

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 4

WCC No. 2004-1089

LEE N. THOMPSON, DARIN SHARP, and SCOTT BAILEY

Petitioners

vs.

STATE OF MONTANA

Respondent

LIBERTY NORTHWEST INSURANCE CORPORATION and
MONTANA STATE FUND

Intervenors.

ORDER GRANTING LEAVE TO RESPOND TO
RESPONDENT'S REQUEST TO TAKE JUDICIAL NOTICE

Summary: Respondent, State of Montana, requested the Court to take judicial notice of legal arguments raised in another case pending before this Court. Petitioners requested leave to respond to those matters which are the subject of judicial notice and the State objects to Petitioners' request.

Held: Leave to respond is granted. Pursuant to Rule 202(e), Mont. R. Evid., when a party requests the Court to take judicial notice of law, another party to the action is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Evidence – by Section: RULE 202. The State has requested this Court to take judicial notice of legal arguments raised in the matter of *Robinson v. Montana State Fund*, WCC No. 2004-1091. Petitioners have requested an opportunity to review the *Robinson* briefs and, if necessary, respond to the

arguments for which the State has requested judicial notice. Pursuant to Mont. R. Evid. 202(e), Petitioners are entitled to this opportunity.

¶ 1 In a conference call conducted on January 4, 2006,¹ Respondent, State of Montana (State), requested the Court take judicial notice of arguments raised in the matter of *Robinson v. Montana State Fund*, WCC No. 2004-1091, to the extent those arguments are pertinent to Liberty Northwest Insurance Corporation's (Liberty) motion for reconsideration. In response to this, Petitioner requested an opportunity to review the briefs that had been submitted in the *Robinson* matter and, if necessary, to respond to the arguments of which the State had requested the Court take judicial notice.

¶ 2 After reviewing the briefs in *Robinson*, Petitioner requested an opportunity to briefly respond to certain of the arguments raised in *Robinson*. Despite having made the request for the Court to take judicial notice of these arguments, the State now objects to Petitioner being allowed to respond to these arguments.² The basis for the State's objection is that the Court, in its Order Denying [Liberty's] Request to Present Testimony at Oral Argument, noted in a footnote that the State's Response to [Liberty's] Motion to Reconsider would not be viewed by this Court as a separate motion to reconsider on behalf of the State since it was not filed within the time limits prescribed by ARM 24.5.337(1).³

¶ 3 The State has characterized the Court's statement that the State's brief would not be taken as a separate motion for reconsideration as a rejection of the brief in its entirety. On that premise, the State objects to what it characterizes as "a second opportunity for Petitioners to address jurisdictional arguments the State (as a result of the Court's rejection of its brief) has not been allowed to raise."⁴ The State's concerns are misplaced.

¶ 4 Petitioners are not being allowed a "second opportunity" to address arguments the State has not been allowed to raise. On the contrary, Petitioners are being allowed **one** opportunity to address arguments the State has injected into this matter by requesting the Court to take judicial notice. Pursuant to Mont. R. Evid. 202(e), when a party requests the Court to take judicial notice of law, another party to the action is entitled, upon timely

¹ See Minute Entry No. 3656.

² Petitioners' request for leave to respond and the State's objection were made to the Court via e-mail. Hard copies of the e-mails have been docketed and made a part of the Court record.

³ 2006 MTWCC 1, n.1.

⁴ State's E-Mail to Court, 01/16/06.

request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed.

¶ 5 Moreover, the Court did not reject the State's brief in response to Liberty's motion for reconsideration. Rather, the Court noted that, although the State raised issues not addressed in Liberty's motion, the State had not filed a motion for reconsideration in its own right and its brief would not be taken as such by this Court.

¶ 6 In any event, how this Court views the State's brief in response to Liberty's motion for reconsideration is wholly irrelevant to the matter at hand. The State has requested this Court to take judicial notice of legal arguments raised in the *Robinson* case. Pursuant to Mont. R. Evid. 202(e), therefore, Petitioners are "entitled . . . to an opportunity to be heard" regarding the matters of which the State requested the Court take judicial notice.

ORDER

¶ 7 Petitioners are granted up to and including January 23, 2006, to respond to legal arguments raised in *Robinson v. Montana State Fund*, WCC No. 2004-1091. Petitioners' brief shall be limited to addressing those matters which were raised in *Robinson*.

DATED in Helena, Montana, this 20th day of January, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Mr. Norman L. Newhall
Mr. Anthony Johnstone
Mr. Larry W. Jones
Mr. David A. Hawkins
(via U.S. mail and e-mail)