



carey law firm, P.C.



COMPREHENSIVE CASE LAW REVIEW

2006 to Present

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ASBESTOS

Atchley v. Louisiana Pacific Corp., 2018 MTWCC 17 (Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner seeks death benefits from Respondent, contending that her husband died from asbestos-related disease and that his last injurious exposure to Libby asbestos occurred in the course of his 9-year employment at Respondent's lumbermill, which was located approximately 2 miles outside of Libby. Respondent denied Petitioner's claim, contending that the decedent was not exposed to an injurious amount of Libby asbestos while working at its mill and did not develop asbestos-related disease as a result of working at its lumbermill.

Held: The decedent had an OD and was exposed to Libby asbestos in amounts greater than the Libby background level during his 9 years of employment at Respondent's lumbermill. Under the potentially causal standard of *In re Mitchell*, he suffered his last injurious exposure to asbestos at Respondent's lumbermill. The decedent's OD caused his death, and Respondent is therefore liable for death benefits.

Rosling (McMillan) v. Associated Loggers Exchange, 2019 MTWCC 5 (Findings of Fact, Conclusions of Law, and Judgment)

Summary: The decedent was exposed to Libby asbestos for most of his life and diagnosed with asbestos-related disease almost seven years before working for Respondent's insured. However, his condition was stable and he continued to work as a logger. After beginning to work for Respondent's insured, where he suffered a significant exposure to Libby asbestos, decedent's ARD significantly and rapidly worsened and he ultimately had to quit his job because he could no longer physically perform it. Prior to his death, he filed an OD claim, contending that his ARD was an OD and that he was last injuriously exposed to the hazard of his OD while employed at Respondent's insured. Respondent asserts that Petitioner did not timely file his claim. In the alternative, Respondent asserts that Petitioner's employment for its insured did not cause his OD.

Held: The decedent timely filed his claim. The decedent's ARD was an OD because his exposure to Libby asbestos during his lifetime of employment was the major contributing cause of his ARD and because his exposure while working for Respondent's insured was the major contributing cause of the rapid acceleration of his ARD, which resulted in his inability to work. Respondent is liable for Petitioner's OD because it was the insurer at risk at the time decedent was last injuriously exposed to Libby asbestos. Thus, Respondent is liable for OD benefits.

Warboys v. Liberty Northwest Ins. Corp., 2020 MTWCC 5 (Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner seeks occupational disease benefits, asserting that she suffers from an asbestos-related disease and that it was proximately caused by her occupational exposure at the Stimson Lumber Company in Libby. Respondent has denied liability, asserting that Petitioner does not have an asbestos-related disease. In the alternative, Respondent asserts that if Petitioner has an asbestos-related disease, her employment at the Stimson lumbermill was not the proximate cause.

Held: Respondent is not liable for occupational disease benefits. Petitioner has not proven by a preponderance of the evidence that she currently has a diagnoseable asbestos-related disease.

Although Petitioner was exposed to Libby asbestos, this Court is not convinced that her CT scan shows structural pathology that is consistent with asbestos-related pleural thickening.

ATTORNEYS' FEES

Arneson v. Travelers Prop. Cas., 2006 MTWCC 7
(Order Granting Partial Summary Judgment).

Related Topic: [Penalties](#)

Summary: Respondent moves for partial summary judgment with respect to Petitioner's claim for additional travel expenses and attorneys' fees.

Held: Summary judgment granted. Mileage reimbursement is intended to cover the type of expenses that Petitioner is attempting to claim separately. With respect to attorneys' fees and costs, Respondent paid the medical expenses prior to adjudication and therefore is not liable for attorneys' fees pursuant to RCM 92-616, -618 (1975).

Vanbouchaute v. Montana State Fund, 2007 MTWCC 37
(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Penalties](#)

Summary: Petitioner petitioned the WCC for a determination as to whether he was entitled to receive a lumbar fusion as recommended by his physician. Petitioner also sought attorneys' fees and a penalty.

Held: Respondent authorized surgery shortly after the conclusion of the hearing. Respondent's conduct in denying the surgery recommended by his treating physician based initially on a file review by the managed care organization's medical advisor and then the second opinion of an independent medical examiner was unreasonable. However, since Respondent authorized the surgery before the claim was adjudged compensable by the WCC, Petitioner is not entitled to recover his attorneys' fees or costs. Petitioner is entitled to a penalty.

Pinnow v. Halverson, Sheehy & Plath, P.C., 2008 MTWCC 53
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner entered into a settlement agreement which settled two workers' compensation claims with Respondent acting as her attorney. Although Petitioner ultimately accepted the settlement amount, she contested Respondent's right to an attorney fee, arguing that Respondent did not adequately represent her interests.

Held: The evidence overwhelmingly demonstrates that Petitioner was well-represented by Respondent. Respondent is entitled to its attorney fee and costs as provided for in the Attorney Retainer Agreement signed by Petitioner and Respondent.

Briese v. MACo Workers' Compensation Trust, Briese, 2008 MTWCC 50 (2009 MT 259N)
(Order Denying Richard H. Renn's Motion to Award Attorney Fees)

Appealed to Montana Supreme Court: December 22, 2008; Affirmed: August 4, 2009

Summary: Petitioner's former attorney moves the Court for an order awarding attorney fees on death benefits payable to Petitioner's children during the period of time he represented Petitioner in a claim for death benefits.

Held: Petitioner’s former attorney is not entitled to a fee on benefits awarded to the children because he did not represent the children and the benefits payable to the children under the Stipulation for Entry of Judgment were not due to the attorney’s efforts.

Schmill v. Liberty Northwest Ins. Corp. and Montana State Fund, 2010 MTWCC 22
(Order Regarding Calculation of Attorney Fees).

Summary: Petitioner Cassandra Schmill and Intervenor Montana State Fund dispute the correct calculation of common fund attorney fees on claims where an offset is taken for payment of social security disability income (SSDI) benefits. Petitioner argues that the calculation of the contingent fee should be based on the gross amount of the common fund benefit, before the SSDI offset is taken. Intervenor argues that the calculation of the contingent fee should be based on the net amount of the common fund benefit, after the SSDI offset is taken.

Held: Pursuant to the common fund doctrine, Schmill’s counsel is entitled to reasonable attorney fees from the common fund beneficiaries. In determining which is the more reasonable method for calculating a contingent fee on common fund benefits in this case, the Court looks to the predominant practice for calculating a contingent attorney fee in cases where an SSDI offset is taken. Petitioner’s counsel advised the Court that the predominant practice is to calculate the attorney fee on the net benefits after the SSDI offset is taken. Seeing no compelling reason to deviate from the predominant practice in this case, the Court orders that when calculating the attorney fee on *Schmill* common fund benefits payable by Montana State Fund, the contingent fee shall be based on the net amount of the common fund benefit, after the SSDI offset is taken.

Montana State Fund v. Uninsured Employers’ Fund, et al., 2010 MTWCC 10
(Order Granting in Part and Denying in Part R&R Fabrication’s Motion to Amend Response to Third-Party Petition for Indemnity).

Summary: Third-Party Respondent (R&R) moved the Court for leave to amend its response to the UEF’s third-party petition for indemnity. Petitioner Montana State Fund stipulated to Third-Party Respondent’s motion except for the proposed amendment seeking an award of attorney fees. Petitioner argues that R&R’s proposed amendment requesting attorney fees is futile since attorney fees may only be awarded to claimants and Third-Party Respondent is not a claimant. Third-Party Respondent responds that § 39-71-612, MCA, does not, on its face, appear to preclude a third party from receiving attorney fees but simply provides that the insurer shall pay reasonable costs and attorney fees if certain conditions are met.

Held: Although § 39-71-612, MCA, does not specifically preclude an award of attorney fees to a third-party respondent, § 39-71-614, MCA, provides that the amount of an attorney’s fee assessed against an insurer under § 39-71-611, MCA, or § 39-71-612, MCA, must be based *exclusively* on the time spent by the attorney in *representing the claimant*. Since R&R is not a claimant it cannot recover its attorney fees under either § 39-71-611, MCA, or § 39-71-612, MCA. Although R&R’s proposed amendment seeks attorney fees, “pursuant to equitable or legal principals,” § 39-71-611(3), MCA, and § 39-71-612(4), MCA, specifically prohibit an award of attorney fees “under the common fund doctrine or any other action or doctrine in law or equity.” Since R&R’s proposed amendment would be futile, it must be denied.

Sikkema v. Liberty Northwest Insurance Co., 2017 MTWCC 16
(Order Granting Respondent's Motion for Partial Summary Judgment)

Related Topic: [Penalties](#)

Summary: Petitioner seeks a 20% increase in the amount of benefits under § 39-71-2907, MCA, and her attorney fees under §§ 39-71-611 and -612, MCA, for Respondent's alleged unreasonable delay in authorizing a surgery. Respondent moves for partial summary judgment. It argues that Petitioner cannot recover her attorney fees on her medical benefits under §§ 39-71-611 or -612, MCA — which generally provide that this Court can award attorney fees if it adjudicates a dispute over compensation and the insurer's denial or delay was unreasonable — because it authorized the surgery prior to adjudication, and further argues that this Court cannot award attorney fees on the 20% increase because this increase is a "penalty" and not "compensation." Petitioner objects to the summary judgment motion, arguing that the statutes do not preclude her from recovering attorney fees on her claim for a 20% increase in the full amount of benefits due under § 39-71-2907, MCA — which Petitioner argues is not a penalty, but rather additional compensation.

Held: Respondent is entitled to summary judgment on Petitioner's claim for attorney fees. This Court cannot award attorney fees on Petitioner's medical benefits because Respondent authorized the surgery before this Court adjudicated the dispute. Nor can this Court award attorney fees if Petitioner obtains a 20% increase in her benefits because case law from the Montana Supreme Court and this Court establishes that the 20% increase under § 39-71-2907, MCA, is a penalty, not compensation.

BELTON CASES

Harrison v. Liberty Northwest Ins. Corp., Stillwater Mining Company, 2006 MTWCC 22 (2008 MT 102)
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: May 26, 2006; Affirmed: April 1, 2008

Summary: Petitioner petitioned the Court to determine whether Stillwater Mining Company or Liberty Northwest Insurance Corporation, insurer for Derek Brown Construction Company, was responsible for payment of his medical costs and disability benefits.

Held: Stillwater Mining Company (Stillwater) is responsible for the payment of Petitioner's medical costs and disability benefits. Dr. Varnavas, one of Petitioner's treating physicians, opined that Petitioner's back injury sustained while on the job at Derek Brown Construction Company (Derek Brown) occurred as a direct result of a previous occupational disease Petitioner suffered while working for Stillwater. Dr. Varnavas's opinion was not disputed by Petitioner's other treating physician, Dr. Quenemoen, who was unable to opine whether Petitioner's injury sustained while on the job at Derek Brown was a result of his occupational disease suffered while working for Stillwater. Liberty Northwest Insurance Corporation (Liberty) paid Petitioner temporary total disability benefits and also paid for Petitioner's back surgery. Stillwater must indemnify Liberty for these medical and disability benefit payments. Stillwater should continue to pay Petitioner's disability and medical benefits. Petitioner is also entitled to receive his costs from Stillwater.

Liberty Northwest Insurance Corporation v. Valor Ins. Co., 2008 MTWCC 7
(Findings of Fact, Conclusions of Law and Judgment).

Summary: The claimant suffered knee and neck injuries as a result of an industrial accident on March 5, 2002. His neck injuries were diagnosed as a strain with an underlying degenerative condition. A cervical MRI taken March 23, 2005, revealed a herniated disk. In the interim, the claimant's employer switched workers' compensation insurers. Respondent, who was the insurer at the time of the claimant's industrial accident, denied liability on the grounds that the herniated disk was the result of an occupational disease which developed after July 1, 2002, when it ceased to be the insurer of claimant's employer. Petitioner, who became the employer's workers' compensation insurer on July 1, 2002, denied liability on the grounds that the herniated disk was caused by the March 5, 2002, industrial accident. Petitioner now seeks reimbursement from Respondent of certain medical and wage-loss benefits it has paid the claimant under a reservation of rights.

Held: The claimant did not reach maximum medical improvement (MMI) for his cervical condition until after he was declared to be at MMI following his neck surgery. Accordingly, Respondent is liable for the claimant's neck condition and Petitioner is entitled to indemnification for the benefits it paid pursuant to *Belton v. Carlson Transport*.

Liberty Northwest v. Montana State Fund, In Re: Ellis, 2011 MTWCC 8
(Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Cross-Motion for Summary Judgment).

Note: This is not really a *Belton* case, but is more properly categorized as an Indemnification case.

Summary: Respondent paid workers' compensation benefits to and on behalf of Claimant under a reservation of rights. Petitioner later admitted liability for Claimant's claim, but refused to indemnify Respondent for funds paid, arguing that the Workers' Compensation Act does not require it to

indemnify another insurer for benefits paid under a reservation of rights. Respondent moved for summary judgment in its favor, and Petitioner cross-motined.

Held: Respondent is entitled to indemnification from Petitioner for funds it paid to and on behalf of Claimant. Petitioner is the party who is properly and primarily obligated to pay those benefits.

Selley v. Acuity Insurance Co., Victory Insurance Co. Inc., 2018 MTWCC 4
(Order Declining to Consider Petitioner’s Motion for Summary Judgment)

Summary: Petitioner moves for partial summary judgment on his penalty claim against the second insurer, arguing that its refusal to authorize an MRI is unreasonable under the Belton rule, which provides that when two insurers deny liability for a claim, and assert that the other is liable, the second insurer has a duty to pay benefits under a reservation of rights until the claim is resolved. The parties have submitted nearly 300 pages of exhibits, the majority of which are medical records, in support of their positions.

Held: Although insurers have a duty to investigate claims, which includes obtaining diagnostic tests, this Court declines to consider Petitioner’s partial summary judgment motion under ARM 24.5.329(1)(b), because judicial economy will be not served by deciding the penalty claim against the second insurer before trial.

BENEFITS

Hedrick v. MACo Workers' Compensation Trust, 2006 MTWCC 3

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: May 3, 2006; Dismissed: October 12, 2006

Summary: Petitioner petitioned to receive treatment for her carpal tunnel syndrome by a Washington state physician, and for disability benefits for periods of time she claims she was disabled.

Held: Petition to receive treatment for carpal tunnel syndrome is granted. Petition to receive disability benefits for periods of time Petitioner claims she was disabled is denied. Subject to Petitioner's treating physician's opinion regarding Petitioner's employability during her recovery from surgery, Petitioner may be entitled to disability benefits for the period of her recovery from surgery.

Hiett v. Montana Schools Group Ins. Auth., et al., 2006 MTWCC 33

(Order Determining Threshold Issues in Scope of Decision).

Summary: Following briefing by the parties, the Court determined whether the Montana Supreme Court's ruling in this case abrogates the exclusion of palliative and maintenance care set forth in § 39-71-704(1)(f), MCA; and whether the criteria for furnishing of secondary medical services set forth in § 39-71-704(1)(b), MCA, may still apply under any circumstances or whether this section was wholly abrogated by *Hiett*.

Held: The *Hiett* decision has not abrogated the exclusion of palliative and maintenance care, and the secondary medical benefits provision has not been wholly abrogated by *Hiett* and may still apply to particular claims.

Woodards v. Montana Ins. Guar. Assoc., 2007 MTWCC 55

(Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Motion for Summary Judgment, and Granting Respondent's Cross-Motion for Summary Judgment)

Appealed to Montana Supreme Court: March 6, 2008; Dismissed: July 23, 2008.

Summary: Respondent moved for summary judgment, arguing that because Petitioner is considered retired, she is not entitled to PTD benefits pursuant to § 39-71-710, MCA. Petitioner moved for summary judgment, arguing that Respondent unlawfully retroactively converted her TTD benefits to PPD benefits without notice. Respondent cross-motivated for summary judgment on the notice issue.

Held: Petitioner is not entitled to PTD benefits pursuant to § 39-71-710, MCA, and therefore Respondent's motion for summary judgment on this issue is granted. Because Petitioner never met the legal definition of PPD, she was never entitled to PPD benefits. Despite how either party would characterize the payment of these benefits, legally, there could not have been a retroactive "conversion" of benefits to which Petitioner was entitled. The benefits Petitioner received after reaching maximum medical improvement amounted to an overpayment of TTD benefits. Petitioner's motion for summary judgment on the retroactive conversion issue is therefore moot and Respondent is entitled to summary judgment in its favor on this issue.

Aldrich v. Montana State Fund, 2007 MTWCC 57 (2009 MT 40)
(Decision and Judgment)

Appealed to Montana Supreme Court: January 15, 2008; Affirmed: February 18, 2009

Summary: Petitioner petitioned this Court for an award of temporary total disability (TTD) benefits during the period of Petitioner's medical instability resulting from an occupational disease, notwithstanding the age or Social Security retirement status of Petitioner. Respondent argues that Petitioner is not entitled to TTD benefits because he has failed to prove an actual wage loss.

Held: Petitioner is not entitled to an award of TTD benefits. Pursuant to § 39-71-701, MCA, a worker is eligible for TTD benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing. In this case, at the time Petitioner contends he was no longer at maximum healing, he had not worked for approximately eleven years and had been drawing Social Security retirement benefits for approximately two years. None of the facts presented to this Court establish that Petitioner suffered any wage loss as a result of his injury when he was no longer at maximum healing. Petitioner, therefore, has failed to meet his burden of proof that he was entitled to receive TTD benefits.

Fabbi v. Valley Forge Ins. Co., 2008 MTWCC 16
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: May 14, 2008; Dismissed: November 26, 2008

Summary: Petitioner petitioned the Court for temporary total and temporary partial disability benefits for the time periods between January 24, 2001, and November 14, 2001, and from May 2, 2002, through September 29, 2002. Petitioner also requested attorney fees, costs, and a penalty. Respondent argued that Petitioner was not entitled to the requested benefits because her physician released her to her time-of-injury job and Petitioner voluntarily terminated her employment with Respondent's insured.

Held: After being released to return to work without restrictions, Petitioner advised her employer that she was not available for further work until she notified it otherwise. Petitioner never notified her employer that she was available for work after that time. Because Petitioner voluntarily terminated her employment with her time-of-injury employer for the balance of tie, she is not entitled to the requested benefits.

Vanvallis v. Liberty Northwest Ins. Corp., 2008 MTWCC 25
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner was injured in the course and scope of her employment as a full-time employee. She returned to her time-of-injury job on a part-time basis because of her physician-ordered work restrictions, but was unable to adequately perform the job duties of her time-of-injury job. Petitioner's employer placed her in an alternative part-time position which allowed her to work within her 25-hours-per-week restriction. Petitioner petitioned this Court for a determination of whether the 25-hours-per-week job constitutes regular employment within the meaning of § 39-71-116(24), MCA.

Held: The Court concludes that Petitioner's job, which employed her 25 hours per week, every week, is substantial and significant, and constitutes "regular employment" within the meaning of § 39-71-116(24), MCA.

Lafountain v. Montana State Fund, 2008 MTWCC 46
(Judgment).

Summary: Petitioner suffered an industrial injury on September 17, 2002. Respondent accepted liability and paid benefits. Petitioner contends that he is entitled to payment of lost wages at the rate of \$1,610 per week. Petitioner further contends that Respondent should authorize him to travel to Germany for a surgical procedure which is not available in the United States. Respondent contends that Petitioner has been paid indemnity benefits at the correct rate, and that he is not entitled to travel for surgery.

Held: Petitioner is not entitled to the amount of wage-loss benefits he seeks as a matter of law. Although Petitioner satisfied the Court that he is in pain from his industrial injury and that he is motivated to improve his condition and return to work, Petitioner did not meet his burden of proof regarding his entitlement to the specific treatment he desires.

Quick v. Montana State Fund, 2008 MTWCC 27 (2009 MT 162)
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: July 1, 2008; Affirmed: May 13, 2009

Related Topic: [Penalties](#)

Summary: Petitioner petitioned the Court for retroactive and future domiciliary care benefits, a higher rate of pay for domiciliary care provided by Petitioner's wife, Dolly, a 20% penalty, attorney fees, and costs. Petitioner argued that Respondent was placed on notice that Petitioner required domiciliary care at the time of his 1984 accident, and that Dolly has been providing the care since then. Respondent argued that it did not have notice that Petitioner needed domiciliary care until February 1, 2007, the first day a medical opinion was received by it stating that domiciliary care was warranted. Prior to trial, Respondent conceded that Petitioner required 24-hour domiciliary care. Respondent began paying a rate of \$7.50 per hour to Dolly, effective February 1, 2007.

Held: Petitioner is not entitled to retroactive domiciliary care prior to February 1, 2007, because Respondent was not put on notice that domiciliary care was warranted until this date. Significantly, Petitioner's attorney in 2005 stated in a letter to Respondent that a claim for domiciliary care benefits had never been made. Respondent's rate of \$7.50 per hour is unreasonable. The evidence establishes that similar rates were paid for domiciliary care not provided by a person with RN skills in the late 1980s, and in the present case, the evidence establishes that Petitioner requires his care to be provided by a person with RN skills. The Court finds that, based upon the testimony of a qualified professional, \$20.00 per hour is a reasonable rate of pay for Dolly because she is an RN. Further, the Court finds that Petitioner is entitled to a 20% penalty because Respondent's rate is an unreasonable rate.

Drake, Hilbert v. Montana State Fund, 2011 MTWCC 2

(Order Denying Petitioner's Motions for Summary Judgment and Granting Respondent's Cross-Motions for Summary Judgment).

Summary: Petitioners suffered industrial injuries while the 5th Edition of the AMA Guides was in effect but reached MMI after the 6th Edition came into effect. They challenge Respondent's decision to award them impairment ratings as determined under the 6th Edition. Petitioners argue that impairment ratings should be calculated under the Guides in effect on the date of their industrial injury. Respondent argues that impairment ratings should be calculated under the Guides in effect on the date an injured worker reaches MMI.

Held: Section 39-71-703, MCA, provides that an injured worker’s impairment rating is to be determined by the “latest” edition of the Guides. Section 39-71-711, MCA, provides that an impairment rating is a purely medical determination which must be determined by an impairment evaluator after a claimant has reached maximum healing and must be based on the “current” edition of the Guides. The “latest” or “current” edition of the Guides is the most recent edition in existence on the date an injured worker reaches MMI. In Petitioners’ cases, the 6th Edition existed on the date they each reached MMI. Petitioners’ motions for summary judgment are denied and Respondent’s cross-motions for summary judgment are granted.

Poindexter v. Montana State Fund, 2010 MTWCC
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner was off work after an industrial accident. Respondent informed Petitioner that his treating physician was releasing him to return to work with restrictions and that his employer had a modified job available. Petitioner alleges that he called his employer and was informed that no work was available. Petitioner’s employer claims that he instructed Petitioner to report to work, but Petitioner did not report for work at the agreed-upon time. Petitioner alleges that Respondent incorrectly and unreasonably terminated his TTD benefits.

Held: Petitioner has not proven his entitlement to TTD benefits for the time period of September 23, 2009, through February 21, 2010. Respondent did not unreasonably terminate Petitioner’s TTD benefits. Petitioner is not entitled to his costs, attorney fees, or a penalty.

Chapman v. Twin City Fire Ins. Co., 2010 MTWCC 30
(Findings of Fact, Conclusions of Law and Judgment and Order Resolving Pending Motion)

Appealed to Montana Supreme Court: December 29, 2010; Dismissed: February 15, 2011

Summary: Petitioner alleges she suffered an industrial injury to her low back when her employer required her to move her belongings from one workstation to another. Respondent denied liability because it did not believe Petitioner suffered an industrial injury.

Held: The facts demonstrate that Petitioner suffered a compensable industrial injury. However, the facts further demonstrate that Petitioner’s injuries are not as severe as she claims, nor did Petitioner prove that the subsequent termination of her employment was related to her industrial injury. Petitioner has proven entitlement to certain medical benefits, but neither to wage-loss benefits nor a penalty.

Stewart v. Liberty Northwest Ins. Corp., 2010 MTWCC 14
(Order Denying Respondent’s Motions for Summary Judgment).

Related Topic: [Equity – Estoppel & Waiver](#)

Summary: After this Court determined that Petitioner was not entitled to an increased impairment rating because Petitioner failed to establish a causal relationship between her industrial injury and chronic pain, Respondent discontinued payment for Petitioner’s pain patches. Petitioner petitioned the Court for an order directing Respondent to resume coverage and payment for this prescription and any other necessary pain medications. Respondent moved for summary judgment, arguing that Petitioner is collaterally estopped from bringing this second cause of action because the issue of causation was resolved in the trial concerning Petitioner’s impairment rating.

Held: Respondent's motion is denied. In *Lund v. State Compensation Mut. Ins. Fund*, the Montana Supreme Court held that a second action in a workers' compensation claim which seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action does not satisfy the identical issue element of collateral estoppel. In Petitioner's first action, she sought an increased impairment rating. Section 39-71-711, MCA, sets forth the statutory criteria for impairment ratings. Petitioner's current action seeks to establish Respondent's liability for payment of certain medical benefits. Section 39-71-704, MCA, sets forth the statutory criteria for medical benefits. Since the issue in the present action differs from the issue raised and decided in the prior action, collateral estoppel does not apply.

Wright v. ACE American Ins. Co., 2010 MTWCC 11 (2011 MT 43)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: June 23, 2010; Affirmed: March 15, 2011

Related Topic: [Maximum Medical Improvement](#)

Summary: Petitioner suffered an industrial injury to his left shoulder. After surgery, his shoulder pain worsened and he also experienced cervical symptoms. Although Petitioner subsequently saw several doctors, none offered viable treatment options except pain management. Petitioner sought medical treatment on his own with a former Billings doctor, now practicing in Wyoming, who recommended a second shoulder surgery. Respondent has denied Petitioner's request for that surgery. Petitioner further alleges that he is unable to work and should receive TTD benefits. Respondent alleges that Petitioner's treating physician signed job analyses and has released him to return to work, thereby rendering him ineligible for TTD benefits.

Held: Petitioner is entitled to additional medical benefits. Although Petitioner's treating physician, a pain management specialist, does not recommend further surgical treatment, the Court finds the opinion of an orthopedic surgeon, who believes Petitioner is likely to improve with additional surgery, more persuasive. Since additional medical treatment is reasonably expected to improve Petitioner's condition, he is not at MMI. Since he also has not been released to return to his time-of-injury employment, he is entitled to TTD benefits. As the prevailing party, Petitioner is entitled to his costs. Petitioner has not demonstrated that Respondent was unreasonable in adjusting his claim and therefore Petitioner is not entitled to attorney fees or a penalty.

Hart v. Hartford Ins. Co. of the Midwest, 2010 MTWCC 8
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: May 7, 2010; Remanded: August 24, 2010

Summary: Petitioner petitioned the Court for certain periods and amounts of temporary total, temporary partial, and back-owing medical benefits. Petitioner injured his low back in the course and scope of his employment. Petitioner's employer provided him with light-duty employment, but Petitioner missed several days of work. Petitioner's relationship with his initial treating physician was terminated due to Petitioner's drug seeking behavior. A new physician examined Petitioner at Respondent's request. This physician concluded that Petitioner was at MMI and assigned him a 0% impairment rating. Petitioner continued to seek medical care through several physicians, often seeking narcotic medication. Petitioner failed to seek pre-authorization for any of his medical treatment at issue in this case.

Held: Petitioner is not entitled to any retroactive temporary total disability benefits because his employer offered him job duties within his restrictions and no physician removed him from work entirely. Petitioner is entitled to retroactive temporary partial disability benefits effective December 30, 2008, when he was restricted to 5 hours maximum with the possibility of not being able to work at all on some days. Petitioner is not entitled to past medical benefits because his personal conduct and broken contracts leave little room for a determination that the treatment bills at issue were for undisputedly necessary treatment.

Murphy v. Montana State Fund, 2010 MTWCC 6
(Decision and Judgment).

Summary: Petitioner sought a lump-sum conversion of his permanent total disability benefits.

Held: In a bench ruling, the Court concluded that Petitioner is entitled to a lump-sum conversion of his permanent total disability benefits as he planned to use the funds to purchase a feedlot. Petitioner came to trial fully prepared, having sought financing and with a reasonable business plan. His self-employment venture would not pay more than his bi-weekly benefits would provide him a saleable asset upon retirement. The provisions of ARM 24.29.1202 were thus satisfied.

