

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 1

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 DENYING INTERVENOR'S REQUEST
TO PRESENT TESTIMONY AT ORAL ARGUMENT

Summary: Intervenor, Liberty Northwest Insurance Corporation, requested leave to present testimony at the oral argument on its motion for reconsideration.

Held: Liberty's request is denied. Absent compelling reasons, the Court does not view an oral argument on a motion for reconsideration as an opportunity to present evidence that could have been adduced either with the briefing of the original motion or with the briefing of the motion for reconsideration.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.337. ARM 24.5.337(1) does not provide for the parties to request oral argument. Absent a request from the Court, a motion for reconsideration is deemed submitted for decision upon receipt of the nonmoving party's response or the expiration of the time for such response.

Procedure: Reconsideration. Absent compelling reasons, the Court does not view an oral argument on a motion for reconsideration as an opportunity for testimony of witnesses to present evidence that could have been adduced either with the briefing of the original motion or the motion for reconsideration. The Court can see no compelling reason why additional facts, in the way of testimony, should be introduced when the party contends the only grounds for reconsideration would be an error of law.

¶1 Before the Court is the motion by Intervenor, Liberty Northwest Insurance Corporation (Liberty), to reconsider this Court's Order granting Petitioners' motions for summary judgment.¹ Subsequent to the filing and complete briefing of this motion, Liberty, by correspondence dated December 20, 2005, requested leave to call two witnesses at the oral argument which was set for January 6, 2006. On December 30, 2005, Petitioners filed a written objection to the taking of testimony at the oral argument. For the reasons set forth below, Liberty's request to present testimony at the oral argument was denied.²

¶2 Pursuant to ARM 24.5.337(1), upon receipt of the response to a party's motion for reconsideration, the motion shall be deemed submitted unless the Court requests oral argument. This section does not provide for the parties to request oral argument. Absent a request from the Court, a motion for reconsideration is deemed submitted for decision upon receipt of the nonmoving party's response or the expiration of the time for such response. Although the Court had not initially been inclined to request oral argument on Liberty's motion for reconsideration, it, nevertheless, accommodated Liberty's request.

¶3 Liberty's request for oral argument was granted pursuant to ARM 24.5.337. In applying this rule previously, this Court has held that, absent compelling reasons, the Court will not consider an issue on reconsideration when the issue had not been raised previously

¹ On November 17, 2005, the State of Montana filed a "Response to [Liberty's] Motion to Reconsider" in which it advised the Court that it did not oppose Liberty's motion. In its response to Liberty's motion, the State asserted additional grounds not raised by Liberty. The State has not filed a motion to reconsider in its own right, however, and its response to Liberty's motion cannot be taken as such since it was not filed within the time limits prescribed by ARM 24.5.337(1).

² In order to allow Liberty ample time to notify its witnesses, on January 3, 2006, the Court verbally advised the parties that testimony would not be taken at the January 6, 2006 oral argument. Liberty requested a conference call to clarify the oral argument proceedings which was held on January 4, 2006. At this time, Liberty requested that the oral argument be vacated in light of the Court's denial of Liberty's request to present testimony. The Court stated that this Order would be issued in any event to set forth the Court's reasons for denying Liberty's request to present testimony. (See Minute Entry No. 3656.)

despite ample opportunity to do so.³ Similarly, absent compelling reasons, the Court does not view an oral argument on a motion for reconsideration as an opportunity to present evidence that could have been adduced either with the briefing of the original motion or with the briefing of the motion for reconsideration.

¶4 In the instant case, Liberty stated: “Given that the case was submitted on agreed facts, the only ground for reconsideration would be an error of law.”⁴ The Court can see no compelling reason why additional facts, in the way of testimony, should be introduced when, as Liberty contends, the only ground for reconsideration would be an error of law. Moreover, if additional facts beyond those to which the parties agreed in submitting this matter should be considered, the Court sees no compelling reason why they were not presented previously.

ORDER

¶5 Liberty’s request to present testimony at oral argument on its motion for reconsideration is **DENIED**.

¶6 Since the oral argument has been vacated, pursuant to ARM 24.5.337, Liberty’s motion for reconsideration is deemed **SUBMITTED**.⁵

DATED in Helena, Montana, this 11th day of January, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Mr. Norman L. Newhall
Mr. Anthony Johnstone
Mr. David A. Hawkins
Mr. Larry W. Jones
Submitted: January 4, 2006

³ *Fleming v. International Paper Co.*, 2005 MTWCC 57, ¶ 8.

⁴ Liberty’s Motion to Reconsider and Supporting Brief and Request for Hearing at 2.

⁵ This motion is deemed submitted subject to Liberty’s opportunity to submit an offer of proof for the record, Petitioners’ opportunity to lodge an objection to Liberty’s offer of proof, and Petitioners’ opportunity to request leave to respond to arguments made in the matter of *Robinson v. Montana State Fund*, WCC No. 2004-1091, of which the State of Montana requested the Court to take judicial notice. (See Minute Entry No. 3656.)