

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 06-0365

2004-1089

LEE N. THOMPSON, DARIN SHARP and  
SCOTT BAILEY,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellant,

and

LIBERTY NORTHWEST INSURANCE  
CORPORATION and MONTANA STATE FUND,

Intervenors and Appellants.

**FILED**

ORDER JUN - 8 2006

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

**FILED**

JUN 07 2006

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

The notice of appeal from a judgment certified as final by the Workers' Compensation Court was filed in this cause number on May 15, 2006. The notice properly stated that the appeal was subject to the Rule 54, M.R.App.P., mandatory mediation process.

On May 18, 2006, appellant State of Montana moved to suspend the Rule 54 mandatory mediation; the motion was supported by counsel for the other parties. The basis for the motion is that the judgment certified as final by the Workers' Compensation Court resolved a declaratory judgment action relating to the constitutionality of certain Montana statutes. According to the parties, while "all appeals from the Workers' Compensation Court" clearly are subject to the mediation process pursuant to Rule 54(a)(1), M.R.App.P., that requirement surely was intended to tie to the requirement of Rule 54(a)(c), that appeals

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in actions seeking monetary damages/recovery are subject to the mandatory mediation process. The State points out that, unlike the ordinary case in--and appeal from--the Workers' Compensation Court, the underlying action does not directly seek monetary damages/recovery, but seeks only a declaration of the constitutionality of certain statutes in the Workers' Compensation Act on which the court has ruled. For that reason, the motion asserts that Workers' Compensation Court judgments in declaratory actions in which no monetary recovery is sought are at least implicitly excluded from the scope of Rule 54.

We agree. We have repeatedly made it clear in the past that motion practice under Rule 54 is disfavored and the Rule is intended to be self-executing. We also have made it clear that parties may not simply agree not to mediate a case encompassed within Rule 54, and should not move this Court for such relief.

Here, however, we properly carve out a small exception to the requirements of Rule 54(a)(1). We expressly conclude that an appeal from a judgment of the Workers' Compensation Court is not subject to Rule 54 mediation if, and only if, the underlying action in that court was for a declaratory judgment seeking no damages or monetary recovery.

THEREFORE,

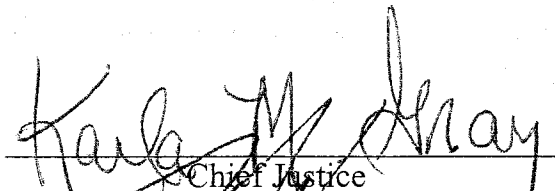
IT IS ORDERED that the Motion to Suspend Rule 54, M.R.App.P., Mandatory Mediation is GRANTED.

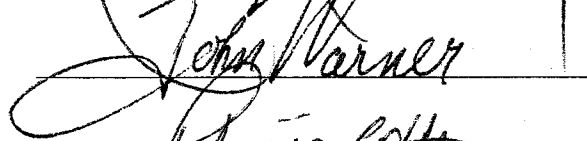
IT IS FURTHER ORDERED that, the record on appeal having been filed, the briefing schedule set forth in the applicable appellate rules of procedure shall run from the date of this

Order. Because of the importance of the issues on appeal to this Court and to the 2007 Legislature, we will look with disfavor on motions for extensions of time unless extraordinary circumstances are shown.

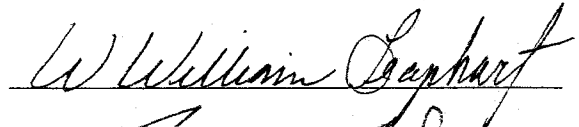
The Clerk is directed to give immediate electronic notice of this Order to counsel of record, followed by notice by mail to counsel and to the Honorable James Jeremiah Shea.

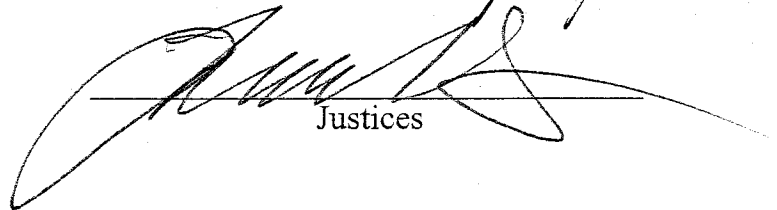
DATED this 7<sup>th</sup> day of June, 2006.

  
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Chief Justice

  
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Justice

  
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Justices

OFFICE OF  
WORKERS COMPENSATION JUDGE  
HELENA, MONTANA

JUN - 8 2006

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