Carey v. American Home Assurance Co., 2010 MTWCC 3
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner broke her left wrist while working as the front end manager at Sam's Club. Shortly after she returned to work, Petitioner's job position was eliminated at Sam's Club stores nationwide as part of a restructuring plan. Petitioner opted not to apply for other management positions at Sam's Club, but applied for hourly positions instead. The only position she was offered was as a part-time food demonstrator. Petitioner declined the position and accepted a severance package. She later filed this petition, arguing that she was terminated due to her industrial injury and that she is entitled to TTD and PPD benefits, as well as her costs, attorney fees, and a penalty.

Held: Petitioner lost her job at Sam's Club due to the elimination of her time-of-injury job position and due to the unavailability of any other position which Petitioner desired and for which she was qualified. Petitioner is not entitled to TTD or additional PPD benefits. Because Petitioner is not the prevailing party, she is not entitled to her costs, attorney fees, or a penalty.

Pugh v. Charter Oak Fire Ins. Co., 2010 MTWCC 1
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned the Court for a determination of temporary total disability (TTD) benefits due to her. Petitioner argues that she was constructively discharged from her time-of-injury employment and is entitled to TTD benefits pursuant to § 39-71-701(4), MCA. Petitioner contends she is also entitled to TTD benefits for a period of time following her cubital tunnel release surgery.

Held: Petitioner voluntarily resigned her employment and was not constructively discharged. Petitioner failed to meet her burden of proof that she suffered a total loss of wages as a result of her injury after her voluntary resignation.

MACo Workers' Compensation Trust v. Klinkam, 2011 MTWCC 26
(Findings of Fact, Conclusions of Law and Judgment).

Topic: Benefits: Social Security Offset

Summary: Petitioner claims it is entitled to an offset pursuant to § 39-71-701(5), MCA, which provides that an insurer is entitled to an offset if the claimant collects social security disability payments “because of the injury” for which the claimant also receives workers’ compensation benefits.

Held: Respondent receives social security disability benefits for a multitude of reasons in addition to the knee injury for which she receives workers’ compensation benefits. Respondent’s knee injury was only one of eleven conditions considered severe by the Social Security Administration’s Administrative Law Judge in his determination that Respondent was entitled to benefits. Petitioner is not entitled to an offset.

Stewart v. Liberty Northwest Ins. Corp., 2012 MTWCC 11 (2013 MT 107)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: April 30, 2012; Affirmed: April 23, 2013

Related Topic: Penalties

Summary: Petitioner suffers from ongoing pain in her right knee since her industrial accident and two arthroscopic surgeries. The WCC ruled in an earlier decision that Petitioner was not entitled to an increase in her impairment rating for her chronic pain. Following the earlier ruling, the Respondent denied further liability for Petitioner’s pain medication. Petitioner contends that Respondent unreasonably denied her medication, and she is entitled to the pain medication, penalty, attorney fees, and costs.

Held: Petitioner has demonstrated that her original injury and resulting surgeries are causally related to her need for ongoing pain medication. She is entitled to continued payment of her medication without a reservation of rights by Respondent. As Respondent acted reasonably in reliance on the WCC’s earlier ruling that Petitioner was not entitled to an increased impairment rating for her chronic pain, Petitioner is not entitled to a penalty or attorney fees.

MACo Workers' Compensation Trust v. Klinkam, 2012 MTWCC 25
(Order Denying Petitioner’s Request for Benefits under § 39-71-610, MCA).

Summary: Petitioner appeals the determination by the Department of Labor & Industry, Employment Relations Division, denying her request for benefits under § 39-71-610, MCA. The Department denied Petitioner’s request on the grounds that Petitioner’s benefits were converted to permanent partial disability benefits and not terminated as the statute requires.

Held: Petitioner admits that she continues to receive compensation benefits; therefore, her compensation benefits have not been terminated. Rather, her benefits have been converted from one type of compensation benefit to a different type of compensation benefit. Pursuant to § 39-71-610, MCA, Petitioner does not qualify for “additional biweekly compensation benefits.”

Clapham v. Twin City Fire Ins. Co., 2012 MTWCC 27

(Order Granting Partial Summary Judgment in Favor of Petitioner).

Summary: Petitioner moved for summary judgment, arguing that Respondent violated the provisions of § 39-71-608, MCA, when it agreed to pay his claim under a reservation of rights and then refused to pay medical expenses and failed to accept or deny his claim, or request authorization to continue paying his claim under the statute, after the 90-day time period had expired. Petitioner contends he is entitled to acceptance of his claim, attorney fees, and a penalty. Respondent admits it did not pay Petitioner's medical expenses and that it did not accept or deny his claim within 90 days as required by the statute. However, Respondent argues that it was not obligated to pay any benefits under § 39-71-608, MCA, and that the only consequence it may face for failing to comply with the 90-day deadline is attorney fees and a penalty if the claim is later adjudged compensable.

Held: Petitioner is not entitled to acceptance of his claim for Respondent's failure to obtain written consent to make compensation payments for more than 90 days under a reservation of rights. However, Petitioner is entitled to a penalty if his claim is found to be compensable. Respondent is obligated to pay certain medical expenses incurred during the time period it placed Petitioner's claim under § 39-71-608, MCA.

Trevino v. Montana State Fund, 2013 MTWCC 1

(Order Granting Respondent's Motion for Summary Judgment) (*Reconsideration Granted – March 29, 2013*).

Summary: Respondent moved for summary judgment on Petitioner's claim of entitlement to permanent partial disability and vocational rehabilitation benefits, arguing that Petitioner was at maximum medical improvement and released to return to her time-of-injury employment and that Petitioner believes she is capable of performing her time-of-injury job. Petitioner objected to Respondent's motion, arguing that a question of fact exists as to whether she can perform her time-of-injury job.

Held: The undisputed facts support a conclusion that Petitioner is capable of performing her time-of-injury job. Thus, she is not entitled to additional permanent partial disability benefits nor vocational rehabilitation benefits and Respondent is entitled to summary judgment in its favor.

O'Mahoney v. Liberty Ins. Corp., 2013 MTWCC 6

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: April 3, 2013; Dismissed: June 12, 2013

Summary: Petitioner alleges she is permanently and totally disabled due to right arm pain from her industrial injury. Respondent argues that Petitioner has had several jobs approved for her by her treating physician, and that her subjective pain complaints are insufficient to support a finding of permanent total disability.

Held: While Petitioner is undergoing evaluation and treatment at a pain clinic upon referral of her treating physician, she is not at MMI and her claim for permanent total disability is premature. She is entitled to continuation of temporary total disability benefits while she completes her pain treatment.

Gray v. Montana State Fund, 2014 MTWCC 2
(Order Denying Petitioner’s Motion for Summary Judgment)

Related Topic: [Disability](#)

Summary: Petitioner began receiving social security retirement benefits at age 62, but continued to work. He subsequently suffered an industrial injury for which he has reached MMI. Petitioner contends that he only received “partial” social security benefits and that he is entitled to PTD benefits until he reaches the age of “full retirement.” Respondent contends that Petitioner is considered “retired” under § 39-71-710, MCA, and that he is therefore ineligible for PTD benefits.

Held: Section 39-71-710, MCA, provides that injured workers are considered retired if they receive social security retirement benefits or if they are eligible to receive full social security retirement benefits. This provision of the statute is framed in the disjunctive. Under the terms of this statute, if an injured worker is either eligible to receive full social security retirement benefits or actually receives social security retirement benefits in any amount, the worker is considered retired. Since Petitioner received social security retirement benefits, even though they are not “full” benefits, he fulfills the requirements of the statute and is considered “retired.” He is therefore not eligible for PTD benefits.

Nelson v. Montana Schools Group Insurance Authority, 2014 MTWCC 15
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: After reaching MMI and being told by Respondent that all further treatment had to be preauthorized, Petitioner traveled to California in 2011 and 2012 for office visits with her surgeon without getting preauthorization. Respondent denies liability for the office visits and travel expenses because Petitioner failed to obtain preauthorization and failed to timely submit her travel expenses. Petitioner demands the ongoing right to see her California surgeon, and Respondent counters that it has not categorically denied Petitioner future treatment with her California surgeon; only that it reserves the right to determine if further treatment in California is medically necessary. Petitioner argues the Petition for Hearing was timely filed, while Respondent claims the petition is barred by the statute of limitations. Respondent denies liability for Petitioner’s costs, attorney fees, and a penalty.

Held: Petitioner is not entitled to payment for the office visits to see her California surgeon in 2011 and 2012, and is not entitled to reimbursement for her travel. Petitioner was informed after reaching MMI that further treatment needed to be preauthorized. Petitioner failed to seek preauthorization, and failed to timely submit her travel receipts despite knowing the rules regarding travel reimbursement. Petitioner has the right to see her California surgeon in the future provided the treatment is medically necessary and related to her claim. The Petition for Hearing is not barred by the statute of limitations. Petitioner is not entitled to her attorney fees, costs, or a penalty.

Davidson v. Benefis, 2014 MTWCC 18
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Disability](#)

Summary: Petitioner argued that her preexisting lower extremity impairment combined with her industrial injury resulted in an actual wage loss, entitling her to PPD benefits. Respondent countered that Petitioner resigned her CNA position, and that her preexisting permanent impairment was unrelated to her industrial accident, giving her no right to PPD benefits.

Held: Section 39-71-703(1), MCA (2009), did not require that a permanent impairment be a direct result of the industrial injury. Petitioner was forced to resign because she could not return to her time-of-injury job due to a combination of her preexisting permanent impairment and her industrial injury. Therefore, Petitioner had an actual wage loss under the pre-2011 PPD statutes, entitling her to PPD benefits.

Ferrel v. Montana State Fund, 2017 MTWCC 6

(Order Granting Petitioner’s Motion for Summary Judgment and Denying Respondent’s Motion for Summary Judgment)

Summary: Petitioner and Respondent move for summary judgment on stipulated facts on three issues: (1) At the time Respondent terminated Petitioner’s PTD benefits, was Petitioner receiving benefits “from a system that is an alternative to social security retirement” within the meaning of § 39-71-710(1), MCA? (2) If Petitioner was receiving benefits “from a system that is an alternative to social security retirement,” is State Fund’s termination of Ferrel’s PTD benefits barred by the equitable defense(s) of estoppel and/or laches? (3) If State Fund’s termination of Ferrel’s PTD benefits is not barred by estoppel and/or laches, is § 39-71-710(1), MCA, constitutional?

Held: Because Petitioner’s receipt of retirement benefits from the Montana Highway Patrol Officers’ Retirement System does not preclude her from receiving them from Social Security when she is age-eligible, and she is not collecting retirement benefits from the Montana Highway Patrol Officers’ Retirement System instead of collecting them from Social Security, Petitioner was not receiving benefits “from a system that is an alternative to social security retirement” within the meaning of § 39-71-710(1), MCA. Thus, Respondent incorrectly determined that Petitioner was “retired,” and is liable for her PTD benefits from the time it terminated those benefits.

Moreau v. Transportation Insurance Co., 2017 MTWCC 7 (2018 MT 1)

(Order Granting Respondent’s Motion for Summary Judgment and Denying Petitioner’s Cross-Motion for Summary Judgment)

Appealed to Montana Supreme Court: May 30, 2017; Affirmed: January 2, 2018

Summary: Respondent accepted liability for the decedent’s occupational disease, and paid certain medical benefits. However, another entity had already paid some of the medical bills for which Respondent would have been liable under § 39-71-704, MCA. Petitioner contends that since that entity does not want to be reimbursed, Respondent should pay the amount of those medical bills to Petitioner. Respondent moved for summary judgment, contending that it is not liable to Petitioner since the decedent received the medical services to which he was entitled. Petitioner cross-moved for summary judgment

Held: Under controlling case law, Respondent is entitled to summary judgment. It is not liable to pay Petitioner the value of the decedent’s medical bills which were paid by an entity that is not seeking reimbursement from Petitioner. Furthermore, this Court does not have jurisdiction to decide whether Respondent must reimburse another entity that is not a party to this case for paying the decedent’s medical bills.

Davis v. Liberty Insurance Corporation, 2017 MTWCC 21

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner settled his indemnity benefits with insurer on a disputed liability basis, and reserved his future medical benefits. Thereafter, insurer declined to authorize a referral for Petitioner to see his surgeon, citing the five-year medical closure rule in § 39-71-704(1)(f)(i), MCA. Petitioner contends that he is entitled to ongoing medical benefits pursuant to § 39-71-704(1)(f)(ii), MCA, because he is permanently totally disabled.

Held: Where the vocational rehabilitation expert was unable to point to any suitable jobs for Petitioner, and given Petitioner's older age, modest education, limited transferable skills, near-constant and high levels of pain, poor prognosis, and co-existing health conditions, Petitioner has met his burden of proving that he does not have a reasonable prospect of physically performing regular employment. Because he is permanently totally disabled, Petitioner is entitled to ongoing medical benefits pursuant to § 39-71-704(1)(f)(ii), MCA.

Clark v. Arch Insurance Company, 2018 MTWCC 18

(Order Affirming Department of Labor & Industry's Order Granting Interim Benefits)

Summary: Appellant appeals from a Department order granting Appellee's petition for interim TTD benefits under § 39-71-610, MCA.

Held: The Department's order is affirmed. Appellant did not demonstrate that the Department erred in awarding interim benefits, and Appellee presented substantial evidence to establish a prima facie case for interim TTD benefits.

Loranger v. Montana State Fund, 2019 MTWCC 18

(Order Granting Respondent's Motion for Summary Judgment)

Related Topic: [Mediation](#)

Summary: Respondent moves for summary judgment, asserting that Petitioner's claim for PTD benefits — which is based on the combined sequelae of three industrial injuries — is premature because Petitioner has not yet returned to MMI for his right knee injury following right knee surgery and, based on Petitioner's attorney's assertions, is not at MMI for his cervical spine injury. Petitioner has not presented evidence that he is currently at MMI for his right knee injury nor that he is still at MMI for his cervical spine injury, but asserts that this Court can still determine that he is entitled to PTD benefits. In the alternative, Petitioner asserts that this Court should hold a trial to determine whether he is entitled to TTD benefits.

Held: Respondent is entitled to summary judgment because Petitioner's claim for PTD benefits is premature. This Court has previously ruled that when a claim for PTD benefits is based on the sequelae from multiple injuries, the claimant must be at MMI for each injury before he is eligible for PTD benefits. Petitioner has not presented sufficient evidence from which this Court could find that he is currently at MMI for either his right knee injury or his cervical spine injury. This Court cannot hold a trial to determine Petitioner's entitlement to TTD benefits because the parties have not mediated that issue; therefore, this Court does not currently have jurisdiction over that dispute.

Allum v. Montana State Fund, 2020 MTWCC 1
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: After Petitioner's treating physician determined that Petitioner had reached MMI, Petitioner failed to attend an impairment evaluation because he claimed that the letter from the impairment evaluator's office was illegal notice of the evaluation, because his treating physician did not select the evaluator, and because the evaluator would not allow him to videotape the evaluation. Upon receiving Petitioner's Class 2 impairment rating, which was based on a medical records review, and approved job analyses for jobs that paid more than Petitioner's time-of-injury job, Respondent terminated Petitioner's TTD benefits and paid him his impairment award. Petitioner asserts that he has not reached MMI and that Respondent failed to follow the express terms of the WCA and, therefore, that he is entitled to retroactive and ongoing TTD benefits, additional PPD benefits, and a penalty.

Held: Petitioner is not entitled to retroactive and ongoing TTD benefits, additional PPD benefits, nor a penalty. Petitioner had no legal grounds to skip his impairment evaluation. Because Petitioner reached MMI, was released to return to work, and had a Class 2 impairment but no actual wage loss, the only benefit to which he was entitled was an impairment award. Respondent's termination of Petitioner's TTD benefits and its denial of Petitioner's claim for additional PPD benefits was lawful and reasonable.

Maldonado v. Continental Casualty Co., 2020 MTWCC 6
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: The parties dispute whether Petitioner is permanently totally disabled and, therefore, entitled to additional medical benefits notwithstanding the passage of 60 months since the diagnosis of her OD. Petitioner contends that she is permanently totally disabled because her difficulty breathing and fatigue, which are the result of a workplace exposure to allergens, prevent her from physically performing regular work. Respondent contends that her subjective complaints are not credible because they cannot be explained by the objective measures of Petitioner's condition. Her treating physician deferred to the IME physician, the IME physician approved 12 JAs based on Petitioner's restrictions, and the CRC testified that Petitioner is qualified and competitive for each one.

Held: Petitioner is not permanently totally disabled and is, therefore, not entitled to additional medical benefits under § 39-71-704(1)(f)(ii), MCA. Petitioner is physically capable of performing at least two of the approved JAs based on the objective measures of her condition.

Johnson v. Hartford Accident & Indemnity Company and Montana DOL/ERD, 2020 MTWCC 20
(Order Denying Respondent/Insurer's Renewed Motion to Dismiss Petition For Trial)

Related Topic: [Procedure](#)

Summary: Petitioner appeals the DLI's medical review panel's decision that his medical benefits are to remain terminated under the 60-month rule in the 2011 Workers' Compensation Act. He seeks a ruling that Respondent/Insurer is liable for additional medical benefits. The DLI refuses to participate in this case on the grounds that it has no legal interest in the outcome; DLI points out that its role was that of an initial adjudicator and that if Petitioner prevails in this appeal, then Respondent/Insurer will be liable for the additional medical benefits. Respondent/Insurer moves to dismiss, asserting that it is not a proper respondent and that Petitioner has not stated a claim against it.

Held: The Court denied Respondent/Insurer’s motion to dismiss. Respondent/Insurer is the proper respondent because it will be liable for additional medical benefits if Petitioner prevails. Moreover, Petitioner stated a direct claim against Respondent/Insurer for additional medical benefits.

Robertson v. Montana State Fund, 2021 MTWCC 5
(Findings Of Fact, Conclusions of Law, And Judgment)

Appealed To Montana Supreme Court: April 5, 2021; Appeal Dismissed Per Stipulation of Parties: May 21, 2021

Summary: Petitioner argues she is entitled to PTD benefits because — although Respondent has several approved JAs, including sedentary positions with her time-of-injury employer — her pain and her age and lack of skills render her unable to physically perform regular work.

Held: Petitioner is not entitled to PTD benefits. This Court is not persuaded that Petitioner’s pain is so severe, or that her age and lack of skills are such impediments, that she is unable to physically perform any regular work. This Court is convinced that Petitioner could have successfully returned to work for her time-of-injury employer in the jobs it offered her.

Lorenzen v. Employers Preferred Insurance Co., 2021 MTWCC 17
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Credibility](#)

Summary: Petitioner seeks additional benefits, asserting that his industrial accident permanently aggravated his preexisting conditions, including his chronic pain, cervical spine condition; lumbar spine condition; and right foot condition. Petitioner also asserts that his industrial accident caused a brain injury, resulting in headaches and tinnitus.

Held: Respondent is not liable for additional benefits. Respondent is liable only for those medical conditions caused or materially aggravated by Petitioner’s industrial accident. In his industrial accident, Petitioner suffered a left-wrist sprain, which has completely resolved; a low-back sprain, which has completely resolved; and a herniated disc at C5-6, which has been surgically repaired and which resulted in no additional physical restrictions. Petitioner did not suffer a permanent aggravation to any of his preexisting conditions. Petitioner’s current need for medical treatment and his alleged current inability to return to his time-of-injury job or otherwise work is a result of his preexisting conditions and a nonindustrial left-ankle injury, conditions and injuries for which Respondent is not liable.

Collen v. Montana State Fund, 2021 MTWCC 19
(Order Granting Respondent’s Motion to Dismiss Petitioner’s Petition for Trial)

Summary: Respondent moves to dismiss Petitioner’s Petition for Trial. The petition asks this Court to determine: (1) that hearing aids are a prosthesis under § 39-71-704(1)(f)(ii), MCA, and/or a prosthetic device under § 39-71-704(1)(g)(ii), MCA, and, therefore, (2) that Petitioner will be entitled to hearing aid-related medical benefits after August 31, 2023, notwithstanding § 39-71-704(1)(f)(i), MCA (the 60-month rule). Respondent argues that, since it is paying all hearing aid-related benefits to which Petitioner is currently entitled and has not denied Petitioner’s future hearing aid-related

medical benefits, only taken the position that those benefits will terminate on August 31, 2023, under the 60-month rule, there is no dispute over benefits as required by § 39-71-2905(1), MCA, and this Court lacks subject matter jurisdiction. In the alternative, Respondent argues that since facts bearing on Petitioner’s entitlement to hearing aid-related medical benefits in the future — such as whether Petitioner returns to the workforce and requires those benefits to continue to work under § 39-71-717(2), MCA — are subject to change, Petitioner’s claim is not justiciable under the ripeness doctrine. Petitioner opposes Respondent’s motion on both grounds.

Held: Respondent’s Motion to Dismiss Petitioner’s Petition for Trial is granted. This Court has subject matter jurisdiction because the parties have a dispute over workers’ compensation benefits, albeit benefits to which Petitioner may be entitled in the future. However, Petitioner’s claim is not ripe because Respondent has not denied Petitioner’s future hearing aid-related medical benefits, only taken the position that those benefits will terminate on August 31, 2023, under the 60-month rule, and whether Petitioner will be entitled to hearing aid-related medical benefits after that date depends on facts that are subject to change.

Russell v. Victory Insurance Company, Inc., 2023 MTWCC 1

(Order Granting Petitioner Partial Summary Judgment and Order Denying Respondent’s Motion for Summary Judgment)

Summary: The parties cross moved for summary judgment on the issue of whether Respondent had grounds to terminate Petitioner’s benefits for refusing to attend an appointment with her treating physician. Respondent asserts that Petitioner did not attend an appointment with the occupational medicine physician that it had designated as her treating physician under § 39-71-1101(2), MCA, which states, in relevant part, “Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician.” Thus, Respondent argues that it had grounds to terminate Petitioner’s benefits under § 39-71-1106(1), MCA, which states that an insurer may terminate benefits if an injured worker unreasonably refuses to cooperate with her treating physician. Inter alia, Petitioner argues that the occupational medicine physician did not become her treating physician under § 39-71-1101(2), MCA, because Respondent had not accepted liability for her claim at the time it attempted to designate him as her treating physician. Thus, Petitioner argues that she was not legally obligated to attend the appointment with the occupational medicine physician and, therefore, that Respondent did not have grounds under § 39-71-1106(1), MCA, to terminate her benefits for refusing to attend the appointment.

Held: Petitioner is entitled to partial summary judgment because Respondent did not have grounds to terminate her benefits under § 39-71-1106(1), MCA. Respondent had not accepted liability at the time it attempted to designate the occupational medicine physician as Petitioner’s treating physician, nor at the time of the appointment Petitioner refused to attend. At that time, Respondent was paying benefits under a “reservation of rights,” which it asserted allowed it to indefinitely pay benefits without accepting liability. Thus, when Respondent attempted to designate the occupational medicine physician as Petitioner’s treating physician, it did not have the right to do so under the plain language of § 39-71-1101(2), MCA, and, therefore, the occupational medicine physician did not become her treating physician. Because the occupational medicine physician was not Petitioner’s treating physician, she was under no obligation to attend the appointment Respondent scheduled for her. Therefore, Respondent did not have grounds under § 39-71-1106(1), MCA, to terminate her benefits for refusing to attend the appointment.

Ruff v. Benefis Health System, Inc., 2022 MTWCC 7
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner requests a lump-sum conversion of her PTD benefits on the grounds that she needs it to afford the necessities of life, manage her debt, and preserve the use of her arm. She also argues that a lump-sum conversion is in her best interest. Petitioner contends that she will use the money, as set forth in her financial plan, to pay off debt, buy a house, modify the house, buy a modified disability vehicle, and make investments for her future. Respondent argues that Petitioner does not have the financial need required for a lump-sum conversion because her monthly income exceeds her expenses, the principal and interest payments on her student loans have been temporarily suspended, she is able to make the minimum monthly payments on her credit cards, and she has other, less-expensive options to preserve the use of her arm. Respondent also argues that a lump-sum conversion is not in Petitioner's best interest because her financial plan is flawed.

Held: Petitioner's request for a lump-sum conversion of her PTD benefits is denied. Petitioner neither demonstrated that she has the financial need required to justify a lump-sum conversion nor that a lump-sum conversion is in her best interest.

BURDEN OF PROOF

Slavin v. Montana State Fund, 2009 MTWCC 36

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned the Court for acceptance of his workers' compensation claim and payment of appropriate benefits. Petitioner alleged that an accident and injury occurred in the course and scope of his employment at H & H Express. Petitioner, two coworkers, and the claims adjuster testified to the events surrounding the day of the alleged accident and injury.

Held: Petitioner is not entitled to acceptance of his claim. After reviewing the totality of the evidence and observing the witnesses at trial, the Court did not find Petitioner's trial testimony regarding the events surrounding his alleged accident and injury to be credible. The Court found the other witnesses' testimony credible. Petitioner testified that he may or may not have informed a coworker about his injury when they worked together on the morning of the alleged accident. Petitioner also testified that the coworker may or may not have observed him limping while at work. In his recorded statement given to the claims adjuster only six days after the alleged accident, however, Petitioner unequivocally stated that the coworker asked why he was limping and Petitioner informed him more than once that his knee hurt. The coworker testified at trial that he did not observe Petitioner limping and did not ask him about his alleged injury. A different coworker testified that he spoke with Petitioner and observed him on the morning of the alleged accident and did not perceive Petitioner suffering any pain. Finally, in Petitioner's recorded statement, he failed to mention his fishing guide activities that occurred on the same day as the alleged accident and injury. This omission also factored in the Court's determination that Petitioner's version of events was not credible.

Hinman v. Montana State Fund, 2007 MTWCC 2 (2007 MT 278N)

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: January 16, 2007; Affirmed: October 30, 2007

Summary: Petitioner petitioned the Court for workers' compensation benefits because of chemical exposures occurring during his employment with Specialized Automotive.

Held: Petitioner is not entitled to any workers' compensation benefits. Petitioner has not met his burden of proving his chronic obstructive pulmonary disease was caused by the chemical exposures occurring during his employment with Specialized Automotive.

Johnson v. MHA Workers' Comp. Trust, 2007 MTWCC 17

(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: June 21, 2007; Dismissed: October 19, 2007

Summary: Petitioner petitioned the Court relative to two claims for benefits. The first relates to an injury that allegedly occurred on February 18, 2005. The second relates to an injury that allegedly occurred on October 4, 2005.

Held: Regarding her February 18, 2005, claim, Petitioner has not met her burden of proof that she suffered a compensable injury. The Court concludes Petitioner suffered a compensable injury to her right shoulder and arm on October 4, 2005.

Foster v. Montana Schools Group Ins. Auth., 2007 MTWCC 18
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Causation](#)

Summary: Petitioner sustained a left knee injury on September 6, 2005, while employed by Respondent's insured, Evergreen School District. On October 27, 2005, Petitioner underwent a left knee arthroscopy with a partial medial meniscectomy. On November 22, 2005, Petitioner was released to full duty by her treating physician. On December 20, 2005, Petitioner returned to her treating physician noting severe pain and catching in her left knee. Ultimately, an MRI conducted on May 19, 2006, showed evidence of an avascular necrosis of the subchondral area of the lateral femoral condyle. Petitioner contends that the avascular necrosis is causally related to either her injury of September 6, 2005, or the medial meniscectomy of October 27, 2005. Alternatively, Petitioner contends that an additional arthroscopy should be authorized to determine whether she has sustained a repeat meniscal tear. Respondent has denied liability, contending that Petitioner has failed to establish a causal relationship between the avascular necrosis and her industrial injury. Respondent also contends that Petitioner has failed to establish on a more-probable-than-not basis that she has sustained a repeat meniscal tear.

Held: Petitioner has failed to establish on a more-probable-than-not basis that the avascular necrosis is causally related to either her injury of September 6, 2005, or her arthroscopy of October 27, 2005. With respect to the possibility of a repeat meniscal tear, Petitioner has likewise failed to establish on a more-probable-than-not basis that such an injury exists. The MRI conducted on May 19, 2006, showed no evidence of a tear, and her treating physician's testimony that there may be a 5-10% chance that the MRI may have missed it does not satisfy Petitioner's burden of proof.

