

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 24

WCC No. 2005-1222

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JASON HARRISON

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION  
and STILLWATER MINING COMPANY

Respondents/Insurers.

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ORDER DENYING STAY OF EXECUTION AND WAIVER OF SUPERSEDEAS BOND

**Summary:** Respondent Stillwater Mining Company was held liable by this Court for Petitioner's benefits. Stillwater then filed a notice of appeal and has moved for a stay of execution of judgment and a waiver of the bond requirement. At the present time, Petitioner's benefits are being paid by Liberty Northwest Insurance Corporation under a reservation of rights. Liberty and Petitioner both object to the stay of execution. Petitioner and Liberty further argue that, should the stay be granted, the bond requirement should not be waived.

**Held:** Stillwater's motion is denied. In determining whether to grant a stay of execution, the Court must balance the interests of all the parties involved. In the present case, should Stillwater prevail on appeal, it would be able to obtain restitution from Liberty.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2910.** The decision to grant a stay of execution rests within the Court's discretion. Where a respondent requests a stay of execution, the Court must balance the interests of the respective parties. Where Petitioner succeeded at the trial court level and the Court found Stillwater Mining Co. responsible for Petitioner's benefits, the Court will not stay the execution of judgment when the perverse result might be termination of Petitioner's benefits he is entitled to receive from either Stillwater or Liberty

Northwest Ins. Co. Should the Court's decision be overturned by the Montana Supreme Court, Stillwater should have no difficulty obtaining restitution from Liberty.

**Appeals: Stay of Execution or Judgment.** Where a respondent requests a stay of execution, the Court must balance the interests of the respective parties. Where Petitioner succeeded at the trial court level and the Court found Stillwater Mining Co. responsible for Petitioner's benefits, the Court will not stay the execution of judgment when the perverse result might be termination of Petitioner's benefits he is entitled to receive from either Stillwater or Liberty Northwest Ins. Co. Should the Court's decision be overturned by the Montana Supreme Court, Stillwater should have no difficulty obtaining restitution from Liberty.

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¶1 Respondent Stillwater Mining Company (Stillwater) moves for an order staying the judgment of this Court and waiving the requirement for a supersedeas bond, pending an appeal to the Supreme Court. Stillwater requested the stay and waiver of bond on May 26, 2006, the same day it filed its notice of appeal.

¶2 In its motion, Stillwater asserts that as a self-insured employer enrolled under Plan 1 of the Workers' Compensation Act, it was required to demonstrate that adequate security exists, and thus, the Court should waive the bond requirements.

¶3 Respondent Liberty Northwest Insurance Corporation (Liberty) objects to the stay of execution, and further argues, should the stay be granted, the bond requirement should not be waived. Liberty, finding little authority to guide this Court in whether to issue a stay, urges the Court to adopt the procedure found in Fed. R. Civ. P. 62. Liberty further points out that it has been making payments to Petitioner under a reservation of rights pursuant to § 39-71-608, MCA. Since Liberty has been adjudicated not liable for Petitioner's compensation, it argues it is no longer obligated to pay Petitioner these benefits and may terminate the payments at any time with proper notice.

¶4 Petitioner also objects to Stillwater's motions. Petitioner adopts Liberty's arguments and further argues that Stillwater offered no argument or authority in support of its request for a stay and that the request should be denied under Rule 24.5.316(4) ARM.<sup>1</sup> Additionally, Petitioner argues that his entitlement to benefits is undisputed and this case has been a battle between Liberty and Stillwater as to which is the liable insurer. Petitioner asserts that he should not be at risk of having his benefits terminated while this case is on appeal. Finally, Petitioner points out, should this case be reversed upon appeal, Stillwater should have no difficulty recovering its payments from Liberty.

¶5 In reply, Stillwater provides information on its financial situation, providing its 2006 Workers' Compensation Self-Insurance Application, and asserting that it has assets in excess of liabilities in the amount of \$479,702,000.

¶6 The motion is governed by § 39-71-2910(2), MCA, which provides:

The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. . . . A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

¶7 ARM 24.5.346 gives additional guidance for the waiver of the bond, explaining, "If the parties stipulate that no bond shall be required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement." The rule further provides that except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a) and 7(b).

¶8 Mont. R. App. P. 7(a) provides in pertinent part:

Upon entry of a judgment or order in a civil case a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper . . . .

¶9 Mont. R. App. P. 7(b) provides in pertinent part:

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<sup>1</sup> "Failure to file briefs may subject the motion to summary ruling. Failure of the moving party to file a brief with the motion shall be deemed an admission that the motion is without merit."

