paid over the course of the PTD claimant's work life. *Rausch II*, ¶ 24. Clearly, PPD benefits are a different kind of benefit than a PTD benefit, and the approach to paying those benefits differs substantially under the WCA. Therefore, the Montana Supreme Court concluded that "PPD claimants and PTD claimants are not similarly situated." *Rausch II*, ¶ 25. *Accord Rausch v. State Compen. Ins. Fund*, 2002 MT 203, ¶ 18, 311 Mont. 210, ¶ 18, 54 P.3d 25, ¶ 18 ("*Rausch I*") (stating that PTD claimants and PPD claimants are members of distinct classes which are not similarly situated). Consistent with the Montana Supreme Court's recent finding, this Court has previously explained why PTD claimants and PPD claimants occupy different classification groups:

> **Permanently totally disabled workers represent a separate and distinct class from permanently partially disabled workers.** While the members of both classes may have suffered industrial injuries, their disabilities are very different. The class of permanently partially disabled workers consists of injured workers who are able to return to work, and therefore able to continue earning wages. The class of permanently totally disabled workers consists of workers who cannot return to employment on a regular basis, and who are thus incapable of earning meaningful wages.
>
> The difference between the classes is reflected in the benefits which the legislature has provided for the two classes. Permanently totally disabled

> workers are entitled to bi-weekly benefits during the entire period of their disability, § 39-71-702, MCA (1991), at least until they begin drawing retirement benefits or become entitled to full social security retirement benefits, § 39-71-710, MCA (1991). The benefits available to permanently partially disabled claimants are more limited. Permanently partially disabled workers are limited to a maximum of 350 weeks of benefits, including any impairment award. § 39-71-703(2), MCA (1991). That is approximately 6¾ years. In contrast, a worker who becomes permanently totally disabled at age 25 could receive up to 40 years or more of biweekly benefits. As set forth in an earlier paragraph, the biweekly benefits amounts available to permanently totally disabled workers are also greater than the amounts available to permanently partially disabled workers.
>
> Thus, while permanently partially disabled workers may collect an impairment award, that award is only one component of the more limited benefits available to permanently partially disabled claimants. The overall level of those benefits in the broad scheme of things is significantly less than benefits available to permanently totally disabled workers.

Order & Judm. Regarding Constitutional Challenge ¶¶ 10-12, *Rausch v. State Compen. Ins. Fund*, 2001 MTWCC 15 (Apr. 20, 2001), *reversed on other grounds by Rausch I* (emphasis added).

Unquestionably, Montana's WCA treats PPD claimants differently from PTD claimants and those two groups of injured workers occupy different classifications under Montana law. As a result, the constitutional analysis and holding of *Reesor* cannot govern the constitutional analysis of *Satterlee*. Accordingly, this Court must conduct a separate equal protection analysis in *Satterlee* to determine if § 710's termination of PTD benefits violates the Equal Protection Clause of the Montana Constitution.

B. SECTION 710'S TERMINATION OF PTD BENEFITS DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES BECAUSE IT DOES NOT DISCRIMINATE BETWEEN LIKE CLASSES AND IS RATIONALLY RELATED TO LEGITIMATE GOVERNMENTAL OBJECTIVES

Satterlee asserts that *Reesor* mandates a holding that § 710 is unconstitutional because it denies PTD benefits to claimants who are eligible for social security retirement benefits, but pays PTD benefits to claimants who are ineligible for social security retirement benefits. Satterlee Br. 6-8. As the party challenging the constitutionality of § 710, Satterlee bears the heavy burden of proving the statute is