Somerville v. MACo Workers' Compensation Trust, 2007 MTWCC 36
(Order Denying Petitioner's Motion for Reconsideration).

Summary: Petitioner moves for reconsideration of this Court's conclusion that Petitioner failed to meet his burden of proof that he was entitled to benefits. Petitioner urges the Court to reweigh the evidence and find in his favor.

Held: Petitioner's motion is denied. Petitioner directs the Court's attention to the same evidence which the Court already considered and the sum of his argument is that the Court should assign more weight to the discrepancies in the testimony of Respondent's witnesses, and less weight to the discrepancies in Petitioner's testimony. Having already considered the evidence which Petitioner emphasizes in his brief, the Court concluded Petitioner failed to meet his burden of proof. Upon reconsideration, that determination stands.

Healy v. Liberty Northwest Ins. Corp., 2007 MTWCC 43
(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Physicians](#)

Summary: Petitioner injured his low back in a work-related incident in 2005. He had previously settled a workers' compensation claim for a low-back injury in 1998. While Petitioner complained of severe pain in his low back and leg and an MRI revealed a herniated disk, the PA-C who was treating him and the PA-C's supervising physician concluded that no objective medical findings supported Petitioner's subjective complaints of pain. Petitioner was released to work without restriction, but he did not return to work and sought medical treatment elsewhere, eventually having

back surgery performed. The physician from whom Petitioner last sought treatment opined that Petitioner's back condition was permanently aggravated by his 2005 industrial injury. Respondent denies liability for benefits from the date Petitioner was released to work without restriction.

Held: Petitioner has demonstrated by a preponderance of the evidence that his back condition was permanently aggravated as a result of his June 9, 2005, industrial injury. Respondent is therefore liable for payment of workers' compensation benefits.

Heffner v. Montana State Fund, 2007 MTWCC 40
(Order Denying Petitioner's Motion for Reconsideration).

Summary: Petitioner moves for reconsideration of this Court's decision that Petitioner failed to meet his burden of proof that he was entitled to benefits.

Held: Petitioner's motion is denied. Petitioner contends the Court failed to properly consider the 1979 workers' compensation statutes regarding his burden of proof. Specifically, Petitioner argues that he established it was medically possible that his injury was causally related to his industrial accident and this constitutes acceptable proof to meet his burden. However, Petitioner failed to meet his burden of proof that his injury was more probably than not caused by his industrial accident. Petitioner further argues the Court erred in excluding certain exhibits. Having revisited the exhibits in question and the rulings on these evidentiary matters, I see no reason to disturb my earlier rulings.

Iron v. Montana State Fund, 2008 MTWCC 15
(Findings of Fact, Conclusions of Law, and Judgment).

Related Topic: [Credibility](#)

Summary: While performing his job duties, Petitioner was struck in the head by a metal lid which blew off a pressurized canister. Respondent accepted liability for Petitioner's facial injuries, but denied liability for an alleged injury to Petitioner's cervical spine. Petitioner sought treatment on his own and eventually had a cervical fusion performed. He now seeks medical and TTD benefits for his cervical condition and surgery, as well as costs, attorney fees, and a penalty.

Held: While Petitioner's underlying cervical condition progressed from the time of his industrial accident in 2004 until his cervical fusion in 2007, Petitioner's lack of credibility, lack of objective medical findings, and his treating physician's inability to attribute the cause of his cervical progression to the industrial accident, lead the Court to conclude that Petitioner has not met his burden of proof. Respondent is therefore not liable.

Russell v. Watkins & Shepard Trucking Co., Inc., 2008 MTWCC 36 (2009 MT 217)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: July 18, 2008; Affirmed and Remanded: June 24, 2009

Summary: Petitioner alleges that several of his health ailments were caused by chronic low-level carbon monoxide exposure which occurred while driving a semi-truck for Respondent. Respondent responds that Petitioner has failed to prove that his health problems were caused by chronic low-level carbon monoxide exposure and has failed to prove that he was exposed to an elevated level of carbon monoxide while driving for Respondent.

Held: Petitioner has met his burden of proof regarding his diagnosed cognitive dysfunction condition and his claim regarding his cognitive dysfunction is compensable. Regarding his other health ailments, Petitioner has not proven that it is more probable than not that they were caused by his carbon monoxide exposure and his claim for compensation regarding the remaining conditions is denied.

Distad v. Montana State Fund, 2009 MTWCC 16

(Order Denying Reconsideration)

Appealed to Montana Supreme Court: May 8, 2009; Dismissed: June 26, 2009

Summary: Petitioner moves for reconsideration of this Court's March 20, 2009, Findings of Fact, Conclusions of Law and Judgment in which this Court concluded that Petitioner is not entitled to reopen his settlement based upon a mutual mistake of fact and that Petitioner is not entitled to a penalty. Respondent Montana State Fund objects to Petitioner's motion.

Held: Although Petitioner sets forth three allegations which he argues entitle him to reconsideration, none of these allegations affect my conclusion that Petitioner did not meet his burden of proof regarding the cause of his back condition. Petitioner's motion for reconsideration is therefore denied.

Ingle v. Montana State Fund, 2011 MTWCC 3

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: March 2, 2011; Dismissed: May 26, 2011

Related Topic: [Causation](#)

Summary: Petitioner alleges that she has suffered medical problems caused by carbon monoxide exposure at her workplace. Respondent denied liability for Petitioner's injuries, alleging that she has not proven that her medical conditions occurred as a result of carbon monoxide poisoning.

Held: Although the Court finds that Petitioner was exposed to a small amount of carbon monoxide at her workplace, the Court concludes Petitioner did not meet her burden of proof regarding the relationship of that exposure to the symptoms she has exhibited.

Grande v. Montana State Fund, 2011 MTWCC 21

(Order Denying Petitioner's Motion to Amend Findings of Fact, Conclusions of Law, and Judgment).

Summary: Petitioner moves the Court to amend its Findings of Fact, Conclusions of Law, and Judgment to reflect entitlement to medical benefits for treatment of Petitioner's rheumatoid arthritis between August 2007 and August 2009.

Held: Petitioner's motion is denied. The parties asked the Court to make a general determination regarding whether Petitioner suffered from an occupational disease arising out of and in the course and scope of his employment and, if so, whether he was entitled to payment of temporary total disability benefits and reasonable medical benefits related to the treatment of his occupational disease. The Court resolved these general issues in the affirmative and entered judgment for Petitioner. Petitioner did not raise the specific issue of whether he would be entitled to medical benefits if his job duties temporarily aggravated his rheumatoid arthritis.

Peterson v. Uninsured Employers Fund v. McDunn, 2012 MTWCC 7

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner contends that he suffers an industrial injury to his shoulder during an encounter with a malfunctioning storage unit door at his workplace. His employer did not have workers' compensation insurance and the UEF denied the claim on the grounds that insufficient evidence supports Petitioner's contentions. Petitioner further contends that the UEF unreasonably denied his claim. The UEF contends that the uninsured employer should indemnify it if the Court determines that Petitioner's claim is compensable.

Held: Petitioner has not met his burden of proof and the UEF is therefore not liable for his claim. The UEF did not unreasonably deny the claim.

Holmes v. Safeway, Inc., 2012 MTWCC 8

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner, who suffers from a pre-existing back condition, injured his low back in an industrial accident soon after starting to work for Respondent. Petitioner alleges he was hired to work full-time and that he suffered a permanent aggravation to his low back which precludes him from returning to work in any capacity. Respondent contends that Petitioner's industrial injury caused a temporary aggravation of his underlying condition, and that it did not hire Petitioner as a full-time employee.

Held: Petitioner has not met his burden of proof regarding his claim that he is permanently totally disabled. Petitioner has not proven his entitlement to additional temporary total disability benefits. Respondent correctly calculated Petitioner's average weekly wage under §39-71-123(3)(a), MCA. Petitioner has not proven that he is entitled to additional temporary partial disability benefits.

Erving v. Hartford Accident & Indemnity Company, 2012 MTWCC 4

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner contends that she suffered aggravations or injuries to her right knee and low back arising out of and in the course of her employment and that Respondent should be liable for those conditions. Respondent denied liability. Petitioner further contends that Respondent unreasonably denied her claim and she is therefore entitled to a penalty and attorney fees.

Held: Petitioner has not met her burden of proof and Respondent is therefore not liable for her claim. Petitioner is not entitled to a penalty and attorney fees.

Koch v. Employers' Ins. Group, 2012 MTWCC 14

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner was injured in a non-work-related motor vehicle accident in October 2009. In March 2010, she slipped and fell at work but did not believe she suffered any significant injury from the industrial accident. Her back condition worsened and by May 2010, she could not perform her job duties. Petitioner contends that her physical complaints changed after the May 2010 industrial accident and that it caused her current condition. Respondent denied liability for Petitioner's claim, contending that she has not proven that her industrial accident caused her injuries.

Held: Petitioner suffered a compensable injury in the course and scope of her employment and she is entitled to workers' compensation benefits.

Taylor v. Montana State Fund, 2012 MTWCC 17
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner fell at work on May 27, 2009. She did not formally seek medical treatment, but she discussed subsequent back pain with her primary care provider. Petitioner self-treated with medication and exercise. In July 2009, she discussed ongoing back pain with her healthcare provider during a regular check-up. On September 7, 2010, she suffered a significant increase in back pain symptoms while standing up after painting her toenails. Although Respondent initially accepted liability for her May 2009 industrial accident, it later denied certain benefits, contending that Petitioner's ongoing back problems were unrelated to her industrial accident. Petitioner contends that Respondent should be liable for additional workers' compensation benefits and that it has unreasonably denied these benefits, therefore entitling her to her attorney fees and a penalty. Petitioner moved to compel disclosure of expert witness testimony or, alternatively, to limit expert witness testimony.

Held: Respondent disclosed the relevant facts of expert witness testimony to Petitioner in advance of trial and Respondent did not surprise or take unfair advantage; therefore the Court will not compel expert witness disclosure or limit expert witness testimony. Petitioner has shown on a more probable than not basis that her ongoing back problems are related to her May 27, 2009, industrial accident, and she is entitled to workers' compensation coverage for her back condition. Petitioner is entitled to her costs. Respondent did not unreasonably deny workers' compensation benefits. Therefore, Petitioner is not entitled to attorney fees or a penalty.

Clapham v. Twin City Fire Ins. Co., 2012 MTWCC 34
(Order Resolving Respondent's Motion in Limine and Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered a work-related back injury in 2002. In 2010, he changed jobs. He later filed an occupational disease claim against his new employer. Respondent denied Petitioner's claim on the grounds that his employment did not cause his back condition. Petitioner contends that he developed a compensable occupational disease while working for Respondent's insured.

Held: Petitioner has not proven that he developed an occupational disease while working for Respondent's insured. He is therefore not entitled to the benefits he seeks.

Tuttle v. First Liberty Ins. Corp., 2012 MTWCC 37
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: November 19, 2012; Judgment Vacated and Withdrawn by Parties

Summary: Petitioner alleges her current disability is a result of her September 2008 industrial accident, entitling her to reinstatement of disability benefits retroactive to the time her benefits were terminated in December 2008 and payment of medical expenses. Respondent counters that Petitioner was placed at MMI with a 0% impairment rating three and a half months post-injury, and that a temporal relationship between Petitioner's industrial accident and the herniated disks discovered over two years post-MMI is insufficient proof of causation.

Held: Respondent is correct that a temporal relationship between Petitioner's current disability and her industrial accident, without more, is insufficient to meet her burden of proof. However, there is ample factual and historical evidence in this case that correlate the objective medical findings of the two herniated disks to Petitioner's work-related injury. Petitioner has therefore met her burden of proof in establishing on a more probable than not basis that the herniated disks in her thoracic and

lumbar spine, and her current disability for which she seeks benefits, are causally related to her September 2008 industrial accident. Petitioner has not demonstrated an entitlement to benefits retroactive to the time her benefits were terminated in December 2008. Petitioner is entitled to temporary total disability benefits as of April 27, 2011, the date on which her doctor issued a report stating she could no longer perform her duties.

Gary v. Montana State Fund, 2012 MTWCC 38
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffers from low-back pain due to an L4-5 herniated disk. Petitioner claims his current condition is a result of his 2005 industrial injury and wants Respondent to pay for surgery and related, unpaid medical expenses. Respondent denies liability for Petitioner's current condition, maintaining Petitioner's herniated disk is a result of naturally-occurring degeneration unrelated to his industrial injury.

Held: Petitioner has the burden of proving a causal connection between his current herniated disk and his industrial accident. Without proof of medical causation on a more-probable-than-not basis that his current condition is causally related to his industrial injury, Petitioner has failed to meet his burden of proof.

Drivdahl v. Zurich American Ins. Co. et al., 2012 MTWCC 43
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner contends that he is permanently totally disabled due to his industrial injury. Respondent contends that Petitioner is not entitled to permanent total disability benefits because his treating physician has approved several job analyses.

Held: The weight of the evidence supports Petitioner's entitlement to permanent total disability benefits.

Hardie v. Montana State Fund, 2012 MTWCC 44
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner fell in her employer's parking lot, landing on her backside, causing immediate low-back pain. Her pain improved over time and she sought no medical attention until months later, but failed to relate the onset of pain to the fall at work for over ten months. Respondent denied Petitioner's claim on the basis of a lack of objective medical evidence.

Held: Petitioner has shown by a preponderance of the evidence that her fall at work caused the objective medical findings of a bulging disk and annular tear in her lumbar spine revealed in an MRI some ten months post-injury. She is entitled to past and future medical and indemnity benefits related to her low-back condition.

Gaudette v. Montana State Fund, 2013 MTWCC 7
(Findings of Fact, Conclusions of Law, and Judgment).

Summary: Petitioner contends that she has suffered either from Multiple Chemical Sensitivity or somatoform disorder since reacting to odors during renovations at her workplace. Although Respondent accepted liability for her respiratory condition, Petitioner contends that Respondent has unreasonably refused to accept liability for her continuing condition. Respondent contends that Petitioner suffered only a temporary aggravation of an underlying respiratory condition, that she has

reached maximum medical improvement for that aggravation, and that her present complaints are not causally related to her industrial injury.

Held: Petitioner has not met her burden of proving that her present condition is causally related to her industrial injury. She reached maximum medical improvement for a temporary aggravation of an underlying condition and is not entitled to further indemnity or medical benefits.

Langston v. MACo Workers' Compensation Trust, 2013 MTWCC 15
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner alleges her workplace environment aggravated her COPD, resulting in a compensable occupational disease. Respondent denies that Petitioner suffered an occupational disease.

Held: Petitioner's claim for occupational disease benefits is not supported by a preponderance of the medical evidence and is therefore denied. Medical evidence, including opinions of treating physician and IME Dr. Hewitt, did not support Petitioner's claim that elevated carbon dioxide levels following fire in office building aggravated symptoms of her COPD. Evidence indicated Petitioner's claimed COPD aggravation was more likely related to her 23 years of smoking and recent upper-respiratory infection.

Myles v. Sparta Insurance Company, 2014 MTWCC 19
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner claims he injured his right hip at work when he stepped up onto a semi-truck. Respondent counters that Petitioner failed to prove that it is more probable than not he suffered a hip injury at work.

Held: The evidence supports Petitioner's contention that he suffered a torn labrum in his right-hip socket at work. He is therefore entitled to coverage for treatment of his right-hip condition.

Starkey v. ACE American Insurance Company, 2014 MTWCC 6
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner alleges she injured her right foot in the course and scope of her employment with Shopko Stores in Valley County, Montana, and that she is entitled to medical and wage-loss benefits, attorney fees, and a penalty. Respondent argues that Petitioner's foot injury was incurred prior to the day she claimed she injured it at work and that she is not entitled to workers' compensation benefits.

Held: No legal dispute is involved in this matter as it is essentially a fact issue that hinges on witness credibility. The Court concluded Petitioner suffered a right-foot injury in the course and scope of her employment and is therefore entitled to medical benefits. However, the record reflects that Petitioner continued to work in her time-of-injury position until she voluntarily left to move out of state, so she is not entitled to wage-loss benefits. As Respondent did not act unreasonably in denying Petitioner's claim, Petitioner is not entitled to attorney fees, or a penalty.

Rushford v. Montana Contractor Compensation Fund, 2014 MTWCC 16
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: In October 2007, Petitioner became ill after inhaling paint and diesel exhaust fumes while working as a carpenter. Petitioner's condition did not improve and he was eventually diagnosed with RADS. Petitioner contends that he is permanently totally disabled and that he is entitled to retroactive TTD benefits. Petitioner further contends that Respondent should be liable for ongoing coverage for the medical treatment recommended by his treating physician, including a referral to a neurologist. Petitioner further contends that he is entitled to his attorney fees, costs, and a penalty. Respondent denies that it has any further liability in this matter. It contends that Petitioner does not have RADS, has suffered no ongoing effects from his industrial injury, and that Petitioner is not permanently totally disabled.

Held: The Court found Petitioner's subjective reports of his disability to be wholly lacking in credibility, and the Court further found that Petitioner misrepresented his condition to his medical providers. Based on the evidence presented, the Court concluded that Petitioner is not permanently totally disabled and is not entitled to retroactive TTD benefits. The Court further concluded that Petitioner is not entitled to receive ongoing treatment as recommended by his treating physician, as his current condition is not related to his industrial injury. The Court concluded that Respondent is not liable for the referral to a neurologist recommended by Petitioner's treating physician. The Court further concluded that Petitioner is not entitled to his attorney fees, costs, or a penalty.

Thompson v. Montana State Fund, 2013 MTWCC 25
(Findings of Fact, Conclusions of Law and Judgment)

Summary: Petitioner alleges she is permanently and totally disabled as a result of an occupational disease affecting her right wrist, cervical spine, and right vocal cord that impairs her ability to speak audibly. Respondent counters that Petitioner has jobs approved for her by her treating physician and is therefore employable and not totally disabled.

Held: Petitioner's job approvals were inconsistent with her physical limitations and vocal impairment which renders her unable to speak above a whisper. Given the totality of Petitioner's condition, she does not have a reasonable prospect of employment, and is therefore permanently and totally disabled.

Boland v. Montana State Fund, 2014 MTWCC 8
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Major Contributing Cause](#)

Summary: Petitioner suffered an industrial injury in November 2007. He then worked as a janitor from February to May of 2010. In 2011, he worked part-time for the employer with whom he suffered the November 2007 industrial injury. In January 2012, he suffered a non-work-related fall for which he sought chiropractic treatment. In July 2012, he filed an occupational disease claim, alleging that the janitorial work permanently aggravated his pre-existing condition. Respondent denied the claim, arguing that Petitioner's claim was untimely, that he was last injuriously exposed to the conditions which gave rise to his occupational disease at a subsequent employer, and that the non-work-related fall severed liability.

Held: Petitioner has not met his burden of proving that the janitorial work he performed in 2010 is the major contributing cause of his condition. The Court did not reach the issue of the timeliness of his claim.

Engle v. Hartford Underwriters Ins. Co., 2013 MTWCC 27
(Findings of Fact, Conclusions of Law and Judgment)

Related Topic: [Penalties](#)

Summary: After Respondent denied further benefits for Petitioner's accepted occupational disease claim, Petitioner petitioned the Court, arguing that her ongoing problems with her left elbow are caused by her occupational disease and that Respondent cannot now deny liability. Petitioner further argued that Respondent unreasonably denied her further benefit.

Held: Petitioner did not suffer a new injury which would sever Respondent's liability under § 39-71-407(5), MCA. It was unreasonable for Respondent to refuse to pay further benefits to Petitioner on this theory without any evidence to support its position and Petitioner is therefore entitled to a penalty and her attorney fees. Respondent has not proven that Petitioner's current elbow condition is unrelated to her occupational disease claim and therefore it remains liable for her condition.

Haines v. Montana University System Self-Funded Workers' Comp. Program, 2015 MTWCC 9
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner was injured in an industrial accident in which he was exposed to chlorine gas while mixing swimming pool chemicals. He later developed peripheral neuropathy in his legs, which he attributes to either the industrial accident or as an occupational disease from exposure to various pool maintenance chemicals over the course of his employment. Respondent accepted liability for ocular chemosis and other acute injuries in the immediate aftermath of the industrial accident, but denied further liability for Petitioner's peripheral neuropathy, contending that it was not caused either by the industrial accident or his ongoing chemical exposures.

Held: Petitioner has not proven that his exposure to chemicals caused his peripheral neuropathy. The weight of the medical evidence indicates that neither chlorine gas nor calcium hypochlorite caused his peripheral neuropathy. Although Petitioner alternately contended that he suffered an occupational disease from exposure to a variety of chemicals in the course and scope of employment, the only physician who testified that these chemicals caused his peripheral neuropathy did not have sufficient foundation to offer such an opinion.

Kellegher v. MACo Workers' Compensation Trust, 2015 MTWCC 16
(Findings of Fact, Conclusions of Law and Judgment)

Related Topic: [Disability](#)

Summary: Petitioner suffered several injuries from a work-related accident. He contends that the resultant conditions, particularly vertigo, frequent headaches, and left knee problems, have left him permanently totally disabled. Respondent disagrees, arguing that one member of an IME panel approved job analyses and therefore Petitioner does not meet the statutory requirements for PTD.

Held: The evidence demonstrates that Petitioner has no reasonable prospect of physically performing regular employment as a result of the work-related injuries he sustained and he is therefore permanently totally disabled.

Kramlich v. The Montana Municipal Interlocal Authority, 2014 MTWCC 21
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Major Contributing Cause](#)

Summary: Petitioner contends that he suffers from an occupational disease caused by exposure to dust, exhaust, and other inhalants in the course and scope of his employment performing street worker duties for the City of Lewistown, and that Respondent unreasonably denied his claim. Respondent contends it reasonably denied the claim because Petitioner's employment was not the major contributing cause of his medical conditions.

Held: Petitioner has not met his burden of proving that his employment was the major contributing cause of his alleged occupational diseases. Petitioner's treating physicians and the IME physician appear to agree that Petitioner's sleep apnea was the major contributing cause of his congestive heart failure and sequelae. The IME physician testified that Petitioner's sleep apnea was not work-related. Petitioner has not offered any medical evidence to the contrary. Respondent is therefore not liable for his claim.

Carlock v. Liberty NW Ins. Corp., et al., 2015 MTWCC 19
(Order Denying MACo's Motion for Summary Judgment)

Related Topic: [Last Injurious Exposure](#)

Summary: In this last injurious exposure case, the insurer for the second of three employers moved for summary judgment relying entirely on Petitioner's interrogatory answer that he suffered a "significant asbestos exposure" when the insurer for the third employer was at risk.

Held: The insurer that moved for summary judgment failed to meet its burden that there are no issues of material fact or demonstrate that it is entitled to judgment as a matter of law. Since medical causation requires expert opinion or testimony, Petitioner's conclusory statement that he suffered a "significant asbestos exposure" when he worked for the third employer does not, by itself, establish that his claimed exposure was of the type and kind which could have caused his alleged occupational disease.

Vonfeldt v. Costco Wholesale Corp., 2015 MTWCC 20
(Finding of Fact, Conclusions of Law and Judgment)

Related Topic: [Major Contributing Cause](#)

Summary: Petitioner claimed an occupational disease to her wrists, arms, shoulders, and neck as a result of repetitive heavy lifting. Respondent accepted liability for her bilateral tenosynovitis, which caused the pain in her forearms and wrists. Respondent also accepted liability for her myofascial pain syndrome, which caused the pain in her upper back, shoulders, neck, and arms, but only as a temporary aggravation of a preexisting condition. Respondent maintains that it is no longer liable for Petitioner's myofascial pain syndrome on the grounds that she returned to her baseline.

Held: Petitioner's myofascial pain syndrome is compensable as an occupational disease. Petitioner's treating physician and the IME panel agree that she has myofascial pain syndrome and that her work aggravated it. Petitioner's treating physician opined that her work was the leading cause of her myofascial pain syndrome. Although the IME panel anticipated that Petitioner's condition would

subside when she changed to a less physically-demanding position, she has not returned to her baseline, which was having no pain in her upper back, shoulders, neck, and arms.

McNamara v. MHA Workers' Compensation Reciprocal, 2016 MTWCC 5

(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Causation](#)

Summary: Petitioner claims that a 2013 injury aggravated her preexisting knee condition, resulting in her need for a total knee replacement. In the alternative, she claims her need for a total knee replacement was caused by an occupational disease resulting from years working as a CNA.

Held: Respondent is not liable for Petitioner's total knee replacement. Petitioner's treating physician testified that she did not require any treatment for her 2013 injury and that her work was not the leading cause of her knee condition and need for a total knee replacement. Instead, the treating physician opined the surgery was the inevitable consequence of an earlier injury.

Kirk v. Montana Contractor Compensation Fund, 2016 MTWCC 9

(Order Denying Respondent's Motion for Summary Judgment)

Related Topics: [Causation](#), [Summary Judgment](#)

Summary: Respondent moves for summary judgment, arguing that Petitioner does not have sufficient evidence to prove he suffered an industrial injury on May 15, 2015. Petitioner opposes the motion on the grounds that there are material issues of fact.

Held: Respondent's motion for summary judgment is denied because Petitioner presents a genuine issue of material fact as to whether he incurred a work-related lumbar sprain/strain on May 15, 2015.

Murphy v. Westrock Company, 2017 MTWCC 2 (2018 MT 54)

(Order Granting Respondent's Motion for Summary Judgment and Denying Respondent's Motion for Protective Order, Respondent's Motion in Limine, and Petitioner's Motion to Compel as Moot)

Appealed to Montana Supreme Court: March 21, 2017; Reversed and Remanded: March 20, 2018

Related Topic: [Physicians](#)

Summary: Respondent moves for summary judgment on Petitioner's PPD and rehabilitation claims on the following grounds: its independent medical examiner, a medical doctor, opined that Petitioner has no medically determined physical restrictions as a result of his injury; and Petitioner's chiropractor, although offering a contrary opinion, may not create an issue of material fact because, under the 1991 statute, a chiropractor can provide neither the required "medically determined" physical restriction nor "physician's" certification. Therefore, Respondent contends it is entitled to judgment as a matter of law on Petitioner's claims.

Held: Although Petitioner's chiropractor offered an opinion contrary to Respondent's medical doctor, he may not create an issue of material fact because, under the 1991 statute, a chiropractor can provide neither the required "medically determined" physical restriction nor "physician's" certification. Therefore, Respondent is entitled to judgment as a matter of law on Petitioner's claims for PPD and rehabilitation benefits.

***Wommack v. Nat'l Farmers Union Prop. & Casualty Co., et al*, 2017 MTWCC 8**
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topics: [Major Contributing Cause](#), [Last Injurious Exposure](#)

Summary: Petitioner developed an OD from exposure to asbestos at the refinery where he worked. For most of his career, Petitioner worked within the refinery, but in the years before his retirement, he worked as an asphalt salesman based in an office across the street. The insurers at risk during Petitioner's time in the refinery maintain that he continued to be exposed to asbestos after changing jobs and his last injurious exposure occurred when he worked as a salesman. The insurer at risk during Petitioner's time as a salesman argues that Petitioner's last injurious exposure occurred when he worked fulltime in the refinery.

Held: Although Petitioner's most significant exposure to asbestos occurred prior to accepting the sales position, he continued to experience exposure to asbestos until he retired. Since Petitioner continued to be exposed to the same type and kind of conditions which caused his OD, under *In re Mitchell's* "potentially causal" standard, Petitioner's last injurious exposure occurred when he worked as an asphalt salesman, and the insurer at risk at that time is therefore liable.

***Montana State Fund v. Liberty NW Ins. Corp., Wiard*, 2017 MTWCC 9** (2018 MT 188)
(Order Denying Montana State Fund's Motion for Summary Judgment and Granting Liberty Northwest Ins. Corp.'s Motion for Summary Judgment)

Appealed to Montana Supreme Court: August 30, 2017; Reversed July 31, 2018

Related Topic: [Causation](#)

Summary: Respondent accepted liability for Claimant's 2011 bilateral carpal tunnel syndrome. Claimant changed positions and her symptoms essentially went away. In 2014, Claimant experienced an acute exacerbation of her chronic left carpal tunnel syndrome while working for the same employer, which by then, was insured by Petitioner. Petitioner paid Claimant benefits under a reservation of rights and filed a Petition for Hearing seeking indemnification from Respondent. The parties have cross-moved for summary judgment on the issue of liability for Claimant's 2014 condition

Held: In 2014, after reaching MMI for her 2011 condition, Claimant was required to work longer hours and extra shifts while Petitioner was the at-risk insurer. This exposure materially or substantially contributed to, and significantly aggravated, Claimant's preexisting carpal tunnel syndrome. Therefore, Petitioner is liable for Claimant's 2014 condition and is not entitled to indemnification from Respondent.

