

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 14B

WCC No. 2006-1641

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CURTIS M. MICHALAK

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

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ORDER GRANTING RESPONDENT'S MOTION TO STAY AND WAIVER OF  
SUPERSEDEAS BOND

**Summary:** Respondent moved the Court to stay the judgment in this matter and waive posting of a supersedeas bond. Petitioner opposes staying the judgment, but in the event the Court grants Respondent's motion to stay, Petitioner does not object to waiver of the supersedeas bond.

**Held:** Respondent's motion to stay the judgment is granted. In determining whether to grant a stay of judgment, the Court must balance the interests of all the parties involved. In light of the circumstances in the present case, Petitioner's right to benefits does not outweigh Respondent's right to appeal. Respondent's unopposed motion to waive the supersedeas bond is also granted.

**Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.346.** Pursuant to ARM 24.5.346, the Court may stay a judgment and waive the bond requirement. When considering a stay of judgment, the interests of the respective parties must be balanced. Where Petitioner has made no showing that he can repay Respondent in the event the Court's judgment is reversed, the Court concludes that Petitioner's right to benefits does not outweigh Respondent's right to appeal.

**Judgments: Enforcement: Stays of Execution.** Pursuant to ARM 24.5.346, the Court may stay a judgment and waive the bond requirement. When considering a stay of judgment, the interests of the respective parties

must be balanced. Where Petitioner has made no showing that he can repay Respondent in the event the Court's judgment is reversed, the Court concludes that Petitioner's right to benefits does not outweigh Respondent's right to appeal.

¶ 1 Respondent moves the Court to stay the judgment in this matter and waive posting of a supersedeas bond. Petitioner opposes staying the judgment, but in the event the Court grants Respondent's motion to stay, Petitioner does not object to waiver of the supersedeas bond.

¶ 2 Pursuant to ARM 24.5.346, this Court may stay a judgment and waive the bond requirement. A motion to stay the judgment 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.

¶ 3 I recently reviewed the area of law relating to staying of judgments in *Harrison v. Liberty Northwest Ins. Corp.*<sup>1</sup> (*Harrison II*). In *Harrison I*,<sup>2</sup> the issue before me was whether Liberty Northwest Ins. Corp. (Liberty) or Stillwater Mining Co. (Stillwater) was liable for a claimant's benefits. I found that Stillwater was liable. Stillwater then moved for a stay of judgment. Finding guidance from this Court's previous decision of *Ingebretson v. Louisiana-Pacific Corp.*,<sup>3</sup> I determined that when considering a stay of judgment, the interests of the respective parties must be balanced.<sup>4</sup> Specifically, I noted the following language from the *Ingebretson* decision:

While the Court is sympathetic to claimant's financial situation, it must balance that situation against respondent's right to appeal. If execution is

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<sup>1</sup> *Harrison v. Liberty Northwest Ins. Corp.*, 2006 MTWCC 24 (*Harrison II*).

<sup>2</sup> *Harrison v. Liberty Northwest Ins. Corp.*, 2006 MTWCC 22 (*Harrison I*).

<sup>3</sup> *Ingebretson v. Louisiana-Pacific Corp.*, 1994 MTWCC 113-A.

<sup>4</sup> *Harrison II*, ¶ 12 (citing *Ingebretson*).

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>

¶ 4 In *Harrison II*, Stillwater was in a position to recover from Liberty any money it paid to the claimant if this Court's decision in *Harrison I* was reversed.<sup>6</sup> Therefore, I denied Stillwater's motion to stay.<sup>7</sup> That is not the situation in the case at bar because Petitioner has made no showing that he can repay Respondent if this Court's judgment is reversed. This case is more analogous to the situation in *Ingebretson*, in which this Court granted Respondent's motion to stay because Petitioner's inability to repay the judgment in the event of a reversal would render any appeal meaningless. Therefore, like the claimant in *Ingebretson*, I must find that Petitioner's right to benefits does not outweigh Respondent's right to appeal.

¶ 5 In light of the Court's decision to grant Respondent's stay of judgment, Respondent's motion to waive the supersedeas bond is unopposed by Petitioner.

#### ORDER

¶ 6 Respondent's motion for a stay of judgment and waiver of supersedeas bond is **GRANTED**.

¶ 7 This ORDER is certified as final for purposes of appeal.

¶ 8 Any party to this dispute may have twenty days in which to request reconsideration from this ORDER.

DATED in Helena, Montana, this 24<sup>th</sup> day of April, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Sydney E. McKenna  
Larry W. Jones  
Submitted: April 5, 2007

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<sup>5</sup> *Ingebretson*, 1994 MTWCC 113-A at 4.

<sup>6</sup> *Harrison II*, ¶ 14.

<sup>7</sup> *Harrison II*, ¶ 16.