Upon service of notice of appeal, if the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond .

. . .

¶10 As Liberty points out, there is very little guidance found in the case law regarding the application of Mont. R. App. P. 7(a) and 7(b). However, some relevant workers' compensation cases exist. *Reil v. State Compensation Ins. Fund*<sup>2</sup> illustrates the danger in denying a stay. In that case, the claimant prevailed in the initial workers' compensation litigation. The respondent moved for a stay pending appeal, and was denied. The respondent then paid benefits, but the claimant ultimately lost on appeal. When the respondent attempted to recoup the payments, the claimant refused. Ultimately, this Court ordered the claimant to pay restitution, and the Supreme Court affirmed.

¶11 In *ERD/UEF v. Total Mechanical Heating & Air Conditioning*,<sup>3</sup> this Court denied a motion to stay because the party stated that it could not afford to post a bond. The Court reasoned that if the party was admitting it could not afford the bond, it could not meet the requirement of ARM 24.5.346 that it would have adequate security to pay the judgment.

¶12 The case from which the Court finds the most guidance for the present situation, however, is *Ingebretson v. Louisiana-Pacific Corp.*,<sup>4</sup> in which the Workers' Compensation Court granted a stay, but declined to waive the bond requirement. In *Ingebretson*, the Court explained:

The petitioner resists a stay of execution of judgment even if respondent were to post a supersedeas bond or its equivalent. His attorney has indicated that claimant is in dire financial straits. He has been without benefits for more than a year now.

While the Court is sympathetic to claimant's financial situation, it must balance that situation against respondent's right to appeal. If execution is granted and the decision of this Court is later overturned, petitioner's financial situation may prevent him from repaying the judgment, thus rendering any appeal meaningless. . . .<sup>5</sup>

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<sup>2</sup> *Reil v. State Compensation Ins. Fund*, 254 Mont. 274, 837 P.2d 1334 (1992).

<sup>3</sup> *ERD/UEF v. Total Mechanical Heating & Air Conditioning*, 2001 MTWCC 3.

<sup>4</sup> *Ingebretson v. Louisiana-Pacific Corp.*, 1994 MTWCC 113-A.

<sup>5</sup> *Id.* at 4.

¶13 In reaching its decision in *Ingebretson*, this Court explained that it was “[b]alancing the interests of the parties.”<sup>6</sup> The Court must do likewise in the present case. The decision whether to grant a stay rests within this Court’s discretion. *Ingebretson* establishes this Court’s criteria as “[b]alancing the interests of the parties.”

¶14 Applying this to the situation at hand, as things currently stand, Liberty has been paying Petitioner’s benefits under a reservation of rights. However, this Court’s decision has decided that Stillwater is the liable party. Should the Court’s decision be reversed on appeal and a determination be made that Liberty is, in fact, the liable party, Stillwater should have no difficulty in obtaining restitution from Liberty. However, if this Court were to grant the stay, Liberty, having been adjudicated free of liability for this claim, might give notice and cease to pay benefits to Petitioner. The possibility that Liberty could give such notice at will would place Petitioner in a continuing state of uncertainty as to whether the day’s mail may bring notice that his benefits are being terminated. The perverse result achieved, therefore, would be that Petitioner’s success at the trial court level would result in a termination of the benefits he had been receiving up until the time he obtained a favorable ruling from this Court. In balancing the interests of the respective parties, the Court cannot sanction such a result.

¶15 Therefore, Stillwater’s motion for stay of execution of judgment is denied. Although the Court finds Liberty’s argument to adopt the criteria of Fed. R. Civ. P. 62 intriguing, particularly in light of the vacuum of guidance extant on this issue, it declines to do so. Rather, the Court reaches this result because, taking guidance from this Court’s previous rulings that such a decision should balance the interests of the respective parties, the Court believes this is the correct and just result.

¶16 Because Stillwater’s motion for stay of execution of judgment is denied, the Court need not address the issue of waiver of the supersedeas bond.

#### ORDER

¶17 Respondent’s motion for a stay of judgment is **DENIED**.

SO ORDERED.

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<sup>6</sup> *Id.*

DATED in Helena, Montana, this 20<sup>th</sup> day of June, 2006.

(SEAL)

/S/ JAMES JEREMIAH SHEA  
JUDGE

c: Andrew J. Utick  
James R. Hintz  
Larry W. Jones  
Submitted 06/08/06