***Suzor v. International Paper Co.*, 2017 MTWCC 17**
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Credibility](#)

Summary: Petitioner alleges that the injuries to her knees, for which Respondent previously accepted liability, caused one of her knees to give way while she was inside her home, which, in turn, caused her to fall and break her right wrist. She seeks medical benefits for her broken wrist. Respondent denied liability for her broken wrist, relying on claimant's medical record which states she fell because she slipped on ice.

Held: Respondent is not liable for claimant's right-wrist fracture because Petitioner failed to prove that her fall occurred as a result of her knee instability. Petitioner's testimony did not convince this Court that her medical record was incorrect.

TG v. Montana Schools Group Insurance Authority, 2018 MTWCC 1
(Order Granting Respondent's Motion for Summary Judgment)

Summary: While Petitioner was working as an aide at a high school, a special needs student hit her, and then hit and pinched her two days later, leaving bruises. Petitioner did not seek nor require medical treatment for her bruises, although, after they resolved, she reported increased neck and arm pain to her medical providers. The attacks caused PTSD, and aggravated her preexisting anxiety, depression, and pseudoseizures, resulting in her inability to work. Petitioner asserts that she suffered compensable physical injuries, and compensable physical-mental injuries in the attacks.

Held: Respondent is entitled to summary judgment on Petitioner's claims. Petitioner did not suffer compensable physical injuries in the attacks. Although she had bruising, she neither sought nor required medical treatment for her bruises, which resolved without any resulting disability. While Petitioner's treating physician for her fibromyalgia diagnosed increased neck and arm pain as a result of the attacks, his diagnosis was based entirely on Petitioner's subjective complaints of pain and was not substantiated by objective medical findings. Petitioner did not suffer compensable psychological injuries in the attacks. Petitioner's anxiety, depression, and PTSD are mental-mental conditions, and her pseudoseizures are a mental-physical condition. Neither mental-mental nor mental physical conditions are compensable under the Workers' Compensation Act.

Pate v. Montana State Fund, 2019 MTWCC 2
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner asserts that he injured his shoulder in an industrial accident in which a rung on a ladder broke, causing him to fall down and backwards, partially into a crawlspace. Respondent denied liability, at first because Petitioner's medical providers did not identify any objective medical evidence of a shoulder injury. Respondent then relied on the opinion of its IME physician, who determined that while there is objective medical evidence of a shoulder injury or disease, there is no mechanism of a shoulder injury and that the time between the accident and the onset of Petitioner's shoulder pain is too great to support a causal relationship.

Held: Petitioner injured his left shoulder in his industrial accident. Respondent's IME physician failed to take an accurate history and, as a result, did not understand that the Petitioner used his arms to arrest his backwards fall. Respondent's IME physician also did not understand that Petitioner reported shoulder pain immediately after his fall and suffered shoulder pain again within two weeks of his fall. Thus, this Court gave more weight to the evidence from the orthopedist treating Petitioner's shoulder, which is sufficient to prove on a more-probable-than-not basis that Petitioner injured his shoulder in the fall.

Swan v. Montana State Fund, 2020 MTWCC 18
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner claims he suffered a compensable lung injury when he inhaled crystalized mineral dust in the course of his mining job on February 1, 2017. In the alternative, Petitioner claims he has a compensable occupational disease as a result of his occupation as a miner and that his last injurious exposure to the hazard of his lung disease occurred when he was working for Respondent's

insured. Respondent argues that Petitioner failed to prove a compensable injury because he lacks both objective medical evidence of an injury and an expert medical opinion that an exposure on February 1, 2017, was the primary cause of his lung condition. Respondent also argues that Petitioner failed to prove a compensable occupational disease because he lacks an expert medical opinion that his lifetime of occupational exposure was the major contributing cause of his lung condition and because its insured is not the employer of last injurious exposure.

Held: Petitioner does not have a compensable injury because, although he has objective medical evidence of a lung condition, he did not carry his burden of proving by a preponderance of the evidence that an alleged exposure to crystalized mineral dust on February 1, 2017, was the primary cause of his cumulative lung condition. Petitioner does not have a compensable occupational disease because he did not carry his burden of proving by a preponderance of the evidence that his lifetime of occupational exposure was the major contributing cause of his lung condition. Moreover, Petitioner, who was exposed to dust while working for a subsequent employer, did not carry his burden of proving that his employment with Respondent’s insured involved any exposure to a noxious substance, let alone his last injurious exposure.

Krezelak v. Indemnity Insurance Co. of North America, 2021 MTWCC 16
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Physicians](#)

Summary: Petitioner was in a work-related MVA. Respondent accepted liability for strains/sprains to her entire back, including her neck and shoulders. Respondent denied liability for Petitioner’s L4-5 condition, bilateral cubital tunnel syndrome, and left carpal tunnel syndrome, which were diagnosed months to years later. Petitioner argues that these later-diagnosed conditions were encompassed in Respondent’s acceptance and that its denials were an attempt to “unaccept” liability without legal justification. Alternatively, Petitioner argues that she has met her burden of proof, that the MVA caused or permanently aggravated these conditions, with the opinions of her treating physicians. Petitioner also argues that Respondent’s denials were unreasonable because its investigation was inadequate. Respondent argues that it did not attempt to “unaccept” liability for Petitioner’s L4-5 condition, because it did not even know about, let alone accept, that condition in the first place. Respondent argues that Petitioner has failed to meet her burden of proof, that the MVA caused or permanently aggravated her L4-5 and arm conditions, based on the opinions of its IME physician. Respondent also argues that its denials were reasonable because its investigation was thorough.

Held: Respondent is not liable for Petitioner’s conditions under the theory that its denials were an attempt to “unaccept” liability without legal justification. Respondent’s denials were not an attempt to “unaccept” liability, because it did not even know about, let alone accept, those conditions in the first place. However, Respondent is liable for Petitioner’s L4-5 condition and her left cubital tunnel syndrome because she met her burden of proof with respect to those conditions. I.e., this Court was persuaded by Petitioner’s treating physicians, who opined that the MVA caused or permanently aggravated her L4-5 condition and her left cubital tunnel syndrome. And, because Petitioner prevailed on these claims, Respondent is liable for her costs. Nevertheless, because Respondent’s denials were reasonable, Respondent is not liable for Petitioner’s attorney fees or a penalty. Respondent is not liable for Petitioner’s right cubital tunnel syndrome or left carpal tunnel syndrome because Petitioner offered insufficient medical opinion evidence that the MVA caused or permanently aggravated those conditions.

Ray v. Ohio Security Insurance Co., 2022 MTWCC 3
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topics: [Credibility](#), [Physicians](#)

Summary: Petitioner alleges that his industrial accident caused a left shoulder injury and a permanent aggravation to his preexisting cervical spine condition.

Held: Respondent is not liable for Petitioner's left shoulder injury nor his cervical spine condition because Petitioner failed to meet his burden of proving that his industrial accident caused his left shoulder injury nor that his industrial accident caused an aggravation to his cervical spine condition. Because neither Petitioner nor his wife was a credible witness, this Court was not convinced that Petitioner's symptoms started with his industrial accident. In turn, because the physicians on whom Petitioner relied for his medical causation opinions based their opinions on Petitioner's history, this Court did not give their opinions any weight. Moreover, the physician on whom Petitioner relied for his medical causation opinion regarding his cervical spine condition opined that the industrial accident did not aggravate his preexisting cervical spine condition.

Christoffersen v. Montana State Fund, 2023 MTWCC 2
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Causation](#)

Summary: Petitioner contends that she suffered a left-wrist condition from overuse at her bus-driving job, and that inflammation from the left-wrist condition progressed to affect her right elbow and hand. Respondent contends that Petitioner failed to prove she suffered an occupational disease because she lacks an expert medical opinion that her employment was the major contributing cause of any of her conditions.

Held: Petitioner failed to meet her burden of proving that she suffered an occupational disease. Petitioner offered no expert medical opinion, and the evidence did not otherwise establish, that it was more probable than not that her employment was the major contributing cause of any of her conditions.

CASUAL EMPLOYMENT

Weidow v. Uninsured Employers' Fund, 2009 MTWCC 4

(Order Denying in Part and Granting in Part, Petitioner's Motion for Partial Summary Judgment).

Related Topics: [Constitutional Law](#), [Course and Scope](#), [Credibility](#), [Independent Contractors](#), [Mediation](#), [Uninsured Employers' Fund](#)

Summary: Petitioner moved this Court for partial summary judgment on the affirmative defenses raised by the Uninsured Employers' Fund and the Bradley Howard/Howard Family 1995 Trust that Petitioner was an independent contractor and was a casual employee. Weidow was paid by the hour and was provided tools for use in his work as a carpenter on a Yellowstone Club home owned by the Howard Family Trust. Howard claimed the home was intended to be used as a family vacation property and not as a business or income generating property. The parties have filed an Agreed Statement of Undisputed Facts.

Held: Petitioner's motion is denied in part and granted in part. There are material facts in dispute that preclude summary judgment on the casual employment issue. With regard to the independent contractor defense, there are no material facts in dispute and Petitioner is entitled to summary judgment that he was not acting as an independent contractor at the time of his injury.

Raymond v. Uninsured Employers' Fund, 2009 MTWCC 31

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Petitioner Matthew R. Raymond was injured on July 29, 2007, while working on the construction of a cabin. He worked on the project for eleven months. The property was owned by Joseph and Jean Seipel. Each week, Petitioner called on Joseph Seipel at the office of Market Research Group, a company which performs appraisals and conducts market research which Joseph operates as a sole proprietorship. Joseph paid Petitioner with checks bearing the Market Research Group name and address. Neither Joseph nor Market Research Group carried workers' compensation insurance at the time of Petitioner's injury. The Uninsured Employers' Fund denied liability for Petitioner's claim on the grounds that Petitioner was engaged in casual employment.

Held: Although Petitioner was paid out of the Market Research Group checking account, the evidence demonstrates that Joseph wrote many personal checks on that account. Joseph testified that he did not deduct personal expenses, including the money paid to Petitioner, as a business expense. While some evidence suggests that Joseph may have had a "profit motive" for the Lincoln property, ultimately, Petitioner offered insufficient proof to meet his burden. Therefore, I conclude Petitioner was engaged in "casual employment" as defined by § 39-71-116(6), MCA.

CAUSATION

Zahn v. Town Pump, Inc., Employers Ins. of Wausau Mut. Co., 2006 MTWCC 30

(Order Granting Petitioner's Motion for Summary Judgment; *Order Vacated Pursuant to Settlement and Agreement of the Counsel -October 11, 2006*).

Related Topic: [Wages](#)

Summary: This matter has been submitted to the Court for decision on a statement of stipulated facts. Petitioner sustained an injury to his low back while working for Town Pump, Inc. (Town Pump) in 1996. At the time of Petitioner's initial injury, Town Pump was self-insured and retained Putman and Associates, Inc. (Putman) to adjust the claim on its behalf. After undergoing surgery in 2003 to treat his injured low back, Petitioner's treating physician released him to return to work on a full-time basis. On December 4, 2003, Petitioner underwent a functional capacity evaluation (FCE) at Putman's request, during which Petitioner sustained an injury to his neck. This injury required surgery and has disabled Petitioner from work. At the time of the neck injury and the FCE, Petitioner was still an employee of Town Pump. However, at the time of the 2003 injury, Town Pump was enrolled under Plan No. 2 of the Montana Workers' Compensation Act and was insured by Respondent Employers Insurance of Wausau Mutual Company. The parties agree that Petitioner's 2003 neck injury is compensable. However, Respondents contend that Petitioner's indemnity benefits should be paid at the 1996 rate since the FCE and resulting injury was a consequence of the 1996 injury. Petitioner contends he should be compensated at the 2003 rate since the neck injury is a new injury. Petitioner has moved for summary judgment on this issue.

Held: Summary judgment is granted. Petitioner sustained a new compensable injury resulting from an FCE that had been requested by Putman who was acting on behalf of his current employer, Town Pump.

Heckel v. Uninsured Employers' Fund, 2007 MTWCC 11

(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Independent Contractors](#), [Uninsured Employers' Fund](#)

Summary: An apartment manager who received a rent reduction in exchange for collecting rents and doing chores around the building where he resided argued that an infection he suffered in his arm was caused by a cut sustained during an altercation while he was attempting to eject a trespasser from the building, and therefore he is entitled to workers' compensation benefits. The building owner responded that the apartment manager was not an employee because he did not receive wages, that the apartment manager never notified the building owner of the injury, and that the medical evidence does not support the apartment manager's assertion that his arm infection was a result of the altercation.

Held: Although the Court concludes that the building owner knew of the altercation shortly after it occurred, and that the apartment manager was an employee because he received a rent reduction in exchange for his labors, ultimately, nothing in the medical records support a finding that the arm infection was a result of the altercation in the apartment building. Petitioner is therefore not entitled to workers' compensation benefits.

Hunter v. Hartford Ins. Co. of the Midwest, 2007 MTWCC 13
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered an industrial injury in the course and scope of his employment on May 5, 1998. Petitioner contended that his right knee conditions were causally related to the May 5th accident. Respondent responded that Petitioner's right knee conditions were a natural progression of Petitioner's 1983 industrial injury.

Held: The preponderance of the medical evidence demonstrates that Petitioner's right knee conditions are causally related to the May 5, 1998, accident. Petitioner is entitled to receive medical benefits and all other benefits provided under the Workers' Compensation Act.

Oksendahl v. Liberty Northwest Ins. Corp., 2007 MTWCC 24 (2008 MT 132N)
(Order Granting Petitioner's Motion for Summary Judgment)

Appealed to Montana Supreme Court: July 9, 2007; Affirmed: April 22, 2008

Summary: Petitioner suffers from arthritis in his thumbs, which his treating physician and an IME doctor both opine would have developed irrespective of his employment. However, both doctors agree that Petitioner's employment probably aggravated or accelerated his thumb condition. Petitioner and Respondent both argue they are entitled to summary judgment as a matter of law as to whether Petitioner's thumb condition is a compensable occupational disease.

Held: Petitioner's motion for summary judgment is granted. Respondent's Motion for Summary Judgment is denied. Petitioner had been a carpenter all his life, the last five years of which were working for Respondent's insured. Both of the doctors who offered opinions stated that Petitioner's work aggravated this condition. The test for causation of an occupational disease is whether Petitioner's employment constituted a significant aggravation or significant contribution to his condition. Petitioner has established that the aggravation or contribution was significant.

Heffner v. Montana State Fund, 2007 MTWCC 29
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned the Court for payment of medical expenses associated with Petitioner's 2004 herniation of his L4-L5 or L5-S1 disk.

Held: Petitioner's L4-L5 or L5-S1 disk herniation is not causally related to his May 6, 1980, industrial injury. Accordingly, Respondent is not liable for Petitioner's medical expenses associated with the 2004 herniation.

Kratovil v. Liberty Northwest Ins. Corp., 2007 MTWCC 30 (2008 MT 443)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: September 25, 2007; Affirmed and Remanded: December 29, 2008

Related Topic: [Last Injurious Exposure](#)

Summary: Petitioner worked as a plumber/pipefitter for nearly 30 years and suffered from problems with his hands and wrists which he attributes to an occupational disease. Petitioner also twisted his hands and wrists when a drill he was operating locked up, but he did not file an industrial accident claim on this incident. Petitioner also suffered injuries in a motorcycle accident. Respondent claims

it is not liable for Petitioner's occupational disease claim because Petitioner admits he used his hands to break his fall during the motorcycle accident and Petitioner first experienced symptoms in his hands prior to working for Respondent's insured.

Held: Although Respondent argues that it should not be liable for Petitioner's occupational disease because Petitioner experienced soreness in his wrists prior to working as a plumber/pipefitter and subsequently may have injured his hands and wrists in a motorcycle accident, Respondent's insured was the employer of last injurious exposure and, even assuming Petitioner injured his hands and wrists in the motorcycle accident, his employment with Respondent's insured nonetheless significantly aggravated or contributed to his occupational disease. Therefore, Respondent is liable for benefits.

Lanes v. Montana State Fund, 2007 MTWCC 39 (2008 MT 306)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: November 7, 2007; Affirmed: September 3, 2008

Related Topic: [Last Injurious Exposure](#)

Summary: Although Respondent accepted liability for Petitioner's left knee occupational disease, it has denied liability for Petitioner's subsequent occupational disease claim for his right knee. At the time of his left knee claim, Petitioner worked as an electrician for Respondent's insured. At the time of his right knee claim, Petitioner worked as a minister. Respondent alleges that Petitioner's church is the employer of last injurious exposure. Petitioner contends that his work for his church did not permanently aggravate his right knee condition.

Held: The aggravation to Petitioner's right knee caused by his work as a minister was merely temporary additional pain that would alleviate with rest and does not constitute a significant aggravation or contribution. However, Petitioner's work as an electrician significantly aggravated or contributed to his right knee condition. Therefore, Respondent, as the insurer of the employer where Petitioner suffered his last injurious exposure, is liable.

Stewart v. Liberty Northwest Ins. Corp., 2007 MTWCC 41
(Findings of Fact, Conclusions of Law and Judgment).

Summary: While working for Respondent's insured, Petitioner sustained an injury to her right knee. She then underwent two arthroscopic surgeries, after which she continues to experience ongoing pain which she attributes to nerve damage suffered during her surgeries. Petitioner petitioned the Court for an increase in her impairment rating because of her ongoing pain.

Held: Petitioner is not entitled to an increased impairment rating. Although Petitioner's treating physician testified that Petitioner's condition is related to her knee surgery, he further testified that he ultimately has no idea how Petitioner's condition could be related to her surgery. This is insufficient to establish causation. Because Petitioner has failed to prove a causal connection between her industrial injury or subsequent surgeries and her chronic pain condition, her petition for an increased impairment rating is denied.

Uffalussy v. St. Patrick Hospital and Health Sciences Center, 2007 MTWCC 45
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered a work-related low-back injury on November 5, 1997. After the injury, Petitioner suffered balance difficulties that caused an unsteady gait. Additionally, Petitioner began to

experience depressive episodes. In January 1998, Petitioner was involved in a motor vehicle accident (MVA) and suffered a whiplash-type injury with a possible closed head trauma. Petitioner later developed cognitive impairment. Several doctors related the cognitive impairment to the head traumas Petitioner suffered as a result of several falls due to her balance difficulties, Petitioner's depression, chronic pain, fibromyalgia, and the possible head trauma sustained in the MVA. Petitioner argued that her inability to work because of her cognitive impairment was related back to her 1997 low back injury. Respondent argued that Petitioner's cognitive impairment was not caused by the industrial injury but was caused by the 1998 MVA.

Held: Petitioner's cognitive impairment is causally related to her industrial injury. Three physicians who treated Petitioner related her cognitive impairment to various factors including Petitioner's several head injuries suffered as a result of falls, depression, chronic pain, fibromyalgia, and the possible head injury suffered in the 1998 MVA. The physicians were unable to apportion the different factors and the evidence established that the falls subsequent to the MVA, the depression, and the chronic pain were all related to the industrial injury. To the extent that Respondent attributes Petitioner's cognitive impairment to the subsequent MVA, the evidence is not persuasive that Petitioner even sustained a head injury of any consequence as a result of the MVA. The MVA was a low-impact collision after which Petitioner reported to emergency room personnel that she "thinks" she hit the back of her head on the vehicle's headrest in the accident. Petitioner reported no loss of consciousness. No bumps or lacerations on her head were observed and the ER physical examination of Petitioner's head revealed it to be "normocephalic, atraumatic." The evidence establishes that Petitioner is unable to work because of her cognitive impairment. Therefore, Petitioner is entitled to TTD benefits for the periods of time she was unable to work due to her cognitive impairment.

Feuerherm v. Liberty Northwest Ins., 2007 MTWCC 50

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner injured her shoulder in an industrial accident in August 2001. She was placed at maximum medical improvement and given an impairment rating in December 2002. She subsequently attended school and worked at jobs whose duties were within her permanent restrictions. Her shoulder was never pain free from the time of her industrial accident forward, and it significantly worsened in the summer of 2004. A 2005 MRI revealed rotator cuff tears. Upon his review of her 2002 shoulder MRI, her treating physician concluded that a tear had been missed on the older MRI. He further opined that the condition had progressed and was probably caused by Petitioner's 2001 industrial accident and that surgery was warranted. Respondent denied liability.

Held: Petitioner's current problems with her right shoulder, including the rotator cuff tears, were caused by her August 2001 industrial accident. Respondent is liable for continuing medical care for Petitioner's right shoulder.

Barnea v. Ace American Ins. Co., 2007 MTWCC 58

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Physicians](#)

Summary: On May 17, 2004, Petitioner was injured while lifting a heavy beam as part of his job duties as a boilermaker. At the time, he primarily felt pain in his lower back and right hip. However, he also asserted that he had neck and shoulder pain which worsened significantly over time and when he decreased his pain medication. Petitioner's treating physician did not make note of Petitioner's neck and shoulder pain until July 21, 2004, although he later asserted that Petitioner had complained of neck and shoulder pain at the outset. A January 23, 2006, cervical MRI revealed a herniated disk

or protrusion, and surgery was recommended. Respondent denied liability for Petitioner's neck and shoulder condition.

Held: Although Petitioner's neck and shoulder pain was not mentioned in Petitioner's medical records until two months after the industrial accident, the Court has no reason to doubt the assertion of Petitioner's doctor that he had simply failed to record it as he was focused on Petitioner's more severe lumbar complaints. Furthermore, Petitioner's subsequent treating physician also opined that Petitioner's cervical and shoulder conditions were likely caused by the industrial accident. Respondent is therefore liable.

Rach v. Montana State Fund, 2008 MTWCC 20

(Order Granting Respondent's Motion for Summary Judgment).

Summary: Respondent moved for summary judgment based on the grounds that no medical opinion was rendered by any physician which causally linked Petitioner's heart condition to his alleged industrial injury.

Held: Because Petitioner has failed to prove any causal link of his heart condition to his alleged accident, Respondent's motion for summary judgment is granted.

Hagemann v. Montana Contractor Comp. Fund, 2008 MTWCC 35

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: August 6, 2008; Dismissed: September 26, 2008

Related Topics: [Burden of Proof](#), [Physicians](#)

Summary: Petitioner developed an abdominal muscle strain after he ran up a flight of stairs and sprinted some distance to prevent an accident on a construction site. He subsequently developed pneumonia and a pulmonary embolism which he attributed to his industrial injury. Petitioner's treating physician testified that the pneumonia and pulmonary embolism were causally related to his industrial injury. Respondent accepted liability for the muscle strain but denied liability for Petitioner's pulmonary conditions, asserting that they were not caused by his industrial accident.

Held: Petitioner has met his burden of proving that it was more probable than not that his pulmonary conditions were caused by his industrial accident.

Dewey v. Montana Contractor Comp. Fund, 2009 MTWCC 17

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner's left wrist was injured in an industrial accident on August 7, 2007. He continued working with restrictions and subsequently reported pain and numbness in his right wrist. Electro diagnostic testing indicated that Petitioner had bilateral carpal tunnel syndrome. Respondent obtained an IME and denied liability on causation grounds.

Held: Although the Court believes from the medical evidence presented that Petitioner has bilateral carpal tunnel syndrome, Petitioner has not proven it was causally related to his employment with Respondent's insured.

Montana State Fund v. Zurich American Insurance Company, In re: Golt, 2009 MTWCC 3
(Findings of Fact, Conclusions of Law and Judgment).

Summary: In 1995 Petitioner and Claimant settled a 1993 workers' compensation claim for Claimant's low back, closing indemnity benefits but leaving medical benefits open. In 1998 Claimant purchased a bar and restaurant which she ran as a sole proprietor. Claimant eventually accepted a clerical position for an employer insured by Respondent, while continuing to run her bar and restaurant. Claimant's job duties with Respondent's insured changed over time, requiring her to spend more of her workday seated. Claimant experienced increased pain in her back which she attributed to sitting in one place for too long. Petitioner's claims adjuster believed that Claimant's condition could no longer be attributed to her 1993 industrial injury and he suggested she file a claim with Respondent while Petitioner continued to pay her benefits under a reservation of rights. Respondent denied liability. Petitioner continued to pay for Claimant's medical care, including back surgery, while pursuing indemnification from Respondent.

Held: The evidence presented in this case leads me to conclude that the current condition of Claimant's back was neither caused by her 1993 industrial injury nor her 2006 occupational disease. Therefore, neither Petitioner nor Respondent are entitled to receive indemnification from the other. Since Claimant is not a party to this action, this Court cannot order her to reimburse either insurer.

Chapman v. Twin City Fire Ins. Co., 2010 MTWCC 36
(Findings of Fact, Conclusions of law and Judgment and Order Denying Motion for Sanctions)

Appealed to Montana Supreme Court: December 29, 2011; Dismissed: February 15, 2011

Related Topic: [Burden of Proof](#)

Summary: Petitioner alleges she suffered an occupational disease from working at computer workstations which were not properly ergonomically configured.

Held: Although the medical evidence demonstrates that Petitioner suffers from a cervical condition, Petitioner has not proven that a causal relationship exists between her condition and her employment. Her occupational disease claim is therefore denied.

Mullaney v. Montana State Fund, 2010 MTWCC 27
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner filed an occupational disease claim for injuries to her neck, shoulders, and low back which she alleges were caused by poor ergonomic conditions in her workspace. Respondent denied Petitioner's claim, alleging that her complaints are not causally related to her employment. Petitioner then filed this claim for workers' compensation benefits.

Held: Petitioner's treating physician opined that her conditions were caused by her exposure to a non-ergonomic workspace while she was employed at Respondent's insured. Since the opinion of the treating physician is entitled to greater weight, the Court concludes that Respondent is liable for Petitioner's occupational disease claim.

Petritz v. Montana State Fund, 2010 MTWCC 17
(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Burden of Proof](#)

Summary: Petitioner suffered a myocardial infarction while at work on July 6, 2009. Petitioner alleges that his work activities were unusually strenuous and caused the myocardial infarction. Respondent argues that Petitioner has failed to prove under § 39-71-119(5)(a), MCA (2009), that his work activities were the primary cause of his condition.

Held: Petitioner has not proven that it is more probable than not that his work activities were the primary cause of his myocardial infarction. Petitioner's treating physician testified that he could not say with a reasonable degree of medical certainty that Petitioner's exertion at work caused his myocardial infarction. An independent medical opinion from a physician who specialized in cardiovascular disease and interventional cardiology was that Petitioner's myocardial infarction was due to coronary atherosclerosis and his work activities were not the primary cause. The only medical opinion that Petitioner's work exertion was the primary cause of his condition came from a non-treating physician who specialized in neurology.

Fleming v. Montana Schools Group Insurance Authority, 2010 MTWCC 13
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Evidence](#), [Burden of Proof](#)

Summary: Petitioner sustained an injury on May 4, 2007, while working for Respondent's insured. Respondent initially accepted liability. Respondent denied further liability after receiving an unsolicited opinion from an IME physician who opined that Petitioner's condition was a temporary aggravation of a preexisting condition. Petitioner contends that Respondent unreasonably denied further liability.

Held: Petitioner suffered a permanent aggravation of her preexisting condition. Respondent is liable for payment of further benefits associated with Petitioner's permanent aggravation. The IME physician's written opinion that Petitioner did not suffer a permanent aggravation of her preexisting condition is inconsistent with his deposition testimony. Respondent's denial was not unreasonable because it attempted to obtain Petitioner's treating physicians' opinions about the IME report prior to denying liability.