unconstitutional beyond a reasonable doubt. *Powell v. State Compen. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, ¶ 13, 15 P.3d 877, ¶ 13 (citing *Grooms v. Ponderosa Inn* (1997), 283 Mont. 459, 467, 942 P.2d 699, 703). A legislative enactment is presumed constitutional and every intendment in its favor will be presumed, unless its unconstitutionality appears beyond a reasonable doubt. *Powell*, ¶ 13 (noting that every possible presumption must be indulged in favor of the constitutionality of a legislative act, and courts should not consider the constitutionality of a statute unless it is absolutely required) (citing *Davis v. Union P. R.R. Co.* (1997), 282 Mont. 233, 240, 937 P.2d 27, 31); *State ex rel. Hammond v. Hager* (1972), 160 Mont. 391, 400-401, 503 P.2d 52, 57 (Haswell & Daly, JJ., concurring). The question of constitutionality is not whether it is possible to condemn the legislative action. Instead, the question of constitutionality is whether it is possible to uphold the legislative action, and the legislative action will not be declared invalid unless it conflicts with the constitution, in the judgment of the court, beyond a reasonable doubt. *Powell*, ¶ 13 (citing *Stratemeyer v. Lincoln County* (1993), 259 Mont. 147, 150, 855 P.2d 506, 508-509, *cert. denied*, 510 U.S. 1011 (1993)).

The constitutional analysis is essentially a three-step process. The first step in the constitutional analysis is to determine what level of scrutiny applies. Here, the State Fund agrees with Satterlee that the rational basis test is the proper test to apply because the provisions of the WCA neither infringe upon the rights of a suspect class nor involve fundamental rights. Satterlee Br. 7. *Accord Henry v. State Compen. Ins. Fund*, 1999 MT 126, ¶ 33, 294 Mont. 449, ¶ 33, 982 P.2d 456, ¶ 33; *Powell*, ¶ 21. The next step is to identify the classes involved because if the classes at issue are not similarly situated, there can be no equal protection violation. *See Powell*, ¶ 22. The third step involves an analysis of whether a rational basis exists for how the classes are defined and, ultimately, how the classes are treated. Where the classes are similarly situated and there is unequal treatment between the classes, or where the individuals within the class are treated unequally, then a rational basis must be shown to uphold the unequal treatment. If the statute which causes the unequal treatment bears a rational relationship to a legitimate governmental interest, then the constitutional challenge is defeated. *Henry*, ¶ 33 (citing *Heisler v. Hines Motor Co.* (1997), 282 Mont. 270, 279, 937 P.2d 45, 50; *Matter of S.L.M.* (1997), 287 Mont. 23, 32, 951 P.2d 1365, 1371).

1. Satterlee's Equal Protection Argument Fails As a Matter of Law Because Claimants Who are Eligible to Receive Qualifying Retirement Benefits are Not Similarly Situated With Claimants Who are Ineligible to Receive Qualifying Retirement Benefits.

The Equal Protection Clause does not preclude different treatment of different classes of people so long as all persons within a group or class are treated the same. Thus, the Court must first identify the classes involved and determine whether they are similarly situated because the first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. *Powell,* ¶ 22 (*citing Henry* ¶ 27). In addressing the classes involved in an equal protection challenge, the Montana Supreme Court has provided the following guidance:

> [A] prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. **The equal protection clause does not preclude different treatment of different groups or classes of people so long as all persons within a group or class are treated the same.** Consequently, when addressing an equal protection challenge, this Court must first identify the classes involved and determine whether they are similarly situated. **If the classes at issue are not similarly situated, then the first criteria for proving an equal protection violation is not met and we need look no further.**

Powell, ¶ 22 (citations omitted) (emphasis added).

Satterlee asserts that § 710[2] creates the following classes of claimants: (1) PTD

---

[2] Montana Code Annotated § 39-71-710 (2003) states in full:

> **39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits,

or rehabilitation claimants who receive, or are eligible to receive, social security retirement benefits; and (2) PTD or rehabilitation claimants who do not receive, or are ineligible to receive, social security retirement benefits. Satterlee Br. 7. The State Fund asserts that the classes are broader than Satterlee suggests and include claimants who are eligible to receive qualifying retirement benefits[3] versus those who are ineligible to receive qualifying retirement benefits. However, even if this Court adopts the classifications proposed by Satterlee, no equal protection violation results from the two classes of claimants created by § 710 because those classes are not similarly situated with one another.