Grande v. Montana State Fund, 2011 MTWCC 15 (2012 MT 67)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: August 22, 2011; Affirmed: March 20, 2012

Related Topic: [Burden of Proof](#)

Summary: Petitioner left his job as a truck driver due to arthritic conditions in his hands and filed an occupational disease claim. Respondent denied Petitioner's claim, arguing that the conditions were not caused by Petitioner's employment and that aggravations of non-work-related conditions are not compensable as occupational diseases.

Held: Petitioner has proven that his job duties are the major contributing cause of his condition and he is therefore suffering from a compensable occupational disease. He has further proven that his

occupational disease currently precludes him from returning to his time-of-injury employment. Petitioner is entitled to TTD benefits, reasonable medical benefits, and his costs.

Ford v. Sentry Casualty Company, 2011 MTWCC 19 (2012 MT 156)

(Findings of Fact, Conclusions of Law, and Judgment and Order Resolving Respondent's Motion in Limine)

Appealed to Montana Supreme Court: July 27, 2011; Affirmed: July 24, 2012

Related Topic: [Burden of Proof](#)

Summary: Petitioner suffered a work-related injury to his neck for which Respondent accepted liability. Petitioner argues that Respondent should be liable for his cervical disk condition, which Respondent denies is related to the industrial accident. Petitioner further argues that Respondent should be liable for ongoing TTD benefits, and that it unreasonably adjusted his claim. Respondent contends Petitioner is at MMI and has been released to return to work without restrictions, and that it has reasonably adjusted Petitioner's claim.

Held: Although Petitioner suffers from ongoing headaches, neck pain, and tingling sensations in his fingers as a result of his industrial accident, Petitioner has not proven that his cervical disk condition was caused or aggravated by his industrial accident. Petitioner's subjective complaints associated with his industrial injury do not correlate with the objective medical findings for which he seeks surgery. Petitioner has not proven that he is entitled to TTD benefits because no doctor has disputed that he is able to return to work without restrictions. Since Petitioner is not the prevailing party, he is not entitled to his costs, attorney fees, or a penalty.

McLeish v. Rochdale Insurance Co. 2011 MTWCC 18

(Order Granting Respondent's Motion for Summary Judgment).

Summary: Respondent moves this Court for summary judgment. Respondent argues that Petitioner's injury does not arise out of his employment as required by § 39-71-407(1), MCA, because it resulted from an idiopathic fall onto a level surface. Petitioner argues that his injury is compensable because the event resulting in the injury occurred at work.

Held: Respondent's motion is granted. Section 39-71-407(1), MCA, requires that a claimant's injury "arise out of" his employment in order to be compensable. An injury which results from an idiopathic fall onto a level surface does not arise out of one's employment.

Bjorgum v. Montana State Fund, 2011 MTWCC 29

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered a cerebellar hemorrhage nearly two years after he was seriously injured in a work-related MVA. He alleges that the industrial accident caused his hemorrhage and that blood-thinning medication which he took to treat his work-related injuries increased the hemorrhage's severity. Respondent denied liability for the cerebellar hemorrhage, contending that it is not related to Petitioner's industrial accident. Petitioner further contends that Respondent unreasonably denied liability and that it should be held subject to a penalty and payment of his attorney fees.

Held: Petitioner's cerebellar hemorrhage occurred due to the rupture of an arteriovenous malformation which developed as a result of his industrial accident. Respondent is therefore liable for the condition. Although Respondent denied liability, it was not unreasonable as Petitioner's

treating physician did not offer a definitive opinion regarding the cause of Petitioner's condition and other medical experts offered conflicting opinions.

Cornelius v. Lumbermen's Underwriting Alliance et al., 2012 MTWCC 13

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner reached MMI for an industrial injury to her back and settled her claim with medical benefits reserved. After changing employers, she began to suffer increased back problems approximately a year and a half later – which was also approximately two months after she switched to a workstation which she did not find ergonomically suitable. After the insurer liable for her industrial injury denied further payment of medical benefits, she filed an occupational disease claim against her new employer. The new employer's insurer denied liability and did not pay benefits. Petitioner alleges that she is suffering from an occupational disease for which the second insurer is liable. Petitioner contends that she is entitled to total disability benefits because a doctor has opined she is unable to work. Petitioner contends that the insurer unreasonably refused to pay her benefits under § 39-71-407(5), MCA, since the liability dispute was between insurers.

Held: Petitioner suffers from an occupational disease. She reached MMI for her previous industrial injury and suffered a permanent aggravation while working for her post-injury employer. Petitioner presented the undisputed medical opinion that she is unable to work and she is therefore entitled to indemnity benefits. Since the liability dispute was between two insurers, the insurer for her then-current employer was unreasonable in refusing to pay her benefits as required by § 39-71-407(5), MCA. She is therefore entitled to her attorney fees and a penalty.

Bright v. Montana State Fund, 2018 MTWCC 19

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner suffered a back injury in 1994 while working at DPHHS. He retired from DPHHS in 2009, but continued his second job at a retail store, where he was frequently required to lift up to 40 pounds and occasionally required to lift up to 100 pounds. His back pain worsened, but Respondent denied further liability for his condition in 2014, relying on Petitioner's treating physician's opinion that his low back was aggravated by lifting at the retail store. Petitioner resigned from the retail store in 2015, claiming that he could no longer work, in part, because of his back condition. Petitioner seeks TTD or PTD benefits from the date he resigned, asserting that his back condition is a natural progression of his 1994 injury. Respondent asserts that it is not liable for TTD or PTD benefits because, inter alia, Petitioner's work at the retail store aggravated his low-back condition and he has not returned to baseline.

Held: Respondent is not liable for TTD or PTD benefits. Petitioner's asserted inability to work is not the result of a natural progression of his 1994 injury; rather, his work at the retail store aggravated his back condition and he has not returned to baseline.

Mize v. Montana State Fund, 2020 MTWCC 7

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner seeks death benefits, asserting that her husband's industrial accident six days before his death was the primary cause of his pulmonary embolism. Respondent denied liability, asserting that Petitioner did not meet her burden of proving that her husband suffered an injury by objective medical findings. In the alternative, Respondent argues that decedent's accident was not the primary cause of his pulmonary embolism.

Held: Petitioner is entitled to death benefits. Petitioner proved with objective medical findings and medical causation opinions that her husband's accident was the primary cause of his pulmonary embolism and resulting death, which is, by itself, an injury under the Workers' Compensation Act. However, because Respondent's denial of liability was reasonable, Petitioner is not entitled to attorney fees or a penalty.

CLAIM FILES

Porter v. Liberty Northwest Ins. Corp., 2007 MTWCC 42
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Benefits](#), [Jurisdiction](#), [Penalties](#), [Physicians](#)

Summary: Petitioner injured his back in an industrial accident for which Respondent accepted liability. Petitioner sought chiropractic treatment and subsequently alleged that the treatment aggravated a preexisting cervical condition. Petitioner ceased to treat with the chiropractor and began to treat with a physician who had previously treated his cervical condition without Respondent's approval to change treating physicians. Months after he last treated Petitioner, the chiropractor declared him to be at MMI and released him to his time-of-injury job without restriction. The chiropractor withdrew that opinion when he learned Petitioner had treated with other doctors. Prior to filing this lawsuit, Petitioner's counsel requested a complete copy of Respondent's claims file and Respondent provided only certain material until compelled to remit the remainder pursuant to subpoena. Petitioner moved this Court to adopt guidelines to compel insurers to turn over claims files upon request. Petitioner further alleged that Respondent's adjusting of his claim was unreasonable.

Held: Petitioner failed to prove that the chiropractic treatment aggravated his preexisting cervical condition. Except for the chiropractor's withdrawn opinion, no doctor has found Petitioner to be at MMI and he is therefore entitled to TTD benefits retroactive to the date of termination. Respondent's refusal to reinstate TTD benefits in light of the lack of a doctor's opinion that Petitioner was at MMI or released to return to work is unreasonable and Petitioner is therefore entitled to a penalty. Respondent's adjustment of this claim, taken as a whole, was likewise unreasonable and Petitioner is entitled to his attorney fees. This Court has no jurisdiction to set forth the claims file guidelines Petitioner desires because it does not have jurisdiction over a claim until a petition has been filed.

Long v. New Hampshire Ins. Co., 2009 MTWCC 14

(Findings of Fact, Conclusions of Law and Judgment; *Judgment Vacated and Withdrawn Pursuant to Stipulation of Parties*).

Related Topic: [Penalties](#)

Summary: Although he remained off work from his time-of-injury employment, Petitioner returned to work at his concurrent employment as a car salesman. He informed the claims adjuster assigned to his case that he was returning to his concurrent employment, and the adjuster consented to Petitioner's continued receipt of biweekly benefits while working as a car salesman. Petitioner's claim was then transferred to another claims adjuster, who denied that Petitioner had received consent to receive benefits while working. She terminated Petitioner's benefits and demanded repayment of the benefits he had received. Petitioner requested the adjuster notes from his claim, believing that the notes would substantiate his claim that he had consent to return to his concurrent employment. The new adjuster refused to provide them and informed Petitioner he would have to petition this Court to receive them. Petitioner then petitioned this Court, arguing that he is entitled to ongoing benefits and alleging that Respondent was unreasonable in its adjustment of his claim. Respondent moved to strike Petitioner's spreadsheet which was attached to his response brief regarding waiver defense.

Held: The adjuster's notes which authorized Petitioner to receive temporary total disability(TTD) benefits after he had returned to work at his alternate employment constitutes written consent. Respondent acted unreasonably in its adjustment of Petitioner's claim by attempting to conceal the existence of the adjuster's note which authorized Petitioner's TTD benefits, by threatening Petitioner

with legal action if he failed to return benefits he was rightfully paid, and by failing to maintain its claims file in accordance with § 39-71-107(3),MCA. Petitioner is entitled to ongoing and back-owing TTD benefits, his costs, attorney fees, and a 20% penalty. Although not identical, the spreadsheet attached to Petitioner's response brief regarding waiver defense was substantially similar to the exhibit which was withdrawn at trial and was not probative of the legal issue under consideration. Respondent's motion to strike is granted.

COMMON FUND

Flynn v. Montana State Fund, 2006 MTWCC 31 (2008 MT 394)
(Order Determining Status of Final, Settled, Closed, and Inactive Claims)

Appealed to Montana Supreme Court: October 18, 2006; Affirmed in Part, Reversed in Part: November 25, 2008

Summary: Petitioners, Respondent, Intervenor, and additional insurers briefed the issue of how this Court should deal with final, settled, closed, and inactive claims, and more specifically, how the rule of law as set forth in a prior decision in this case applies to claimants whose claims fall into one of those categories.

Held: The Court determined that the Montana Supreme Court directed this Court to determine only which claims are final or settled. The Court then determined that a settled claim is a claim in which a department-approved settlement or court-ordered compromise of benefits has been made between the claimant and insurer. The Court further determined that a final claim is a claim in which a final judgment has been entered by the Worker's Compensation Court only if the claim is not currently pending on appeal. Claims which are settled or final in accordance with these definitions shall not be subject to the retroactivity of Flynn.

Status: Prior decision held that social security offset must be reduced by one-half of attorney fees expended in obtaining Social Security benefits. Global common fund certification granted on remand. "Settled" and "final" claims defined.

Miller v. Montana State Fund, 2004 MTWCC 75 (WCC No. 2003-0771)
(Consolidated into *Flynn* matter)

Related Topic: [Constitutional Law](#)

Summary: Following the Supreme Court decision in *Flynn v. State Comp. Ins. Fund*, 2002 MT 279,312 Mont. 410, 60 P.3d 397, the petitioner's attorney sought common fund fees with respect to other, nonparty claimants benefitted by the decision. The request was consolidated with a second, parallel case brought by the attorney. Ultimately, the parties entered into a settlement agreement, approved by the Court, which provided that the respondent insurer (State Compensation Insurance Fund) will identify other claimants entitled to Flynn benefits and pay the benefits due them. The agreement also concedes petitioner's attorney's entitlement to common fund attorney fees.

The settlement agreement provides for disclosure of information regarding nonparty claimants who may be entitled to Flynn benefits. The Workers' Compensation Court approved the disclosure subject to strict confidentiality rules precluding further dissemination of the information to others. After approving the agreement, the Supreme Court decided *St. James Community Hosp., Inc. v. Dist. Court of Eighth Jud. Dist.*, 2003 MT 261, 317 Mont. 419, 77 P.3d 534, which held that the constitutional right of privacy, as well as statutes, precluded disclosure of the identity and other information of patients of a hospital which had overcharged its patients and others for copies of medical records. The parties in this case now seek direction concerning what can and cannot be disclosed in this case.

Held: The right of privacy extends only to information as to which an individual has a reasonable expectation of privacy as measured by societal expectations. *Pengra v. State*, 20A0 MT 291 , 302 Mont. 276, 14 P.3d 499; *Jefferson County v. Montana Standard*, 2003 MT 304,318 Mont. 173, 79 P.3d 805. Claimants in workers' compensation cases do not have a reasonable expectation of privacy

with respect to their identities and information pertaining to their entitlement to benefits, at least with respect to attorneys who have established their entitlement to further benefits under the common fund doctrine and where the attorneys are prohibited from disseminating information regarding their identities and claims to others.

Rausch, et al. v. Montana State Fund and Ruhd v. Liberty Northwest, 2005 MTWCC 9 (WCC No. 9907-8274R1)

(Order Denying Motion To Quash Summons And Objections, Joining Parties, And Retaining Caption)

Related Topic: [Procedure](#)

Summary/Status: Prior decision held that a global common fund was created with respect to impairment awards for PTD claimants. Enforcement proceedings underway.

Summary: Upon remand from the Montana Supreme Court decision in *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561, and pursuant to that decision, the Workers' Compensation Court issued summonses to all Montana workers' compensation insurers and self-insurers who have paid permanent total disability benefits to claimants injured since June 30, 1991, requiring them to file responses identifying permanently totally disabled claimants. Some insurers responded by objecting to the summonses and moving to quash them.

Held: The objections are denied and the motions to quash overruled. The summonses make the insurers party respondents. The common fund doctrine obligates the insurers to identify and pay benefitted claimants and gives the Court jurisdiction and authority to make them parties and enforce the common fund doctrine and lien.

Reesor v. Montana State Fund, 2008 MTWCC 28

(Findings and Conclusions by Special Master on Common Fund Issues; Order Adopting Order of Special Master)

Appealed to Montana Supreme Court: June 30, 2008; Remanded Pending Approval of Settlement: October 15, 2008; Dismissed: November 5, 2008

Summary/Status: Limitation on permanent partial disability benefits due to reaching social security retirement age declared unconstitutional by the Montana Supreme Court. Common fund certification denied on remand by Workers' Compensation Court. Enforcement procedures underway.

Ruhd v. Liberty Northwest, WCC No. 2002-0500 (2002 MT 290N; 2004 MT 236)

(Global Common Fund Created with Consolidation into *Rausch*)

Appealed to the Montana Supreme Court: Reversed and Remanded: December 10, 2002

Appealed to the Montana Supreme Court: Reversed and Remanded: August 31, 2004

Consolidated into *Rausch v. Montana State Fund and Jeremy Ruhd v. Liberty Northwest Ins. Corp.*, 2005 MTWCC 9 (WCC 9907-8274R1)

***Satterlee v. Lumberman's Mutual Casualty*, 2006 MTWCC 36 (WCC No. 2003-0840)** (2009 MT 368)
(Order Denying Petitioners' Motion to Allow Discovery and Granting Respondents' Cross-Motion for Partial Summary Judgment)

Appealed to Montana Supreme Court: December 1, 2006; Dismissed re Rule 54(b) Certification; Re-Appealed: July 1, 2008; Affirmed: November 3, 2009

Summary: In its July 12, 2006, Order, this Court granted Petitioners leave to file a motion and brief pursuant to Mont. R. Civ. P. 56(f) to state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment for Respondents. Additionally, the Court continued Respondents' cross-motion for partial summary judgment.

Held: Petitioners' motion for an order allowing discovery is denied. Respondents' cross-motion for partial summary judgment is granted.

Status: Constitutional challenge to retirement provisions of § 39-71-710, MCA. Class certification has been requested.

***Schmill v. Liberty Northwest Ins.*, 2007 MTWCC 38 (WCC No. 2001-0300)** (2009 MT 430)
(Findings and Conclusions of Special Master Denying Responding Insurers' Motion to Dismiss on "Gateway Legal Issues.")

Appealed to Montana Supreme Court: August 27, 2008 ; Affirmed: December 22, 2009

Summary/Status: The Montana Supreme Court's decision of June 7, 2005, states that *Schmill I* is retroactive to all cases not yet final or settled at time of its issuance. Common fund attorney fees are proper and the common fund created in *Schmill I* results in a global lien.

***Stavenjord v. Montana State Fund*, 2008 MTWCC 17 (WCC No. 2000-0207)**
(Order Denying Respondent's Motion for Reconsideration)

Appealed to Montana Supreme Court: May 8, 2008; Remanded Pending Approval of Settlement: August 20, 2008; Dismissed: November 5, 2008

Related Topic: [Jurisdiction](#)

Status: Previous decisions held that claimants suffering occupational diseases after June 30, 1987, may seek permanent partial disability benefits under Workers' Compensation Act. WCC granted limited common fund certification on remand. Common fund certification denied by Montana Supreme Court. Remanded to WCC for further proceedings. Enforcement proceedings underway.

Summary: Respondent moved for reconsideration of this Court's Order Regarding Identification and Notification of Potential Beneficiaries, arguing that since the Court found its process to be "well thought-out and reasonable," it was not impracticable or impossible for the identification and notification procedure to commence without common fund counsel and therefore this Court should reconsider its determination that it could not comply with the Montana Supreme Court's remand order to that effect.

Held: The Court determined as a threshold issue that it was impossible to determine an acceptable identification and notification procedure for potential Stavenjord beneficiaries since, without common fund status, the Court has no jurisdiction to order non-party insurers to comply with the

procedure. Therefore, irrespective of the fact that Respondent’s proposed procedure appears to the Court to be “well thought-out and reasonable,” the Court is unable to comply with the Supreme Court’s directive on remand until such time as the Supreme Court clarifies whether the term “potential Stavenjord beneficiaries” is limited to only those claimants whose employer was insured by Respondent. Motion for reconsideration is therefore denied.

Flynn, Miller v. Montana State Fund and Liberty Northwest Ins. Corp., 2010 MTWCC 20 (2011 MT 300)
(Order Re: Paid in Full)

Appealed to Montana Supreme Court: July 29, 2010; Affirmed: November 29, 2011

Related Topic: [Benefits](#)

Summary: The Court requested briefing on the definition of “paid in full” as used in the definition of a settled workers’ compensation claim for purposes of determining the retroactive application of workers’ compensation judicial decisions.

Held: For purposes of determining the retroactive application of a judicial decision in the workers’ compensation field, a claim that has been “paid in full” is defined as a claim in which all benefits to which a claimant is entitled are paid prior to the issuance of a judicial decision. If any benefits are paid on the claim after the issuance of the judicial decision, the claim is no longer considered “paid in full” and is subject to retroactive application of the decision.

Flynn and Miller v. Montana State Fund and Liberty Northwest Ins. Corp., 2022 MTWCC 11
(Order Closing Case)

Status: This Court has approved by order the Joint Stipulation for Dismissal of Liberty Northwest Insurance Corporation between Petitioners Robert Flynn and Carl Miller and Intervenor Liberty Northwest Insurance Corporation. As the sole remaining insurer/intervenor has been dismissed, this case is closed.

CONSTITUTIONAL LAW

Thompson v. State Of Montana, 2005 MTWCC 53 (2007 MT 185)
(Order Granting Motions for Summary Judgment)

Appealed to Montana Supreme Court: May 15, 2006; Reversed: August 17, 2007

Summary: Petitioners filed an action for declaratory judgment seeking to have the Court declare subsection (3) of section 39-71-604, MCA (2003), and subsection (5) of section 50-16-527, MCA (2003), unconstitutional as violative of Mont. Const., Art. II, §§ 10 and 17, and/or the Fifth and Fourteenth Amendments to the United States Constitution. Petitioners subsequently filed motions for summary judgment on these issues.

Held: Summary judgment is granted. Section 39-71-604(3), MCA (2003), and section 50-16-527(5), MCA (2003), violate the petitioners' constitutional right of privacy as guaranteed by Mont. Const., Art. II, § 10, and no compelling state interest exists to justify such violation. Moreover, the Court also finds that sections 39-71-604(3) and 50-16-527(5), MCA (2003), violate the petitioners' constitutional right to due process as guaranteed by Mont. Const., Art. II, § 17, and no rational basis exists to justify such violation.

Baker v. Transportation Ins. Co., 2006 MTWCC 42
(Order Granting Partial Summary Judgment to Respondent).

Summary: Petitioner Frances Baker, Personal Representative of the Estate of Bruce Baker, petitioned the Court to receive permanent partial disability benefits in the form of a 100% impairment award. Respondent Transportation Insurance Company moves this Court for summary judgment, arguing that § 39-72-703, MCA, prohibits Petitioner from receiving an impairment award. In the event the Court finds Petitioner is prohibited from receiving an impairment award under the 1985 version of the Occupational Disease Act, Petitioner asks the Court to find § 39-72-703, MCA (1985), unconstitutional.

Held: Respondent's motion for summary judgment is granted. Petitioner petitioned the Court for permanent partial disability benefits in the form of an impairment award. Under the 1985 version of the Occupational Disease Act, § 39-72-703, MCA, prohibits occupational disease claimants from receiving partial disability benefits. The Montana Supreme Court has ruled that an impairment award is a component of partial disability benefits under pre-1987 law. *Fellenberg v. Transportation Ins. Co.*, 2005 MT 90, 326 Mont. 467, 110 P.3d 464. Accordingly, Petitioner is barred from receiving an impairment award. Section 39-72-703, MCA (1985), is constitutional. In *Eastman v. Atlantic Richfield Co.*, the Montana Supreme Court held that, prior to the 1987 amendments to the workers' compensation laws, a rational basis existed for unequal benefit awards to occupational disease claimants as opposed to occupational injury claimants. Though the Court has since questioned the continued validity of *Eastman*, it has not overruled it. Therefore, pursuant to *Eastman*, this Court finds § 39-72-703, MCA, constitutional.

Horizon Custom Homes, Inc. v. Uninsured Employers' Fund, In re: Flink, 2007 MTWCC 8
(Order Granting Motion to Dismiss).

Related Topics: [Mediation](#), [Uninsured Employers' Fund](#)

Summary: Respondent moved for an order to dismiss Petitioner's action on the grounds that Petitioner did not request mediation of Respondent's determination within 90 days as required by §

39-71-520(1), MCA. Petitioner argues that § 39-71-520, MCA, is unconstitutional because it violates Petitioner's right to equal protection under the law. Petitioner further argues that it should be entitled to review the medical records of the claimant because Petitioner believes Respondent may have improperly paid all or part of the claim.

Held: Section 39-71-520, MCA, is not unconstitutional because the classes at issue are not similarly situated. Petitioner is not entitled to review the claimant's medical records because Petitioner failed to appeal Respondent's determination to mediation within 90 days. Therefore, this Court is without jurisdiction to review Respondent's determination.

Wilkes v. Montana State Fund, 2007 MTWCC 9 (2018 MT 29)

(Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: March 23, 2007; Affirmed: February 5, 2008

Summary: Petitioner moved for summary judgment, arguing that § 39-71-703, MCA (2001), is unconstitutional to the extent that it denies permanent partial disability benefits for age, education, and lifting to claimants who do not suffer a wage loss. Respondent also moved for summary judgment, arguing that § 39-71-703, MCA, is constitutional.

Held: Petitioner's motion for summary judgment is denied. Respondent's motion for summary judgment is granted. In 1995, the Legislature codified benefits based on age, lifting, and education for permanent partial disability claimants who suffered a wage loss after returning to work while providing no additional benefits based on age, education, and lifting to those claimants who received an impairment award but suffered no wage loss after returning to work. Because these two classes are not similarly situated, the Court concludes there is no violation of Petitioner's equal protection rights.

Weidow v. Uninsured Employers' Fund, et al, 2008 MTWCC 56

(Order Deeming Respondent's Motion to Dismiss to be a Motion for Summary Judgment, Denying the Motion for Summary Judgment, and Declaring § 39-71-520(2), MCA, to be Unconstitutional).

Related Topics: [Casual Employment](#), [Course and Scope](#), [Credibility](#), [Independent Contractors](#), [Mediation](#), [Uninsured Employers' Fund](#)

Summary: Respondent Uninsured Employers' Fund moved for dismissal because it contends Petitioner did not timely file his petition with this Court. The UEF argues § 39-71-520(2), MCA, requires a petitioner to file a petition before this Court within 60 days of the mailing of the mediator's report or the UEF's determination becomes final. The mediator's report and recommendation was mailed on January 31, 2007. UEF notified the mediator and Petitioner that it would not accept the mediator's recommendation on February 21, 2007. Petitioner petitioned this Court on April 10, 2007, 69 days after the mediator's report was mailed. Petitioner argues that a reasonable interpretation of § 39-71-520(2), MCA, is that it is the mediator's report, and not the UEF's determination, that becomes final if no party petitions the Court within 60 days. Petitioner argues that another reasonable interpretation of the statute would allow 85 days to petition the Court. Petitioner argues that the statute is discretionary and not jurisdictional. Finally, Petitioner raises multiple constitutional challenges arguing that § 39-71-520(2), MCA, is void for vagueness, violates his constitutional right to equal protection under the law, and is an impermissible exercise of sovereign immunity.

Held: Although Petitioner's contention that the department mediator's report becomes final absent a petition filed in this Court within 60 days is a reasonable interpretation, so is UEF's interpretation

that the UEF's determination becomes final if no petition is filed. The time limit provided for in § 39-71-520(2), MCA, is not tolled during the 25-day period which the parties have to notify the mediator whether they accept the mediator's recommendation. The time limits imposed in § 39-71-520, MCA, are jurisdictional and bar this Court from waiving them upon equitable grounds. However, § 39-71-520(2), MCA, can reasonably be interpreted to mean that either the UEF's determination or the department mediator's report becomes final if a petition is not filed in this Court within 60 days. Therefore, the statute is unconstitutionally vague because it requires those of ordinary intelligence to guess as to its meaning.

Raymond v. Uninsured Employers' Fund, 2008 MTWCC 52

(Order Denying Uninsured Employers' Fund's Motion for Reconsideration).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Respondent moved this Court to reconsider its decision dismissing the alleged uninsured employer from this case. Respondent contends that the Court did not have all the necessary facts available to it when it reached its decision, and that the Court misinterpreted the law when it concluded that the alleged uninsured employer was not a proper party to the action.

Held: Respondent's arguments have not persuaded the Court that the statutory procedures can be circumvented without impinging upon the due process rights of uninsured employers. Accordingly, Respondent's motion for reconsideration is denied.

Satterlee v. Lumberman's Mut. Cas. Co., 2008 MTWCC 29 (2009 MT 368)

(Order Granting Respondent Montana State Fund's Motion for Partial Summary Judgment)

Appealed to Montana Supreme Court: July 1, 2008; Affirmed: November 3, 2009

See Also: *Satterlee v. Lumberman's Mutual Casualty Company*, 2005 MTWCC 55 (Order Denying Motion for Partial Summary Judgment)

Summary: Respondent Montana State Fund moved the Court for partial summary judgment regarding Petitioners' two remaining constitutional challenges to § 39-71-710, MCA: (1) Whether § 39-71-710, MCA, violates Petitioners' right to due process; and (2) Whether § 39-71-710, MCA, unconstitutionally or impermissibly discriminates against Petitioners based on their age.

Held: Respondent's motion is granted. Section 39-71-710, MCA, does not violate Petitioners' substantive due process rights because it is reasonably related to a permissible legislative objective. Section 39-71-710, MCA, does not unconstitutionally discriminate against Petitioners based on their age because it is rationally related to a legitimate governmental purpose.

Briese v. Ace American Ins. Co., 2009 MTWCC 5

(Order Granting in Part and Denying in Part Respondent's Motion for Summary Judgment, Denying Petitioner's Cross-Motion for Summary Judgment, and Denying Respondent's Request for Sanctions).

Related Topic: [Penalties](#)

Summary: Respondent moved this Court for summary judgment and also requested sanctions against Petitioner and Petitioner's counsel. Petitioner cross-motivated for summary judgment. Petitioner petitioned this Court for an increase in his average weekly wage calculation and for a 20% penalty on unpaid *Lockhart* attorney fees. Petitioner argues that vacation pay accrued during the four pay periods

prior to his injury and paid post-injury should be included in his average weekly wage calculation. Petitioner further argues that the funds he withdrew from his company-sponsored 401(k) account should be utilized in his wage calculation. Respondent contends that accrued vacation paid after the date of injury and monies withdrawn from a 401(k) account are both excluded from the definition of wages pursuant to § 39-71-123, MCA (2003). Respondent also contends that Petitioner is not entitled to a 20% penalty on his *Lockhart* fees pursuant to § 39-71-2907, MCA. Respondent requests the Court to sanction Petitioner and Petitioner's counsel for their allegedly frivolous and meritless claims.

Held: Respondent's motion for summary judgment on Petitioner's entitlement to an increase in his average weekly wage calculation is granted. Respondent's motion for summary judgment regarding the 20% penalty on a *Lockhart* lien is denied. Petitioner's cross-motion for summary judgment on the constitutionality of § 39-71-123, MCA, is denied. Respondent's request for sanctions is also denied. Vacation pay accrued pre-injury but paid post-injury and employer contributions to a pension plan are excluded from the definition of wages when all parts of § 39-71-123, MCA, are read as a whole. Petitioner may seek a 20% penalty on a *Lockhart* lien because the *Lockhart* lien represents a portion of the "full amount of benefits due" Petitioner. Section 39-71-123, MCA, does not violate Petitioner's right to equal or due process. The Court does not find that Petitioner or his attorney have acted in such a way as to warrant sanctions. Even though I do not find some of Petitioner's arguments persuasive, I do not find that the arguments were advanced in bad faith or for any improper purpose.

***Walters v. Flathead Concrete Products*, 2011 MT 45**
(Opinion of the Montana Supreme Court)

Summary: Deceased worker's mother brought survivorship and wrongful death claims against decedent's employer. The District Court granted summary judgment to employer and denied mother's motion for summary judgment on claim that workers' compensation statutes, which resulted in payment of only \$3,000, were unconstitutional. Mother appealed.

Held: The mother argued that the district court erred in holding that her claims were barred by the exclusive remedy provision of the WCA and denying her claim that Mont. Code Ann. §§ 39-71-411 and 39-71-721(4), were unconstitutional. The supreme court noted that the son's injury was covered by the WCA, and he had some possibility of recovery. Although she was the son's parent, the mother did not satisfy the federal definition of dependency incorporated into the WCA which would have entitled her to wage loss payments. She received a lump sum payment of \$3,000 paid to the decedent's surviving parent or parents, Mont. Code Ann. § 39-71-721(4). The Legislature logically directed wage loss benefits to those persons who depended upon them, and paid a small amount to those who did not. The WCA was not arbitrary or unreasonable, and satisfied due process and the quid pro quo. The judgment was affirmed.

***Malcolmson v. Liberty Northwest*, 2011 MTWCC 6**
(Order Granting Petitioner's Motion for Summary Judgment).

Related Topic: [Attorneys' Fees](#)

Summary: Petitioner moves for summary judgment for reinstatement of her medical benefits which were terminated after she refused to allow Respondent to communicate *ex parte* with her healthcare providers. Petitioner argues that § 39-71-604(3), MCA (2007), and § 50-16-527(5), MCA (2007), unconstitutionally violate her right of privacy under Article II, Section 10, of the Montana Constitution, and her right to due process under Article II, Section 17, of the Montana Constitution and under the Fifth and Fourteenth Amendments to the United States Constitution. Petitioner raises both as applied and facial constitutional challenges. Petitioner further argues that she is entitled to

recovery of her attorney fees and costs under the private attorney general doctrine. Respondent responds that the statutes Petitioner challenges are constitutional, and that Petitioner waived her right to pursue a claim for attorney fees and costs.

Held: As applied to the facts of Petitioner's claim, §§ 39-71-604(3), and 50-16-527(5), MCA, are unconstitutional under Article II, Section 10, of the Montana Constitution. Petitioner does not seek to limit Respondent's ability to obtain relevant healthcare information regarding her claim; she seeks only to be advised that the communications with her treating physicians are taking place and to be included in the communications in order to protect her constitutional right of privacy. Petitioner is not entitled to her attorney fees and costs under the private attorney general doctrine. Although she alleges she waived only her right to pursue these claims under § 39-71-611, MCA, the stipulation to which she agreed contains no such limiting language.

Flynn, Miller v. Montana State Fund and Liberty Northwest Ins. Corp., 2010 MTWCC 21
(Order Denying Common Fund Insurers' General Motion to Dismiss).

Summary: Common Fund Insurers moved this Court to dismiss the common fund claims asserted against them on five grounds: (1) Because Common Fund Insurers were not parties to *Flynn I*, enforcement of the *Flynn* common fund violates their right to due process; (2) Petitioners lack standing to pursue common fund claims against Common Fund Insurers; (3) Petitioners failed to mediate the common fund claims against Common Fund Insurers; (4) requiring Common Fund Insurers to identify potential *Flynn* beneficiaries impermissibly reverses the burden of proof; and (5) Petitioners' counsel's attorney fees are limited to the actual amount incurred by the active litigants.

Held: Common Fund Insurers' motion to dismiss is denied. Common Fund Insurers' due process and standing arguments were rejected by the Montana Supreme Court in *Schmill v. Liberty Northwest Ins. Corp. (Schmill III)*. Mandatory mediation does not apply to *Flynn* common fund benefits because *Flynn I* resolved the dispute concerning the entitlement to these benefits. Requiring Common Fund Insurers to identify *Flynn* beneficiaries does not shift the burden of proof to Common Fund Insurers. The insurers' burden in this case is to identify claimants whose right to increased benefits has already been established as a matter of law pursuant to *Flynn I*. This Court has previously rejected Common Fund Insurers' fee calculation argument in *Rausch v. Montana State Fund*. In *Rausch*, this Court held that Common Fund Insurers' argument was based upon a fundamental misinterpretation of the common fund doctrine.

Alexander v. Bozeman Motors, Inc., 2010 MT 135
(Opinion of the Montana Supreme Court).

Related Topic: [Summary Judgment](#)

Summary: The District Court of the Eighteenth Judicial District, Gallatin County, Montana, granted summary judgment in favor of appellees, employer and supervisors, on appellant employees' claims of negligence, intentional battery, and negligence infliction of emotional distress. The district court held that the employees' claims were barred by the exclusivity provision of the Workers' Compensation Act, Mont. Code Ann. 39-71-413.

Held: The employees argued that they had presented evidence demonstrating that the employer intentionally injured them, allowing them to avoid the exclusivity provision. The supreme court found that while the employees averred that the employer intentionally and deliberately exposed one employee to dangerous conditions in the office, and did not respond to his complaints that he was becoming ill, these allegations did not establish that the employer had actual knowledge that requiring

the employee to work in his office would result in certain injury. The fact that the subsequent employee had previously raised the same complaints, and then lost consciousness in the office, did raise a genuine issue of material fact as to whether the employer had actual knowledge that requiring the second employee to work in the same office, without investigating or addressing the alleged contamination, was certain to cause him injury. The employees failed to prove beyond a reasonable doubt that Mont. Code Ann. § 39-71-413 was unconstitutional.

Malcomson v. Liberty Northwest, 2013 MTWCC 21
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner withdrew her consent allowing Respondent to have ex parte communications with her medical providers. She then signed a release allowing Respondent to obtain relevant medical information, but requiring Respondent to give her the opportunity to participate in any communications. Respondent terminated Petitioner’s benefits, arguing that it is entitled to pursue ex parte communications with an injured worker’s medical providers pursuant to §§ 39-71-604(3) and 50-16-527(5), MCA. Petitioner petitioned this Court, arguing that these statutes unconstitutionally violate her right of privacy under Article II, Section 10, of the Montana Constitution, and her right to due process under Article II, Section 17, of the Montana Constitution and under the Fifth and Fourteenth Amendments to the United States Constitution.

Held: As applied to the facts of Petitioner’s claim, § 39-71-604(3), MCA, is unconstitutional under Article II, Section 10, of the Montana Constitution. Petitioner does not seek to limit Respondent’s ability to obtain relevant healthcare information regarding her claim; she seeks only to be advised that the communications with her treating physicians are taking place and to be included in the communications in order to protect her constitutional right of privacy. Although its provisions are identical to the language of § 39-71-604(3), MCA, this Court lacks the jurisdiction to rule on the constitutionality of § 50-16-527(5), MCA, since it is not part of the Workers’ Compensation Act. Strict scrutiny applied in constitutional analysis considering right of privacy set forth under Article II, Section 10 is a fundamental right which “shall not be infringed without the showing of a compelling state interest.”

Hensley v. Montana State Fund, 2019 MTWCC 12
(Order Granting Respondent’s Motion for Summary Judgment and Denying Petitioner’s Motion For Summary Judgment).

Appealed to the Montana Supreme Court: September 12, 2019; Affirmed: December 16, 2020

Related Topic: [Benefits](#)

Summary: Upon reaching MMI for her shoulder injury, Petitioner returned to work without an actual wage loss. She received a 4% whole person impairment rating, which is a Class 1 impairment under the AMA Guides, 6th Ed. Respondent did not pay her an impairment award because § 39-71-703(2), MCA (2011), does not provide for the payment of impairment awards if an injured worker’s impairment is rated as a Class 1 impairment and the worker suffers no actual wage loss. Because this statute provides that an injured worker with a Class 2, 3, or 4 impairment without a wage loss has a right to an impairment award, Petitioner asserts it is facially unconstitutional under the equal protection clause in Mont. Const. art. II, § 4. Petitioner also asserts that by denying her a remedy for her permanent injury, § 39-71-703(2), MCA (2011), violates her right to due process under Mont. Const. art. II, § 17.

Held: Section 39-71-703(2), MCA (2011), is not facially unconstitutional under the equal protection clause because a claimant with a Class 1 impairment rating is not similarly situated to a claimant with a Class 2, 3, or 4 impairment rating due to the difference in the severity and frequency of their symptoms and functional limitations. And, nevertheless, there is a rational basis for treating these classes differently. This Court does not address Petitioner’s due process claim because this Court cannot grant her the remedy she seeks, which is payment of an impairment award.

Hogan v. Federated Mutual Insurance Company, 2021 MTWCC 6
(Order Granting in Part and Denying in Part Petitioner’s Motion for Summary Judgment)

Related Topic: [Summary Judgment](#)

Summary: Petitioner moves for summary judgment, asserting that Respondent does not have a right of subrogation against his third-party tort recovery as a matter of law because § 39-71-414, MCA (2017) — the statute governing a workers’ compensation insurer’s right of subrogation — is unconstitutional and “wholly void.” Petitioner interprets § 39-71-414(1), MCA (2017), as allowing an insurer to immediately exercise its right of subrogation against a third-party tort recovery based on the amount of workers’ compensation benefits “to be paid” in the future. He argues that this subsection violates his right to due process under Mont. Const. art. II, § 17, because there are too many variables and unknowns for this Court to make a finding of the amount of benefits “to be paid” in the future and because the subsection does not include any procedure by which a claimant could recoup the amount he pays to satisfy the insurer’s subrogation lien if the insurer does not ultimately pay that amount of benefits. Petitioner argues that § 39-71-414(6)(a), MCA (2017), is unconstitutional under the second sentence of Mont. Const. art. II, § 16, because it allows a workers’ compensation insurer to exercise its right of subrogation before the claimant is made whole. Petitioner also argues that § 39-71-414(6)(a), MCA (2017), violates his right to due process under Mont. Const. art. II, § 17, because it assigns the claimant the burden of proving that the workers’ compensation insurer may not exercise its right of subrogation. Respondent asserts that this Court should not address Petitioner’s constitutional challenges because they are not ripe and because there is an issue of material fact. In the alternative, Respondent argues that the statute is constitutional.

Held: This Court granted in part and denied in part Petitioner’s Motion for Summary Judgment. Petitioner’s constitutional challenges are ripe and there is no issue of material fact to the purely legal issues on which Petitioner moved for summary judgment. This Court did not reach the merits of Petitioner’s argument that § 39-71-414(1), MCA (2017), is unconstitutional because, as interpreted by the Montana Supreme Court, this subsection does not give a workers’ compensation insurer the right to immediately subrogate against a claimant’s third-party tort recovery based on the amount of benefits “to be paid” in the future. The Montana Supreme Court has held in many cases that a workers’ compensation insurer’s right of subrogation is limited by the made whole doctrine, which provides that an insurer cannot exercise its right of subrogation until the claimant has been made whole for his entire loss and any costs of recovery in his third-party tort claim, including attorney fees. This Court ruled that § 39-71-414(6)(a), MCA (2017), is unconstitutional under Mont. Const. art. II, § 16, because its plain language allows an insurer to subrogate before the claimant has been made whole. However, contrary to Petitioner’s position, the remedy is not a ruling that Respondent has no right of subrogation as a matter of law. Under established Montana law, Respondent has a right of subrogation under § 39-71-414(1), MCA (2017), and may exercise that right when Petitioner is made whole. This Court did not address the merits of Petitioner’s argument that § 39-71-414(6)(a), MCA (2017), is unconstitutional because it assigns him the burden of proof because, having already ruled that this subsection is unconstitutional, this constitutional challenge is now moot.

COSTS

Briese v. Ace American Ins. Co., 2006 MTWCC 6

(Order on Costs).

Summary: Petitioner filed a claim for costs pursuant to the Court's award of costs in its Findings of Fact, Conclusions of Law and Judgment. Respondent objected to two of the costs claimed by Petitioner. First, Respondent objected to paying the cost of Petitioner's copy of a transcript of a deposition taken by Respondent. Second, Respondent objected to paying the cost of a fee charged to Petitioner by an expert witness for responding to questions Petitioner's counsel posed to the expert in a letter prior to the expert's deposition.

Held: Petitioner's claim for the copy of the deposition transcript is granted. Under the rules of the Workers' Compensation Court, the Court may grant reasonable costs. As a practical consideration, a deposition transcript is generally necessary to prepare for trial and to prepare for examination of other witnesses. Additionally, the Court encourages all parties to file proposed findings of fact and conclusions of law. A deposition transcript is needed to accurately reflect the record in those findings of fact and conclusions of law. Petitioner's claim for the cost of the expert fee charged for answering Petitioner's letter prior to the deposition is denied. The letter was unnecessary since Petitioner was allowed to depose the expert at no cost and the letter was not specifically used by Petitioner in the deposition.

Mack v. Transp. Ins. Co., 2007 MTWCC 19

(Order On Costs).

Summary: Petitioner submitted a claim for costs pursuant to this Court's holding in its Findings of Fact, Conclusions of Law and Judgment. Respondent objected to paying the full amount of the costs associated with taking Petitioner's deposition in Elko, Nevada. The basis for Respondent's objection is that Petitioner's deposition was taken both for his claim in this Court and a civil action Petitioner was pursuing against the State of Montana in the First Judicial District Court. Respondent, therefore, argues that Petitioner should only be entitled to recover 50% of the costs associated with this deposition.

Held: Pursuant to ARM 24.5.342(3): "The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed." In the present case, it is neither reasonable, nor equitable, for Respondent to pay the full costs associated with a deposition that was taken for the benefit of two separate claims. The costs in dispute are reduced by 50%.

Heffner v. Montana State Fund, 2007 MTWCC 34

(Order On Costs).

Summary: Respondent filed an Application for Taxation of Costs per ARM 24.5.342.

Held: ARM 24.5.342 states that costs may be awarded to a prevailing claimant. Respondent is not a claimant. Therefore, Respondent is not entitled to costs.

Rau v. Montana State Fund, 2008 MTWCC 34

(Order Regarding Application for Costs).

Summary: Respondent objects to two specific items of costs which Petitioner seeks as the prevailing party: Petitioner's request for the expert fees of Dr. Olshansky; and Petitioner's request for the expert fees of Dr. Cory. Dr. Olshansky did not testify at trial or by deposition and did not provide any type of report. Dr. Cory did not testify at trial or by deposition, although his report was entered into evidence.

Held: Respondent's objections to Petitioner's application for costs regarding the expert fees of Drs. Olshansky and Cory are sustained. Dr. Olshansky's fee is disallowed because he did not testify nor was any report or medical record submitted into evidence. Dr. Cory's fee is disallowed because he did not testify at trial or by deposition, and while a report from Dr. Cory was admitted into evidence and relied upon by the Court in reaching its determination in this matter, the Court cannot determine from Petitioner's application what services are included in the fee attributed to Dr. Cory.

Stewart v. MACo Workers' Compensation Trust, 2008 MTWCC 22

(Order Regarding Charges for Copying Claim Files).

Summary: Petitioner moved the Court for an order requiring Respondent to provide him with a free copy of his claim file. Respondent responded that it is well-recognized in Montana law that it may charge for such copies and that its charge of \$149 for copying a 283-page claim file is appropriate.

Held: Respondent may charge Petitioner the same amount as is commonly charged by businesses offering photocopy services to the public which are located in the same community as the claim file is maintained.

Porter v. Liberty Northwest Ins. Corp., 2008 MTWCC 12

(Order Regarding Applications for Costs and Attorney Fees).

Summary: Respondent objects to four specific items of costs which Petitioner seeks as the prevailing party. Respondent further objects to Petitioner's application for attorney fees for the work performed on Petitioner's case by a nurse consultant. Finally, Respondent objects to Petitioner's application for fees pertaining to hours spent on the portion of Petitioner's claim specific to his cervical condition which this Court concluded was not compensable.

Held: Respondent's objections to Petitioner's application for costs regarding the travel and lodging expenses Petitioner's counsel incurred in attending trial are sustained as not recoverable under ARM 24.5.342. Respondent's objections to Petitioner's application for costs associated with Dr. Mack's deposition are sustained since Petitioner did not prevail upon the issue to which Dr. Mack testified. For the same reason, Respondent's objections to Petitioner's application for attorney fees associated with Dr. Mack's testimony are sustained. Finally, Respondent's objection to Petitioner's application for attorney fees for work performed on his case by a nurse consultant is sustained because a nurse consultant is not an attorney and therefore her fees cannot be characterized as attorney fees.

Russell v. Watkins & Shepard Trucking Co., Inc., 2009 MTWCC 27

(Order Regarding Application for Costs).

Summary: Respondent objects to several specific items of costs which Petitioner seeks as the prevailing party, including deposition costs, expert witness fees, travel and lodging expenses, and copy charges for certain medical records. Respondent argues that many of these items relate only to

portions of Petitioner's case where Petitioner did not prevail, and further argues that Petitioner's counsel cannot recover the costs for travel and lodging he incurred to attend trial in Helena. Respondent also argues that it cannot be required to pay for independent medical examinations which were performed by expert witnesses prior to rendering their opinions.

Held: Respondent's objections to Petitioner's application for costs regarding items which the Court found did not relate to the issue on which Petitioner prevailed are sustained. Petitioner's counsel cannot recover the costs for travel and lodging he incurred to attend the trial in this case. The Court concluded that fees relating to IMEs performed by expert witnesses are recoverable as costs as they were conducted as part of Petitioner's trial preparation and were part of the basis for the opinions the experts reached.

Heth v. Montana State Fund, 2009 MTWCC 19

(Order Regarding Application for Costs).

Summary: Respondent objects to four specific items of costs which Petitioner seeks as the prevailing party: Petitioner's request for the expert fees of Dr. Rosen; two different services provided by Medical Management Resources; and Petitioner's request for reimbursement of the cost of mediation services from Corette, Pohlman & Kebe. Respondent argues that all of these expenses were incurred after this Court conducted the trial in this matter, and therefore they are not reimbursable costs under ARM 24.5.342.

Held: Respondent's objections are sustained. This Court has previously held that the expert fees of a doctor who did not testify at trial or by deposition and who did not create a report submitted into evidence are not recoverable. This Court has also previously held that the cost of appellate mediation is not a recoverable cost. ARM 24.5.342 does not provide for the reimbursement of costs which Petitioner incurred after the trial and which were not part of the Court's deliberations in reaching a decision in this matter.

Fleming v. Montana Schools Group Insurance Authority, 2010 MTWCC 25

(Order Regarding Petitioner's Application for Taxation of Costs).

Summary: After prevailing at trial, Petitioner submitted an application for taxation of costs totaling \$3,475.63. Respondent objects to Petitioner's application to recover costs in the amount of \$20 for postage and long-distance telephone charges. Respondent also objects to Petitioner's application to recover costs in the amount of \$735.98 for travel expenses incurred in attending her deposition and trial.

Held: Petitioner is not entitled to recover the \$20 flat fee her attorney charged for postage and long-distance telephone charges. ARM 24.5.342 specifically provides that long-distance telephone expenses and postage expenses are generally found to be reasonable when documented. A predetermined flat fee does not qualify as documentation. Petitioner is not entitled to recover her costs incurred in attending her deposition and trial. This Court has previously disallowed recovery of a claimant's travel costs and Petitioner cites no authority where the Court has allowed recovery of a claimant's travel costs. ARM 24.5.342 neither specifically allows nor prohibits the recovery of costs for a claimant's travel to attend her deposition or trial. It provides that the Court will allow reasonable costs. The reasonableness of a given item of costs claimed is judged in light of the facts and circumstances of the case. Petitioner has not persuaded the Court that the facts and circumstances of her case warrant recovery of her travel costs. Petitioner is awarded the balance of her application for taxation of costs totaling \$2,719.65.

COURSE AND SCOPE

Popenoe v. Liberty Northwest Ins. Corp., 2006 MTWCC 37
(Order Granting Petitioner's Motion for Summary Judgment)

Appealed to Montana Supreme Court: December 15, 2006; Dismissed and Remanded: February 7, 2007; Order Vacated and Withdrawn Pursuant to Stipulation of Counsel, and Order and Judgment of Court: February 8, 2007

Summary: Petitioner moved for summary judgment after Respondent denied his claim for workers' compensation benefits. Respondent filed a cross-motion for summary judgment. Petitioner broke his ankle when he fell in his employer's parking lot while removing his bicycle from the back of a friend's truck approximately five minutes before the start of his shift. Petitioner claims that his injury is compensable under the "premises rule," while Respondent argues that Petitioner's injury is not compensable because it falls under the "going and coming" rule, now codified by § 39-71-407, MCA, and because Petitioner's actions at the time of his injury were not within the scope of his employment.

Held: Summary judgment is granted in favor of Petitioner. Montana case law has established that after an employee has arrived at his employer's premises and he is no longer engaged in traveling to or from the site of his employment, an injury suffered by the employee is compensable under the "premises rule." Petitioner is entitled to attorney fees and a penalty because, in light of the applicable statutes and case law, Respondent's denial of benefits was unreasonable.

Bevan v. Liberty Northwest Ins. Corp., 2006 MTWCC 38 (2007 MT 357)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: December 15, 2006; Affirmed: December 21, 2007

Summary: Petitioner was a customer service and sales representative for Blackfoot Telephone Communications. She was involved in a motor vehicle accident during an authorized paid break as she returned to work. Respondent denied liability on the grounds that Petitioner was outside the course and scope of her employment.

Held: Petitioner was within the course and scope of her employment when she was involved in a motor vehicle accident during an authorized paid break.

Michalak v. Liberty Northwest Ins. Corp., 2007 MTWCC 14 (2008 MT 3)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: March 22, 2007; Affirmed: January 3, 2008

Summary: Petitioner attended a company picnic hosted by his employer at the employer's lake home and was injured while riding a wave runner on the water. Respondent denied liability.

Held: Section 39-71-118, MCA, which defines "employee" does not preclude Petitioner from receiving benefits because he was acting within the course and scope of his employment at the time of his injury even though he was engaged in a recreational activity.

Driggers v. Liberty Northwest Ins. Corp., 2007 MTWCC 60

(Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: January 28, 2008; Dismissed: March 14, 2008

Related Topics: [Attorneys' Fees](#), [Costs](#), [Penalties](#)

Summary: Petitioner moved this Court for summary judgment, arguing that he was injured in the course and scope of his employment because he was injured while driving to work in a vehicle furnished by his employer and for which the employer paid for gas, oil, maintenance, and insurance. Respondent opposed the motion and cross-motivated for summary judgment, contending that Petitioner failed to satisfy both parts of the two-part test set forth at § 39-71-407(3)(a)(i), MCA. Petitioner further requested an award of attorney fees, costs, and a penalty.

Held: Petitioner's motion for summary judgment is granted and Respondent's cross-motion for summary judgment is denied. Respondent is correct that both parts of the two-part test set forth at § 39-71-407(3)(a)(i), MCA, must be satisfied for Petitioner's injury to be compensable. Petitioner satisfies the first part of the test because he was injured while driving a vehicle furnished by his employer. Petitioner satisfies the second part of the test, that the travel was necessitated by and on behalf of the employer as an integral part or condition of his employment, based upon the well-established case law in Montana regarding the exceptions to the going and coming rule. This Court fails to appreciate any notable distinctions between the present case and the cases of *McMillen*, *Ellingson*, and *Gordon*, which establish that an employee is usually entitled to compensation when injured during travel to or from his employment where he receives a specific allowance to get to and from his job. To the extent that there is any distinction between the present case and the Montana Supreme Court's decisions in *McMillen*, *Ellingson*, and *Gordon*, it may be only that the incident in this case is even more squarely within the scope of the exception to the going and coming rule. Therefore, the Court also finds Respondent's denial of Petitioner's claim unreasonable and he is entitled to attorney fees, costs, and a penalty.

Rau v. Montana State Fund, 2008 MTWCC 26

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to the Montana Supreme Court: July 25, 2008; Remanded: October 15, 2008

Related Topic: [Causation](#)

Summary: Petitioner fainted while waiting on a customer. Her head struck the floor, which caused severe injuries. Respondent denied liability, arguing that her faint was not caused by her work or work environment.

Held: Since the medical evidence demonstrated that the reason for Petitioner's faint was more probably than not her changing position from standing to sitting as required by her job duties, Petitioner's job duties, however seemingly benign, caused the faint which in turn caused her head injury. Therefore, Petitioner's injury occurred within the course and scope of her employment and is compensable.

Charlson v. Mont. State Fund, 2011 MTWCC 7

(Order Denying Petitioner’s Motion for Summary Judgment and Granting Summary Judgment in Favor of Respondent)

Summary: Petitioner worked on two different job sites for his employer. Petitioner was injured in an automobile accident while traveling to one job site to start his shift. Petitioner moves for summary judgment, arguing that his injury should be compensable as a work-related injury under the exception to the “going and coming” rule found at § 39-71-407(3)(a)(ii), MCA. Respondent opposes Petitioner’s motion, arguing that Petitioner was simply driving to work to report for his regular shift and his injury is not compensable under the “going and coming” rule.

Held: Petitioner’s automobile accident which occurred on his way to work is not compensable under § 39-71-407(3)(a)(ii), MCA. Simply traveling to the workplace prior to the start of a work shift does not make travel part of an employee’s job duties. Respondent’s cross-motion for summary judgment is granted.

Peck v. International Paper Co., 2010 MTWCC 35

(Order Denying Respondent’s Motion for Summary Judgment and Granting Petitioner’s Cross-Motion for Summary Judgment)

Summary: Respondent moved for summary judgment, arguing that Petitioner brought his claim against the wrong insurer as he has not correctly identified which entity was his employer at the time he left his employment. Petitioner filed a cross-motion for summary judgment, alleging that Respondent is correctly identified as the party liable for his occupational disease claim.

Held: Under the control test, Petitioner was an employee of the company for which Respondent is the successor-in-interest. Therefore, Respondent is properly identified as Petitioner’s employer for the purposes of Petitioner’s occupational disease claim.

Weidow v. Uninsured Employers Fund v. Howard, 2010 MTWCC 2 (2010 MT 292)

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: February 19, 2010; Affirmed: December 30, 2010

Related Topics: [Casual Employment](#), [Constitutional Law](#), [Credibility](#), [Independent Contractors](#), [Mediation](#), [Uninsured Employers’ Fund](#)

Summary: Petitioner began working on a residential construction project on property owned by Bradley Howard or the Howard Family 1995 Trust as an employee of the general contractor. Howard fired the general contractor and began paying Petitioner directly. Petitioner was injured on the job on June 13, 2006. Howard did not have workers’ compensation insurance. Bradley Howard/Howard Family 1995 Trust argue that neither is liable for Petitioner’s injuries because Petitioner was a casual employee.