In her brief, Satterlee mistakenly suggests that the two classes of claimants created by § 710 are alike in all respects, with chronological age serving as the only difference between the two classes of claimants. Satterlee Br. 7. However, age is not the key difference between the two classes because PTD benefits do not terminate at a specific age. In order to have an entitlement to qualifying retirement benefits, a claimant must have made appropriate contributions to the retirement plan during the course of the claimant's working life. Therefore, contrary to Satterlee's assertion, the limitation on PTD benefits is not triggered by age but is instead triggered by a claimant's eligibility to receive qualifying retirement benefits. Obviously, the eligibility to receive qualifying retirement benefits occurs at different ages for different people.[4]

> and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.
>
> (2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

[3] The plain language of the statute verifies that the receipt of social security retirement benefits is not the only method by which PTD benefits may be terminated. Under § 710, PTD benefits also terminate when the claimant becomes eligible to receive "retirement benefits from a system that is an alternative to social security retirement[.]" This may include retirement benefits from various federal plans.

[4] No specific age triggers an entitlement to Social Security retirement benefits. Instead, if the worker has accumulated enough quarters to make himself or herself eligible for Social Security retirement, the date the worker becomes eligible to receive

The difference between the classes created by § 710 is the eligibility to receive qualifying retirement benefits, and a clear distinction exists between claimants who receive qualifying retirement benefits and those who do not. The best example of the significance of this distinction can be seen by way of example. Claimants who have not accumulated enough credits (*see* 20 C.F.R. §§ 404-498) to be eligible to receive Social Security retirement benefits continue to receive PTD benefits. Claimants who receive qualifying retirement benefits have a benefit available to them that is not available to the other class. However, if *Satterlee* invalidates § 710 as applied to PTD claimants, then an absurdity will result whereby claimants who are not considered part of the normal labor market because they are eligible for qualifying retirement benefits will receive PTD benefits and retirement benefits, but claimants who are ineligible for qualifying retirement benefits will only receive PTD benefits. Certainly, the Legislature could not have intended for workers who are not part of the normal labor market to earn more than workers who are part of the normal labor market. *See generally Watson v. Seekins* (1988), 234 Mont. 309, 763 P.2d 328, 331-332 (holding that workers' compensation is not intended to benefit a disabled worker more than a worker who is merely retired). To avoid such an absurdity, this Court should construe § 710 as terminating a claimant's PTD benefits when the claimant becomes eligible to receive qualifying retirement benefits. *Hiett v. Missoula County Pub. Sch.*, 2003 MT 213, ¶ 36, 317 Mont. 95, ¶ 36, 75 P.3d 341, ¶ 36 ("[W]when more than one interpretation [of a statute] is possible, in order to promote justice and give effect to the purpose of the statute, we will reject an interpretation that leads to an unreasonable or absurd result in favor of another that leads to a reasonable result."); *S.L.H. v. State Compen. Mut. Ins. Fund*, 2000 MT 362, ¶ 17, 303 Mont. 364, ¶ 17, 15 P.3d 948, ¶ 17 ("To avoid an absurd result and to give effect to a statute's purpose, we read and construe the statute as a whole."). More importantly, the receipt of qualifying retirement benefits clearly differentiates the two classes from one another. Because the classes at issue in this litigation are not similarly situated, there can be no equal protection violation. *See Powell*, ¶ 22.

---

those benefits depends on the worker's birth year. For example, a worker born in 1960 or later cannot receive full Social Security retirement benefits until the claimant is sixty-seven. However, for workers born between 1937 and 1959, the age of full Social Security retirement benefits ranges from sixty-five to sixty-six and ten months. *See* http://www.ssa.gov/retirechartred.htm. Therefore, the age of eligibility varies from claimant to claimant.