Held: Petitioner’s activities while employed by Howard do not constitute casual employment. The UEF is therefore liable for Petitioner’s medical benefits. Petitioner has not proven that he is entitled to indemnity benefits. Pursuant to § 39-71-541, MCA, Bradley Howard/Howard Family 1995 Trust must indemnify the UEF for benefits paid to Petitioner.

Hallquist v. Independent Contractor Central Unit, 2010 MTWCC 16

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner appeals an Independent Contractor Central Unit decision which held that his automotive repair business employed five workers between January 1, 2006, and September 30, 2007. Petitioner contends that each of the alleged employees ran an independent business from the same address as Petitioner's auto repair business, although Petitioner performed administrative tasks for all the independent businesses, including collecting funds to pay the shop overhead.

Held: It is undisputed that two of the five alleged employees did not work out of the same shop as P & M Transmission between January 1, 2006, and September 30, 2007. A third alleged employee was indisputably an employee and was paid wages as part of vocational rehabilitation training until October 2007. The remaining two alleged employees meet the criteria for independent contractors under the AB test.

Hopkins v. Uninsured Employers' Fund v. Kilpatrick, 2010 MTWCC 9 (2011 MT 49)

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: August 23, 2010; Affirmed: March 22, 2011

Related Topic: [Major Contributing Cause](#)

Summary: Petitioner was injured in a grizzly bear attack at a private bear park in West Glacier, Montana. Petitioner petitioned the Court for a determination that he was an employee of the alleged employer, Russell Kilpatrick, at the time of the attack. Petitioner contended that he was performing duties in the course and scope of his employment. Kilpatrick responded that Petitioner worked as a volunteer at the bear park. Kilpatrick and the Uninsured Employers' Fund contended that Petitioner was not acting in the course and scope of his employment. Kilpatrick and the UEF further argued that Petitioner's use of marijuana was the major contributing cause of the accident.

Held: Kilpatrick employed Petitioner at the bear park. Kilpatrick controlled the details of Petitioner's work and paid him cash daily for the services he performed. Petitioner acted in the course and scope of his employment when he was attacked as he entered the bear pen to feed the bears. Petitioner fed the bears at Kilpatrick's request and Kilpatrick benefitted from services Petitioner performed at the bear park. Petitioner's marijuana use was not the major contributing cause of the accident. No evidence was presented regarding Hopkins' level of impairment on the day of the attack. Although Petitioner admitted to smoking marijuana before arriving at work on the morning of the attack, it is difficult for the Court to conclude that the *major* contributing cause of the grizzly bear attack was anything other than the grizzly. Petitioner was not attacked when he inexplicably wandered into the grizzly pen. Petitioner was attacked while performing a job Kilpatrick had paid him to do – feeding grizzly bears.

McCullom v. Montana State Fund, 2012 MTWCC 6

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered injuries from an explosion in his camping trailer, where he stayed while working on a jobsite. Petitioner alleged that he was an on-call employee and that he was camping in part because his employer expected him to arrive at the jobsite quickly if he were recalled after hours. Petitioner's employer denied that Petitioner was on call and alleged that Petitioner was not one of the employees that would have been recalled to the jobsite. Respondent contends that Petitioner's injuries did not occur within the course and scope of his employment.

Held: Petitioner was not an on-call employee and his employer received no benefit from his decision to camp near the jobsite. Petitioner's injury did not occur within the course and scope of his employment and it is therefore not compensable.

Erhard v. Liberty Northwest Ins. Corp., 2012 MTWCC 26

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner broke his leg while moving into housing provided by his employer prior to beginning his first work shift. Respondent denied Petitioner's claim for workers' compensation benefits, alleging that Petitioner was not within the course and scope of his employment at the time of his accident and injury.

Held: Petitioner was not an employee of Respondent's insured at the time his accident and injury occurred. He was not within the course and scope of employment because no employment existed. Therefore, Respondent is not liable for Petitioner's claim.

Olson v. Montana State Fund, 2015 MTWCC 2

(Decision on Stipulated Record)

Related Topic: [Wages](#)

Summary: Petitioner suffered injuries in a car accident which occurred while he was traveling to his jobsite in a co-worker's personal vehicle prior to the start of his shift. Petitioner argues that he was in the course and scope of his employment because the payment he received as "subsistence 'in lieu of any travel allowance per day worked'" is reimbursement for travel within the meaning of § 39-71-407(4)(a)(i), MCA, and therefore, this case falls under an exception to the going and coming rule. Petitioner also argues that the payment he received was not designated as an "incentive to work at a particular jobsite" within the meaning of § 39-71-407(4)(b), MCA.

Held: Petitioner was in the course and scope of his employment at the time of the accident. The Montana Supreme Court has held that a payment designated in a union contract as "subsistence per day worked in lieu of any travel time or travel allowance" is travel pay. Thus, an employee who receives such pay is within the course and scope of his employment while traveling to work. This case does not fall under § 39-71-407(4)(b), MCA, because the collective bargaining agreement did not "designate" Petitioner's payment as an "incentive to work at a particular jobsite."

Greer, et al. v. Liberty Northwest Ins. Corp., 2016 MTWCC 2

(Order Granting in Part and Denying in Part Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment)

Related Topics: [Penalties](#), Going and Coming Rule

Summary: Petitioners sought benefits after the decedent suffered a motor vehicle accident while traveling from Bozeman to Ekalaka for the start of his workweek at a construction jobsite. In addition to his wages, the decedent's employer paid him \$60 per diem for each full day worked. Respondent denied liability, arguing that the decedent was not in the course and scope of his employment and therefore not entitled to benefits under § 39-71-407(3), MCA.

Held: The decedent received reimbursement for travel costs from the employer in the form of a per diem and his employment necessitated his travel. Therefore, his death arose out of and within the

course of his employment under the travel allowance exception to the going and coming rule, as codified in § 39-71-407(3)(a)(i), MCA. The decedent was not excluded from coverage under § 39-71-407(3)(b), MCA, because the employer did not make the payment under the terms of a written document that designated the payment as an “incentive to work at a particular jobsite.”

Holtz v. Indemnity Ins. Co. of North America, 2016 MTWCC 4
(Order Granting Respondent’s Motion for Summary Judgment)

Summary: Petitioner, a flight attendant, was injured in a motorcycle accident which occurred approximately 40 miles from her hotel during a paid layover in Cincinnati, Ohio. Respondent denied liability for her injuries and moved for summary judgment on the grounds that her injuries did not arise out of or occur within the course of her employment.

Held: This Court granted Respondent’s motion for summary judgment because Petitioner’s injuries did not arise out of or within the course of her employment under § 39-71-407(2)(a), MCA (2013).

Stephens v. MACo, 2016 MTWCC 16
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: November 15, 2016; Dismissed: March 16, 2017

Related Topic: [Credibility](#)

Summary: Petitioner, an EMT with an ambulance service, suffered an injury while running an obstacle course at a health fair. Although her employer did not pay Petitioner to attend, Petitioner contended that her employer required or requested her attendance and that her supervisor directed her to compete on the obstacle course. Respondent argues that Petitioner was participating in a recreational or social activity not within the course of her employment at the time of her accident and injury.

Held: Petitioner’s employer did not require her to attend the health fair. Although Petitioner’s employer asked her to assume duties for the activity so that her presence was not wholly voluntary, her employer did not “request” her presence at the activity, as that term is defined in § 39-71-407(2)(b), MCA, because her injury did not occur in the performance of the duties her employer asked her to assume. Although Petitioner contended that her supervisor directed her to participate in the obstacle course on which she was injured, this Court did not find that portion of her testimony credible. Since Petitioner’s accident did not occur within the course of the duties her employer asked her to assume, her injury did not occur within the course of her employment under § 39-71-407(2)(b), MCA.

Amundsen v. Albertsons Companies, LLC, 2019 MTWCC 3
(Order Denying Respondent’s Motion for Summary Judgment and Granting in Part and Denying in Part Petitioner’s Motion for Summary Judgment)

Summary: Petitioner worked at a grocery store that is located in a strip mall with a large parking lot shared by the mall’s tenants. On his 15-minute break, Petitioner went to his car, which he had parked near one of the grocery store’s cart corrals. While walking back to the store toward the end of his break, he fell and suffered an injury. Respondent denied liability on the grounds that Petitioner’s injury did not arise out of and in the course of his employment, asserting that the parking lot was not part of the employer’s worksite.

Held: The area of the parking lot where Petitioner sustained his injury was part of his employer's worksite, as the grocery store's employees regularly work in that part of the parking lot. Therefore, Petitioner's injury arose out of and within the course of his employment.

CREDIBILITY

Vallance v. Montana Contractor Comp. Fund, 2006 MTWCC 26

(Findings of Fact, Conclusions of Law and Judgment, and Order Denying Summary Judgment).

Summary: Petitioner filed an occupational disease claim after a 2004 MRI showed that he had herniated disks. However, a 1996 MRI showed those same disks to be bulging. Petitioner has memory difficulties and did not report an accurate history to the physicians who initially concluded that his back problems were from an occupational disease, as those physicians were not aware that Petitioner had suffered several specific traumas to his back both on the job and outside of work.

Held: Petitioner, who has a history of back traumas, including two industrial accidents which he did not report to his employer, has failed to prove that his current back problems stem from an occupational disease rather than an industrial accident or some other specific trauma.

Johnson v. Liberty Mut. Fire Ins. Co., 2007 MTWCC 1

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: February 2, 2007; Dismissed: May 14, 2007

Summary: Petitioner alleges she fell at work, injuring her neck and upper back, and that she reported the injury to co-managers who left that employment shortly thereafter and apparently failed to file the report. Petitioner later filed a claim form with Respondent, alleging a progressive neck injury. Respondent accepted Petitioner's claim regarding degenerative changes in her neck, but has since denied her upper back claim.

Held: Although it is certainly plausible that an injured worker may submit a report of injury which a supervisor then fails to file properly, the empirical evidence presented in this case does not support Petitioner's claim. Petitioner's extensive contemporary medical records contain no evidence that Petitioner ever claimed that she was injured in a fall at work until nearly two years after she left this employment. Petitioner's claim is denied.

Somerville v. MACo Workers' Compensation Trust, 2007 MTWCC 20

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner alleges that he injured his back within the course and scope of his employment while operating a loader on June 15, 2005. Petitioner claims he informed his supervisor and a coworker about the incident shortly after it occurred. Petitioner's supervisor and coworker both claim that Petitioner was not operating a loader on that date, and that Petitioner admitted to them that he had injured his back outside of work on the evening of June 14, 2005.

Held: Although the Court was not entirely convinced of the credibility of Petitioner's supervisor and coworkers, Petitioner also was not entirely credible. The Court, therefore, concludes that Petitioner has failed to meet his burden of proof.

Hanson v. Cedar Valley Construction, Inc., Uninsured Employers' Fund, 2008 MTWCC 32
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: July 21, 2008; Dismissed: September 17, 2008

Summary: Petitioner petitioned the Court for a determination that he suffered a compensable industrial injury to his low back on May 14, 2007, during his employment with Cedar Valley Construction, Inc. Petitioner requested that the Court award temporary total disability benefits and determine the proper rate to be paid for such benefits. Additionally, Petitioner requested costs and attorney fees.

Held: The only evidence presented to the Court that Petitioner sustained an injury while working for Cedar Valley is Petitioner's own testimony. The Court does not find Petitioner's version of events to be credible. Therefore, the Court concludes that Petitioner has failed to meet his burden of proof.

Keller v. Rochdale Ins. Co., 2008 MTWCC 5
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned the Court for benefits related to an alleged industrial injury arising out of her employment with Four Corners Restaurant and Casino.

Held: Based on the evidence presented at trial and on the Court's determination that Petitioner was not a credible witness, Petitioner's claim for benefits is denied. Petitioner's version of the events on the date of her alleged injury differs dramatically from her coworkers' versions. The Court finds the coworkers that testified about the events in question credible. Furthermore, the medical documentation reflects that Petitioner reported the onset of her low-back pain prior to the alleged injury date.

Bagley v. Montana State Fund, 2009 MTWCC 29
(Finding of Fact, Conclusions of Law and Judgment).

Related Topics: [Costs](#), [Attorneys' Fees](#), [Penalties](#)

Summary: After Petitioner David Bagley suffered an industrial injury to his right arm, his employer assigned him to alternate job duties which consisted of completing coursework for an electrician's apprenticeship. Bagley asserted that he was unable to complete the hours to which his treating physician released him to return to work due to severe pain. Bagley's employer terminated his employment for failing to complete his work hours and for not reporting to work. Bagley argues he is entitled to temporary total disability benefits and that Respondent Montana State Fund has unreasonably refused to pay his benefits.

Held: The facts of this case unambiguously demonstrate that Bagley was terminated from his employment for disciplinary reasons. He refused to work the hours to which he had been released, and he then failed to report to work at all. Although Bagley's treating physicians disagree as to whether Bagley is restricted from using his right hand for writing as part of his job duties, they both agree that he is able to work in a sedentary position. Bagley's former employer made such a position available to him, and had Bagley not been fired for cause, he would have been able to continue in that position. Bagley's request for reinstatement of TTD benefits is denied. Since Bagley is not the prevailing party, he is not entitled to his costs, attorney fees, or a penalty.

Sherwood v. Watkins & Shepard Trucking, Great West Casualty Co., 2010 MTWCC 19
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Maximum Medical Improvement](#), [Benefits](#)

Summary: Petitioner suffered numerous industrial injuries over several years of working as a commercial truck driver. Petitioner's employer terminated him after he was missing for several hours with his truck. Although he was unable to account for his disappearance at the time, Petitioner later alleged that he fell and lost consciousness the day before his disappearance, which caused him to become confused the following day. Petitioner alleges that the sum of his industrial injuries and the medications he takes have rendered him totally disabled and that either of two previous employers should be liable for his condition.

Held: The Court does not believe that Petitioner's alleged fall and loss of consciousness occurred. The Court does not find Petitioner's report of another alleged industrial accident to be credible. Therefore, the employer at the time of Petitioner's previous, undisputed industrial injuries is liable for his present condition. Petitioner has presented no evidence that he is at MMI and therefore he is not entitled to permanent total disability benefits. Based on the evidence presented, the Court concludes Petitioner is entitled to temporary total disability benefits as of September 28, 2009.

Bagley v. Montana State Fund, 2009 MTWCC 41
(Order Denying Petitioner's Motion for Reconsideration).

Related Topic: [Evidence](#)

Summary: Petitioner moved the Court to reconsider its decision, arguing that the Court should not have found him incredible and further arguing that evidence presented at trial does not support the Court's findings regarding his modified job duties, his attendance at a learning center, and the severity of his underlying medical condition.

Held: Petitioner has not persuaded the Court that it misapprehended his credibility. While Petitioner would prefer that the Court make different findings, the findings Petitioner has objected to are all supported by evidence found in the record submitted for the Court's consideration.

Martin v. Montana State Fund, 2011 MTWCC 25
(Findings of Fact, Conclusions of Law and Judgment, Order Granting Petitioner's Motion to Exclude Consideration of Evidence of Probation Violation, Order Denying Petitioner's Motion to Compel, and Order Denying Petitioner's Motion to Supplement Record).

Summary: Petitioner alleges that he injured his low back while preparing metal siding for installation on a job site. Respondent denied Petitioner's claim, alleging that its investigation led it to conclude that Petitioner was not injured in the course and scope of his employment. In separate motions, Petitioner moves this Court to exclude evidence regarding an alleged probation violation, moves to compel Respondent to produce an investigative report, and moves to supplement the record with a 2007 W-2 form to refute the employer's testimony that Petitioner first worked for him in March 2008.

Held: Petitioner has not proven that he was injured as a result of an industrial accident. Petitioner's motion to exclude evidence of an alleged probation violation is granted because the evidence is not relevant to the issue in this case. Petitioner's motion to compel production of an investigative report is denied because the report is protected work product. Petitioner's motion to supplement the record

is denied because it is irrelevant as to whether Petitioner's first day of employment with the employer occurred in 2007 or 2008.

Car Werks, LLC v. Uninsured Employers Fund v. Gawronski, 2015 MTWCC 21

(Findings of Fact, Conclusions of Law and Judgment)

Related Topics: [Uninsured Employers Fund](#), [Burden of Proof](#)

Summary: An uninsured employer contests the Uninsured Employers' Fund's acceptance of liability for an injury claim on the grounds that the employee's injuries were not suffered in a car accident in the course of employment but were actually suffered in an earlier motorcycle accident.

Held: The uninsured employer has not met its burden of proving that the employee's injuries were related to an earlier motorcycle accident. This Court did not find the uninsured employer's evidence credible. Moreover, there is sufficient credible evidence and objective medical findings to support the employee's claim for benefits. The uninsured employer is legally obligated to indemnify the Uninsured Employers' Fund for all benefits paid or payable to the employee for his workers' compensation claim.

Warburton v. Liberty Northwest Ins. Co., 2016 MTWCC 1

(Findings of Fact, Conclusions of Law and Judgment)

Related Topics: [Burden of Proof](#), [Physicians](#)

Summary: Petitioner tripped and fell during her work shift at a department store. She sought medical treatment approximately 1½ months later and subsequently claimed that she suffered an injury in the industrial accident. Respondent denied the claim, arguing that Petitioner's medical problems predated the industrial accident.

Held: This Court did not find Petitioner credible and concluded that she did not suffer an injury as a result of her industrial accident.

Rutecki v. First Liberty Insurance Corporation, 2016 MTWCC 6

(Findings of Fact, Conclusions of Law, and Judgment)

Related Topics: [Burden of Proof](#), [Physicians](#)

Summary: Petitioner contends she is entitled to PPD and vocational rehabilitation benefits because she suffered an actual wage loss as a result of her industrial injury. Respondent argues Petitioner has not proven that she suffered an actual wage loss and, consequently, that she is not entitled to PPD or vocational rehabilitation benefits.

Held: Petitioner has not proven she suffered an actual wage loss as a result of her industrial injury. Medical providers have approved alternative jobs which pay as much as her time-of-injury position. She is therefore not entitled to PPD or vocational rehabilitation benefits.

Guymon v. Montana State Fund, 2016 MTWCC 7
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Physicians](#)

Summary: Petitioner claims he suffered a compensable injury when his employer “body blocked” him while he was operating a jumping jack at work. Respondent counters that Petitioner failed to prove that it is more probable than not that he suffered a compensable injury at work.

Held: The evidence does not support Petitioner’s contention that he suffered a compensable injury at work.

Seymour v. Uninsured Employers Fund, 2017 MTWCC 1
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Uninsured Employers Fund](#)

Summary: Petitioner suffered an injury when he fell from a roof on which he claims to have been working. Respondent / Third Party Petitioner denies that Petitioner was an employee and that he was in the course of his employment at the time of his injury. However, if this Court determines otherwise, Respondent/Third Party Petitioner seeks indemnification from Third Party Respondent as an uninsured employer for all benefits paid or payable to Petitioner. Third Party Respondent denies employing Petitioner, either directly or indirectly. However, if this Court determines otherwise, Third Party Respondent contends that Petitioner fell from the roof because of his use of alcohol or non-prescription drugs.

Held: At the time of Petitioner’s injury, Petitioner was employed by Third Party Respondent and in the course of his employment. Petitioner’s alleged use of alcohol or non-prescription drugs was not the major contributing cause of his accident, and therefore, Petitioner is entitled to benefits under the WCA. Third Party Respondent shall indemnify Respondent / Third Party Petitioner for all benefits paid or payable to Petitioner. Petitioner is entitled to his costs against Respondent / Third-Party Petitioner.

Heichel v. Liberty Mutual Insurance, 2018 MTWCC 6
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner asserts she injured her neck and shoulder in an industrial accident and told her manager of the accident and injury later that shift. Petitioner also asserts she told two other managers of her accident and injury within 30 days. The managers deny that Petitioner told them she suffered an industrial injury. Two of the managers testified that Petitioner initially said she was injured in a fall at her home.

Held: After weighing the evidence, this Court finds that Petitioner did not give her employer notice of her alleged industrial accident and injury within 30 days. Therefore, Petitioner’s claim is not compensable under § 39-71-603(1), MCA.

York v. MACo Workers Comp Trust, 2019 MTWCC 1
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner suffered a compensable right shoulder injury in 2007. In 2013, her treating physician, an orthopedic surgeon, diagnosed her with a torn rotator cuff and labrum in her left

shoulder and opined that her left shoulder condition is an overuse syndrome caused by her inability to fully use her right shoulder for many years. Petitioner seeks medical benefits and TTD or PTD benefits. Respondent denied liability for Petitioner's left shoulder condition, relying on its IME physician, who opined that while Petitioner's left shoulder condition is degenerative, it likely cannot be attributed to compensatory overuse alone.

Held: Respondent is liable for Petitioner's left shoulder condition because it is an overuse syndrome caused by her inability to fully use her right shoulder after her compensable injury. This Court gives greater weight to Petitioner's treating physician because he has greater credentials to opine as to the cause of a shoulder condition. Respondent is liable for medical benefits. However, Respondent is not currently liable for TTD benefits because Petitioner has not suffered a total wage loss as a result of her injury, including her left shoulder condition, because she was released to return to work but has voluntarily refused to return. Respondent is not currently liable for PTD benefits because Petitioner is not at MMI and because there is insufficient evidence to find that she does not have a reasonable prospect of performing regular employment.

Leys v. Liberty Mutual Insurance, 2019 MTWCC 10
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner claims she suffered carpal tunnel and postconcussive syndromes following a 2008 industrial motor vehicle accident. Respondent accepted liability for the accident and paid TTD benefits until June 23, 2015, at which time it denied that Petitioner had postconcussive syndrome as a result of her motor vehicle accident. Petitioner's carpal tunnel syndrome recurred in late 2015, but Respondent refused to reinstate TTD benefits. Petitioner argues that Respondent remains liable for her carpal tunnel syndrome and that she is entitled to PTD and/or TTD benefits because her accident-related conditions have rendered her unable to work. Respondent disputes its continued liability for Petitioner's carpal tunnel syndrome and denies she is entitled to any further wage loss benefits.

Held: Respondent is no longer liable for Petitioner's carpal tunnel syndrome because the medical opinions tying the recurrence to her 2008 industrial motor vehicle accident were based on misinformation and Respondent's initial acceptance of liability for that condition was based on a mutual mistake of fact. Petitioner is not entitled to TTD or PTD benefits for postconcussive syndrome because her treating physician's opinions were unreliable and, therefore, she did not meet her burden of proving that she suffered from postconcussive syndrome from 2015-present as a result of her 2008 industrial motor vehicle accident.

DISABILITY

Peterson v. Montana Schools Group Ins. Auth., 2006 MTWCC 14

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: May 5, 2006; Dismissed: July 26, 2006

Pertinent Notes: Permanent total disability, re-affirming *Weisgerber*.

Summary: Petitioner suffered a compensable occupational disease in his right arm and shoulder, rendering him unable to return to his custodian/maintenance position with the school district. After Petitioner reached maximum medical improvement and his treating physician approved five job analyses, Respondent terminated Petitioner's temporary total disability benefits. However, Petitioner's treating physician only considered whether Petitioner was employable in the five job analyses based solely upon the condition of Petitioner's shoulder, and did not take Petitioner's other serious health problems into consideration.

Held: Petitioner's occupational disease, taken in conjunction with the rest of his health problems and his lack of education or skills, renders him unemployable. Because he has reached maximum medical improvement, he is no longer eligible for temporary total disability benefits, as defined by § 39-71-116(34), MCA (1997). Petitioner is therefore permanently totally disabled within the meaning of § 39-71-116(24), MCA (1997).

Benhart v. Liberty Northwest, 2007 MTWCC 3

(Decision and Judgment).

Summary: Petitioner suffered a work-related injury on January 15, 2003. Prior to his injury, he had been diagnosed with Hepatitis C. Subsequent to Petitioner's injury, and for unrelated reasons, his Hepatitis C worsened and his health declined. Respondent denied liability for PTD benefits, arguing that although Petitioner's Hepatitis C predated his work-related injury, the Hepatitis C did not cause Petitioner's health to decline until after his work-related injury. Petitioner argued that even without taking his Hepatitis C into account, his work-related injury rendered him permanently totally disabled.

Held: The parties agreed that Petitioner's condition prior to the effects of the Hepatitis C limited Petitioner to, at most, a part-time job which his treating physician approved only on a trial basis and that it was reasonably foreseeable that Petitioner would be physically unable to function at that level. However, no job analyses were submitted. The Court concludes that even without taking Petitioner's subsequent complications from Hepatitis C into account, he is permanently totally disabled.

McLaughlin v. Northwestern Corp., 2011 MTWCC 9

(Order Denying Respondent's Motion to Dismiss and Motion for Summary Judgment).

Summary: Respondent moves for dismissal of the Petition for Trial, or alternatively, summary judgment in its favor regarding Petitioner's request for a hiring preference under § 39-71-317(2), MCA. Respondent alleges that Petitioner is not entitled to a hiring preference because the parties settled Petitioner's claim on a disputed liability basis.

Held: Section 39-71-317(2), MCA, requires a hiring preference where a worker has suffered a qualifying injury. Since the parties settled Petitioner's claim on a disputed liability basis, whether Petitioner suffered a qualifying injury is a question of fact to be determined by the Court. This case is not appropriate for dismissal nor summary judgment.

DISCOVERY

Russell v. Watkins & Shepard Trucking Co., 2007 MTWCC 5
(Order Regarding Respondent's Motion in *Limine*).

Summary: Respondent moved in *limine* to exclude an Addendum report and medical opinions because the report was not provided to Respondent in a timely manner.

Held: The Court ordered Petitioner to produce all discoverable medical records, excluding any reports or opinions not disclosed by the Court's deadline. The Court further held that Respondent would be granted leave to conduct an additional IME after it examined the records, if Respondent so desired.

St. Paul Travelers Companies, Inc. v. Liberty Northwest Ins. Corp., 2007 MTWCC 44
(Order Granting Motion to Compel and Awarding Attorneys' Fees and Costs).

Summary: Petitioner moved this Court to compel Respondent to answer certain requests for production and an interrogatory to which Respondent had either objected to or provided answers which Petitioner argued were incomplete. Petitioner further requested sanctions pursuant to ARM 24.5.326 in the form of attorney fees and costs.

Held: Respondent's refusal to answer certain of Petitioner's discovery requests on the basis that the information sought was irrelevant does not satisfy the requirements of Mont. R. Civ. P. 26 because these requests could reasonably lead to the discovery of admissible evidence. The Court agrees with Petitioner that certain of Respondent's responses were incomplete or nonresponsive. Petitioner is entitled to reasonable attorney fees and costs pursuant to ARM 24.5.326

Fore v. Transp. Ins. Co., 2008 MTWCC 49
(Order Granting Petitioner's Motion to Compel).

Summary: Petitioner Billy Fore moves the Court to compel Respondent Transportation Insurance Company to produce approximately 800,000 pages of Environmental Protection Agency documentation contained on ten compact disks. Petitioner argues that Respondent is required to produce the documentation in discovery because Respondent asserted the "last injurious exposure" rule in its response to Petitioner's petition for benefits. Respondent responds that Petitioner's discovery request is improper because: (1) the information is not peculiarly within the possession of Respondent but is available to be obtained by other means; and (2) the information is a public record and obtainable under the Freedom of Information Act.

Held: Petitioner's motion to compel is granted. Pursuant to Rule 26(b)(1), Mont. R. Civ. P., Respondent is generally required to produce discovery that is relevant and not privileged. However, the Court shall limit discovery if it determines that the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive. In this case, Respondent has failed to show that Petitioner may obtain the compact disks from a source that is more convenient, less burdensome, or less expensive. Respondent may charge Petitioner a reasonable amount to recoup its cost in copying the compact disks.

Vandervalk v. Montana State Fund, 2009 MTWCC 24
(Order Granting Motion to Quash Subpoenas *Duces Tecum* and Denying Motion for Protective Order).

Summary: The State of Montana moved to quash two Subpoenas *Duces Tecum* which were issued by this Court and served upon it at Kurt Vandervalk's request. The State argues that the subpoenas

were not served in accordance with ARM 24.5.331, that the discovery sought is unduly burdensome, and that the items requested bear no relationship to Vandervalk's petition in this Court. The State further moved for a protective order which would prohibit Vandervalk from serving additional subpoenas upon it. Vandervalk responds that he has a right to the information he seeks under Article II, § 9 of the Montana Constitution.

Held: Vandervalk's subpoenas are quashed as they were not served in accordance with ARM 24.5.331. Furthermore, even if re-served properly, the substance of Vandervalk's request is unduly burdensome upon the State and appears to largely seek information which is not relevant to his claim before this Court. However, the State's motion for a protective order is preemptive and overly broad and is therefore denied.

Hopkins v. Uninsured Employers' Fund, 2009 MTWCC 13

(Order Denying Uninsured Employers' Fund's Motion to Compel).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Respondent Uninsured Employers' Fund (UEF) moved the Court for an Order compelling Intervenor to produce his state and federal tax returns, with all schedules, for the years 2004 through 2007. Intervenor responds that, because the central issue in this case is whether Petitioner was Intervenor's employee on the date of his injury, November 2, 2007, the tax returns for any years besides 2007 are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. With respect to Intervenor's 2007 tax return, Intervenor states that he has not produced that return because he has not yet filed a tax return for 2007.

Held: The UEF's motion is denied. The UEF argues that the tax returns for the years 2004 through 2007 are relevant, or at least reasonably calculated to lead to the discovery of admissible evidence, "in light of Petitioner, Brock Hopkins, [sic] assertion that he worked for and was paid by [Intervenor] for the years 2004 through 2007." The UEF's argument basically boils down to Intervenor's tax returns being discoverable because the UEF "believes" they are discoverable. Beyond the UEF's conclusory assertion, however, the UEF offers no explanation or argument as to *how* Intervenor's tax returns from the years preceding Petitioner's date of injury are relevant or reasonably calculated to lead to the discovery of admissible evidence.

Connors v. U.S. Fidelity & Guarantee, 2010 MTWCC 7

(Order Granting Petitioner's Motion for a Protective Order, Denying Respondent's Motion to Compel, and Denying Petitioner's Motion to Compel).

Related Topics: [Procedure](#), [Penalties](#), [Attorneys' Fees](#)

Summary: This case involves only the issue of whether Petitioner is entitled to attorney fees and a penalty. Petitioner moved for a protective order against Respondent's first discovery requests, alleging that the information Respondent sought was irrelevant in light of the narrow issues presented for determination. Respondent moved to compel Petitioner to answer that discovery. Petitioner also moved to compel Respondent to respond to some of Petitioner's discovery requests which pertain to Respondent's relationship with the IME doctor.

Held: Respondent has not convinced the Court that it is entitled to the discovery it seeks. Its motion to compel is therefore denied and Petitioner's motion for a protective order is granted. Petitioner's motion to compel is denied as Petitioner relies solely on a previous ruling of this Court which does not support Petitioner's position.

Salazar v. Montana State Fund, 2011 MTWCC 28
(Order Granting Respondent's Motion in Limine).

Summary: Respondent moved in limine for an order excluding two documents which it disclosed inadvertently in discovery and which contained information about reserves it set in this case. Petitioner opposes Respondent's motion. While acknowledging that Respondent inadvertently disclosed the reserve information, Petitioner refuses to return the documents and argues that he intends to introduce the reserve information into evidence to prove that Respondent unreasonably adjusted his claim

Held: Respondent's motion is granted. The reserve information is wholly irrelevant to the issues before the Court and is protected under the work product doctrine. Petitioner may not use the documents at issue as trial exhibits.

Vulk v. Employers Compensation Ins. Co., 2014 MTWCC 13
(Order Granting Respondent's Motion to Compel and Granting in Part and Denying in Part Respondent's Motion for a Protective Order)

Related Topic: [Independent Medical Examinations](#)

Summary: Respondent moved to compel Petitioner to respond to two discovery requests to which Petitioner had objected on the grounds of work-product privilege. Respondent further moved for a protective order to bar Petitioner from seeking certain information relating to the physician who performed an IME of Petitioner at Respondent's request. Petitioner opposed Respondent's motions.

Held: Respondent's motion to compel is granted. Respondent's motion for a protective order is granted in part and denied in part, consistent with the holdings of *Fjelstad v. Fireman's Fund* and *Hegwood v. Montana Fourth Judicial Dist. Court*.

Atchley v. Louisiana Pacific Corp., 2015 MTWCC 3
(Order Granting in part and Denying in part Respondent's Motion for Sanctions, Motion to Limit and Motion to Strike Regarding "11 Mile Radius" Exhibit)

Related Topic: [Sanctions](#)

Summary: Respondent moves for sanctions and to limit testimony and the use of an exhibit that was not disclosed until months after the Court granted Respondent's motion to compel discovery of all evidence supporting Petitioner's allegations. Petitioner responds that Respondent cannot prove prejudice by the late disclosure of the exhibit and that the motion is moot as Petitioner does not intend to offer the document into evidence.

Held: Respondent was put on notice after this Court granted its motion to compel that timber harvested in the so-called "11-mile radius" zone was a potential source of the alleged asbestos contamination at its mill and therefore, any prejudice caused by the late disclosure of the "11-mile radius" exhibit was not as great as Respondent alleges. Nevertheless, sanctions are warranted for Petitioner's failure to timely produce the disputed document. The Court will grant a motion to extend the deadlines in the scheduling order to provide Respondent time to "analyze and investigate" the disputed exhibit, which may include reopening the deposition of Petitioner's expert; to supplement its exhibit list; and to file other pretrial motions it feels are needed because of the late disclosure of the disputed exhibit. If the deposition is reopened, Petitioner shall bear all expenses of the deposition, including any reasonable costs incurred by Respondent. Should Respondent file any motions or

reopen the deposition, this Court will vacate the current trial setting. The postponement of trial and the increased costs to Petitioner will serve as the appropriate sanctions for failing to timely produce the disputed document.

T.B. v. Montana State Fund, 2015 MTWCC 18

(Order Granting Respondent's Second Motion to Compel Discovery)

Summary: Respondent moved to compel Petitioner to produce posts from her Facebook page, including posts she designated as "private." Petitioner objected on the grounds of privacy and on the basis that some of her posts might be privileged.

Held: Respondent's motion to compel is granted because its request for production is reasonably calculated to obtain evidence relevant to the issues in this case, including evidence tending to prove or disprove Petitioner's claim that her injury and occupational disease make it difficult for her to engage in physical activities, including typing and using a computer.

Raines v. Technology Insurance Co. Inc., 2020 MTWCC 15

(Order Denying Respondent's Amended Motion for Protective Order)

Summary: Respondent seeks a protective order, asserting that its attorney's e-mails to the independent insurance agency from which Petitioner procured workers' compensation insurance for his business are protected by the work-product privilege. In the alternative, Respondent asserts that it should not have to produce its attorney's e-mails until after Petitioner's deposition.

Held: Respondent's attorney waived the work-product privilege by voluntarily disclosing his work product to the independent insurance agency. Respondent's attorney did not have a reasonable basis to believe that the independent insurance agency would keep the disclosed material confidential because the independent insurance agency has an overlapping relationship with Petitioner and Respondent. Moreover, because the independent insurance agency does not make any decisions in the adjusting of Petitioner's claim and cannot be liable for Petitioner's benefits, it is a disinterested third-party and does not share a common litigation interest with Respondent. Respondent does not have good cause to delay production of its attorney's e-mails until after Petitioner's deposition.

Hogan v. Federated Mutual Insurance Company, 2020 MTWCC 22

(Order Denying Petitioner's Motion for Protective Order)

Summary: Petitioner seeks a protective order prohibiting Respondent from obtaining his mental health records in discovery, asserting that they have no relevance to the issue of whether Respondent may subrogate.

Held: Petitioner's mental health records are discoverable because they are relevant to the factual issue of his "entire loss" from his injury, relevant to the factual issue of the amount of workers' compensation benefits he will receive, and because Respondent is entitled to them to cross examine the expert witnesses Petitioner has disclosed to testify to his mental injuries and the costs to treat those injuries.

Ray v. Ohio Security Insurance Co., 2021 MTWCC 1

(Order Sustaining Respondent's Discovery Objections)

Summary: This Court reviewed documents *in camera* to determine if the information that Respondent objected to producing was protected by the attorney-client or work-product privilege, or whether it was reserve information, which is irrelevant to the issues in this case. This Court also reviewed the documents to determine whether Respondent's attorneys acted as the claims adjusters, in which case the attorney-client and work-product privileges would arguably be waived.

Held: This Court sustained Respondent's objections because the information to which it objected to producing is privileged or irrelevant reserve information. Moreover, Respondent did not waive any privilege because its attorneys did not act as claims adjusters; rather, they were acting solely within their roles as legal advisors.

Hogan v. Federated Mutual Insurance Company, 2021 MTWCC 7
(Order Denying Petitioner's Motion to Compel Discovery)

Summary: Petitioner alleges that Respondent may not exercise its right of subrogation because he has not been made whole. He now seeks an order compelling Respondent to produce its reserve information, asserting that reserve information is relevant to the issue of the amount of workers' compensation benefits to be paid in the future.

Held: After reviewing the Montana Supreme Court's decisions in the area of workers' compensation subrogation, this Court decided that it is unnecessary to make a finding of the amount of workers' compensation benefits to be paid in the future to decide whether Petitioner has presently been made whole. Because it is unnecessary for this Court to make a finding of the amount of benefits to be paid, Respondent's reserve information is irrelevant and not discoverable.

Bowman v. Hartford Accident & Indemnity Co., 2021 MTWCC 9
(Order Granting Petitioner's Motion to Compel and Denying Respondent's Motion to Quash)

Summary: Petitioner, who sustained an occupational disease in the course of her employment as a workers' compensation claims adjuster, moves to compel Respondent, a Plan II insurer, to produce her former employer's file on her claim. Petitioner asserts that the employer is actively involved in adjusting her claim from an office in Kentucky, in violation of Montana law, which requires that Montana claims be adjusted from an office in Montana. Respondent opposes Petitioner's Motion to Compel and has moved to quash the Subpoena Duces Tecum that Petitioner has served upon her former employer. Respondent argues that Petitioner's former employer has not been actively involved in adjusting her claim; instead, Respondent contends that the employer's role has been that of a payment clerk. Respondent also asks this Court to quash the subpoena to the extent it would require the employer to produce communications protected by the attorney-client and work-product privileges.

Held: Petitioner is entitled to her former employer's entire file because several documents from Respondent's claim file suggest that the employer is actively involved in adjusting Petitioner's claim and supervising and directing the Montana adjusters. Petitioner has the right to conduct discovery into the employer's role in the adjusting of her claim. Moreover, if the Montana adjusters disclosed communications from Respondent's attorney to the employer, then the attorney-client and work-product privileges have been waived under established Montana law.

DRUG AND ALCOHOL USE

Heth v. Montana State Fund, 2008 MTWCC 19 (2009 MT 149)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: June 13, 2008; Affirmed: May 5, 2009

Related Topic: [Burden of Proof](#)

Summary: Petitioner was in a single-vehicle accident involving the septic pumper truck he drove for his employer. Petitioner's blood-alcohol content (BAC) tested at .0874 shortly after the accident and beer cans were found in and around the truck. Respondent argued that it is not liable for Petitioner's workers' compensation claim because alcohol was the major contributing cause of the accident. Petitioner argued that alcohol was not the major contributing cause of the accident, and in any event, his employer knew that he drank alcohol on the job and therefore he is not barred from recovery under § 39-71-407(4), MCA.

Held: Although Respondent proved that alcohol was the major contributing cause of the accident, Petitioner proved that his employer knew he used alcohol while performing his job duties. Therefore, Petitioner is eligible for workers' compensation benefits.

EMERGENCY TRIALS

Rogers v. Montana State Fund, 2005 MTWCC 58
(Order Denying Request for Emergency Trial).

Summary: Petitioner alleges he suffered a dislocated shoulder and torn rotator cuff while in the employ of Respondent's insured. Petitioner requests an emergency trial based on his allegation that he needs shoulder surgery as soon as possible along with his medical bills paid, and payment of temporary total disability benefits.

Held: The request for an emergency trial setting is denied. ARM 24.5.311 requires good cause be shown to justify the setting of an emergency trial. To determine whether good cause exists, the rule requires that "[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists." In the present case, other than Petitioner's conclusory allegation that he needs shoulder surgery as soon as possible and his medical bills paid, Petitioner offers no details for the Court to determine whether good cause exists to set an emergency trial.

Lyons v. Montana State Fund, 2006 MTWCC 17
(Order Denying Request for Emergency Trial).

Summary: Petitioner alleges he sustained injuries while employed by Respondent's insured. According to Petitioner's Emergency Petition, Respondent has denied liability on the grounds that Petitioner allegedly failed to timely notify his employer of his injuries pursuant to § 39-71-603, MCA (2005). Petitioner requests an emergency trial setting.

Held: The request for an emergency trial setting is denied. ARM 24.5.311 requires good cause be shown to justify the setting of an emergency trial. To determine whether good cause exists, the rule requires that "[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists." In his petition, Petitioner expounds at length as to the circumstances of his injury and the timing of his notice to his employer. However, he devotes one sentence in support of justification for an emergency setting. In this sentence, Petitioner offers no details which would allow the Court to determine whether good cause exists to set an emergency trial.

Travelers Insurance Company v. Ulrich-Goodwin, 2006 MTWCC 188
(Order Denying Request for Emergency Trial).

Related Topic: [Independent Medical Examinations](#)

Summary: Petitioner requests an emergency hearing and declaratory ruling pursuant to ARM 24.5.311 and 24.5.351.

Held: The request for an emergency setting is denied. ARM 24.5.311 requires that good cause be shown to justify the setting of an emergency trial. To determine whether good cause exists, the rule requires that "[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists." In the present case, Petitioner has petitioned for declaratory relief seeking, apparently, a ruling that Respondent be required to travel from her home in Kalispell to an independent medical examination (IME) in Bozeman. Section 39-71-605(1)(b), MCA (2005), mandates that an IME must be conducted at a "place that is as close to the employee's residence as is practical." Although Petitioner states that it is willing to pay all

expenses and endeavor to make Respondent's travel from Kalispell to Bozeman for the IME as convenient as possible, it has offered no details in its petition as to how the Court might find that an examination in Bozeman is as close to Respondent's residence as practical. Accordingly, the Court cannot find good cause exists to justify an emergency setting.

EQUITY - ESTOPPEL & WAIVER

Johnson v. Liberty Northwest Ins. Corp., 2007 MTWCC 7
(Order Denying Respondent's Motion to Compel).

Summary: Respondent Liberty Northwest Insurance Corporation moved the Court to compel Petitioner to reveal the terms of a settlement agreement between Petitioner and International Paper Company. Liberty argues that in the original petition to the Workers' Compensation Court, Petitioner alleged that he suffers asbestos-related lung disease as a result of his employment with Champion International Company and/or Stimson Lumber Company. Petitioner entered into a disputed liability settlement agreement with International Paper (successor-in-interest to Champion) on April 20, 2005. Thereafter, International Paper was dismissed from the case. Liberty, Stimson's insurer, argued that Petitioner was judicially estopped from pursuing his claim against Liberty if the settlement terms revealed that International Paper and Petitioner settled the case for a substantial sum.

Held: Liberty's motion to compel is denied. The settlement between Petitioner and International Paper is a disputed liability settlement agreement. Because no set of facts contained in the settlement agreement would support Respondent's judicial estoppel argument, the Court will not compel Petitioner to reveal the terms of the agreement.

Young v. Montana State Fund, 2008 MTWCC 2
(Decision and Judgment).

Summary: On August 15, 2005, Petitioner sent a demand letter to Respondent, requesting payment of a permanent partial disability (PPD) award pursuant to *Reesor v. Montana State Fund*. The following day, the Montana Supreme Court ruled in *Otteson v. Montana State Fund*, that PPD awards were not payable to permanently totally disabled claimants and thus Petitioner was not entitled to receive the PPD benefits paid by Respondent. Respondent nonetheless paid Petitioner a PPD award on August 22, 2005. Respondent requested return of these funds on November 21, 2005. Petitioner refused, and Respondent began recouping the PPD award by reducing Petitioner's biweekly benefits by \$23.78. Petitioner argues that for equitable reasons, Respondent is not entitled to the return of the PPD award.

Held: Insofar as Petitioner changed his position for the worse based upon his belief that Respondent had paid him a PPD award and would not request its return, Respondent is equitably estopped from recouping that portion of the erroneous payment from Petitioner. Therefore, of the \$16,625 Respondent erroneously paid to Petitioner, Respondent is entitled to reduce Petitioner's biweekly benefits to recoup a total of \$10,529.

Murphy v. Montana State Fund, 2010 MTWCC 39
(Order Granting Respondent's Motion to Amend Response to Petition for Trial).

Related Topic: [Procedure](#)

Summary: Respondent asks for leave to amend its response to Petitioner's petition for trial to add a contention that Petitioner did not notify his employer of his injury within 30 days of the industrial accident. Petitioner opposes Respondent's motion, arguing that Respondent has waived its right to assert this defense.

Held: Respondent's motion to amend is granted. Petitioner's contention that Respondent cannot successfully defend its claim on these particular grounds is not a basis for precluding the amendment.

McLaughlin v. Northwest Corporation, 2011 MTWCC 17
(Order Denying Respondent's Motion for Summary Judgment).

Summary: Respondent moved for summary judgment on Petitioner's claim to a rehiring preference pursuant to § 39-71-317(2), MCA. Respondent claims Petitioner is equitably estopped from claiming a rehiring preference because Petitioner's former attorney represented in a settlement letter that Petitioner would give up his entitlement to a rehiring preference if he settled his claim on a disputed liability basis. Petitioner contends that Respondent rejected his initial settlement offer and the rehiring preference was never addressed again. Petitioner contends that when the case settled two and half months later, the settlement agreement unambiguously settled only his claim for benefits and not the rehiring preference. Petitioner contends that language which may have been construed as encompassing the rehiring preference was removed from the Petition for Settlement at Petitioner's request and with Respondent's assent.

Held: Respondent's motion is denied. To prevail on a claim of equitable estoppel, a party must establish all six elements by clear and convincing evidence. Respondent has not established all the elements of equitable estoppel.

Newlon v. Teck American Inc., 2014 MTWCC 12 (2015 MT 317)
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: January 6, 2015; Affirmed: November 10, 2015

Summary: In 1996, Petitioner settled numerous workers' compensation claims against his previous employer with the understanding that he would retain lifetime medical benefits for his left-knee and back conditions. Petitioner did not obtain any treatment for his knee from 2000 until 2007. When Petitioner resumed treatment, Respondent paid until 2011, when it asserted a defense under § 39-71-704(1)(d), MCA, alleging that it was relieved of further liability because Petitioner had not used his medical benefits for more than 60 consecutive months. Petitioner contends that his medical benefits for his knee condition remain open from a claim which predated the addition of the 60-month limitation to the statute, or alternatively, that Respondent is equitably estopped from asserting the 60-month rule in this case. Respondent argues that Petitioner's current knee problems are due to his current employment, or alternatively, that Petitioner's claim is barred by a statute of repose, a statute of limitations, estoppel, or laches.

Held: Petitioner's claim is properly considered under the 1991 WCA, which contains a 60-month provision. However, Respondent is equitably estopped from asserting a defense under § 39-71-704(1)(d), MCA. Respondent has not proven that Petitioner's current knee condition is due to a superseding intervening cause. Respondent has not proven that Petitioner's claim is barred by a statute of repose, statute of limitations, estoppel, or laches. Petitioner is entitled to his costs.

McCrary v. Liberty Mutual Fire Insurance Co., 2018 MTWCC 5
(Decision on Stipulated Facts and Judgment)

Appealed to Montana Supreme Court: March 30, 2018; Dismissed: July 16, 2018

Summary: Petitioner suffered an industrial injury to his low back in 1977. His PTD rate for this injury is \$174, which would be payable for his lifetime under the 1977 WCA. Petitioner subsequently worked in a "sheltered" position with his time-of-injury employer and suffered an industrial injury to his knee in 1983. His PTD rate for this injury is \$277, which would be payable until his receipt of

Social Security retirement under the 1983 WCA. He returned to work, but his time-of-injury employer went out of business in 1996, and he has not worked since. From 1997 to 2009, Petitioner: asserted that the combination of his back and knee injuries rendered him permanently totally disabled; demanded PTD benefits under his 1983 claim at the rate of \$277; acknowledged that such benefits would terminate on his receipt of Social Security retirement benefits; obtained PTD benefits at the \$277 rate; obtained attorney fees calculated on a percentage of the PTD benefits he received; and then, after a dispute arose over periods in which Respondent had not paid PTD benefits, obtained a judgment from this Court pursuant to which Respondent was legally obligated to pay PTD at the \$277 rate and attorney fees calculated on the amount of PTD benefits awarded. Petitioner and Respondent stipulate that Respondent “has not paid any benefit to which [Petitioner] is not entitled.” However, Petitioner now argues that his back injury was the “actual cause” of his permanent total disability and, therefore, that Respondent should have paid him PTD benefits under his 1977 claim, and that he is now entitled to PTD benefits under his 1977 claim. Respondent argues that Petitioner is estopped from claiming, and waived his asserted right to, PTD benefits for his 1977 claim.

Held: Petitioner waived his claimed right to PTD benefits under his 1977 claim. Petitioner arguably had the right to PTD benefits under his 1977 claim because he thereafter worked in a sheltered job, which is not to be considered when determining whether a claimant is PTD. However, by his express declarations and his course of conduct, Petitioner intentionally and voluntarily acted inconsistently with his asserted right to PTD benefits under his 1977 claim. And, although the parties have agreed that if Petitioner prevails, Respondent would be entitled to a credit in the amount of what would then be deemed an overpayment of PTD benefits, prejudice to Respondent would result if Petitioner was now allowed to obtain PTD benefits under his 1977 claim because Petitioner has not agreed to reimburse Respondent for the attorney fees calculated on the higher rate, nor to provide any compensation to Respondent for the time-value-of money.

EVIDENCE

Thompson v. State of Montana, 2006 MTWCC 1

(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.

Kilgore v. Transportation Insurance Co., 2008 MTWCC 47

(Order Denying Respondent's Motion to Allow a Post-Trial Deposition of Robert Marozzo and Denying Introduction of Respondent's Proposed Exhibit 24).

Summary: Respondent moves this Court to allow a post-trial deposition of Robert Marozzo, a former W.R. Grace management official, for the purpose of rebutting or impeaching Petitioner's allegedly inconsistent testimony regarding her W.R. Grace termination date. Respondent also moves the Court for admission of proposed Exhibit 24, a copy of a W.R. Grace "Pay Roll Change Notice" which indicates that Petitioner was discharged from W.R. Grace effective March 23, 1987. Respondent argues that proposed Exhibit 24 should also be admitted as either rebuttal and/or impeachment evidence.

Held: Petitioner testified at her deposition and at trial that her termination from W.R. Grace occurred in September 1987. However, although she testified at her deposition that her termination was precipitated by missed work days as a result of being snowed in while visiting family in Washington, she recalled at trial that her missed work days actually resulted from a neck injury she sustained due to a July 1987 car accident. Respondent asserts that Petitioner's inconsistent testimony opens the door for Marozzo's testimony and the admission of proposed Exhibit 24. At the time of the pretrial conference the parties stipulated that the 1987 statutes applied to Petitioner's claim. After the pretrial conference, Respondent sought to amend the Pretrial Order and sought to dispute the applicable statutory year in contravention of ARM 24.5.318(4). Respondent also sought to introduce proposed Exhibit 24 in support of its argument. Regardless of whether Respondent attempts to couch its evidence as rebuttal or impeachment evidence, Respondent is seeking to introduce untimely disclosed evidence in order to fundamentally alter the issues that were agreed to at the pretrial conference and that were incorporated into the Pretrial Order. In light of the statutory year stipulation, there is simply nothing for Respondent to either impeach or rebut.

Hilbig v. Uninsured Employers' Fund, 2008 MTWCC 43

(Order Denying the Uninsured Employers' Fund's Motion to Find Summary Judgment Inappropriate and Granting the UEF's Motion for an Extension of Time to Respond).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Respondent UEF moved the Court to find summary judgment inappropriate pursuant to ARM 24.5.329(1)(c), or in the alternative to grant the UEF an extension of time to file a response brief. The UEF asserted that it had recently learned of medical evidence which would place a material fact in dispute and would thereby render summary judgment inappropriate in the case.

Held: Two days before trial, the parties agreed in a conference call with the Court that the only issue in dispute was whether the UEF could withhold payment of benefits until Petitioner's third-party action was resolved. The UEF conceded during this conference that it had no medical evidence to support its contention that Petitioner was not injured to the extent claimed in the subject accident. Based upon these representations, the Court vacated the trial and directed Petitioner to file a motion for summary judgment to resolve the one legal issue that was in dispute. In light of the procedural history of this case and the representations of counsel which have contributed to this procedural history, it would be manifestly unjust if the Court were to now allow the UEF to interject medical evidence through the back door which would have not been admitted had this matter proceeded to trial as scheduled. The UEF's motion to find summary judgment inappropriate is denied. The UEF has 10 days from the date of this Order in which to respond to Petitioner's summary judgment motion, and must confine its brief only to the evidence which was admitted by stipulation and which would have been relied upon had this matter proceeded to trial as scheduled.

Lira v. Insurance Co. of State of Penn., 2011 MTWCC 1
(Order Denying Respondent's Motion *in Limine*).

Summary: Petitioner's co-worker (Schmidt) shot him in the head during an at-work altercation. Respondent moves *in limine*, seeking an order allowing it to introduce into evidence statements made by Schmidt alleging he was acting in self-defense. Respondent argues that the statements qualify as statements against interest and are therefore excepted from the hearsay rule.

Held: Schmidt's statements that he acted in self-defense when he shot Petitioner would not tend to subject Schmidt to criminal liability so much as they would tend to exculpate him from criminal liability. A person in Schmidt's position would be expected to claim some sort of justification for his action, irrespective of whether he believed it to be true. The statements therefore do not qualify as statements against interest under Mont. R. Evid. 804(b)(3) and are not admissible.

Montana State Fund v. Simms, 2010 MTWCC 41
(Order Excluding Dr. Schabacker's June 28, 2007, Opinion Letter and Excluding the Use of any Confidential Criminal Justice Information not Disseminated in Accordance with the Criminal Justice Information Act).

Summary: Respondent moves to exclude an opinion letter of his treating physician which was elicited by Petitioner. Respondent argues that the letter was based on surveillance videos which were confidential criminal justice information which Petitioner disclosed in violation of the Criminal Justice Information Act. Respondent also moves to preclude the use or further publication or dissemination of the surveillance videos in these proceedings because of Petitioner's alleged violations of the Criminal Justice Information Act. Petitioner argues that the surveillance was properly disclosed. Although Petitioner concedes the surveillance is now confidential criminal justice information, Petitioner argues it did not become confidential criminal justice information until after Respondent's treating physician reviewed the surveillance.

Held: The surveillance constituted confidential criminal justice information before it was disclosed to Respondent's treating physician and was disseminated in violation of the Criminal Justice Information Act. The opinions elicited from Respondent's treating physician and any other physicians to whom the surveillance was improperly disseminated are excluded. Respondent's motion to prospectively preclude the use of the surveillance "for all time" and "for any purpose," even if the surveillance is disseminated in compliance with the Criminal Justice Information Act, is overbroad and is denied.

Hirth v. Montana State Fund, 2012 MTWCC 47

(Order Denying Petitioner's Motion to Exclude Certain Reports and Testimony).

Summary: Petitioner moved to exclude the reports and testimony of two medical doctors who reviewed Petitioner's medical records and disputed the impairment rating assigned by Petitioner's treating physician. Respondent opposes Petitioner's motion, arguing that it would be denied due process of law if it were denied the opportunity to challenge the impairment rating assigned by Petitioner's treating physician.

Held: The arguments Petitioner has raised go to the weight rather than the admissibility of the evidence in question. Petitioner's motion is denied.

Heichel v. Liberty Mutual Insurance, 2018 MTWCC 3

(Order Denying Petitioner's Motion in Limine)

Summary: Petitioner moves for an order excluding her employer's former store manager's written statements - which recount that Petitioner stated she injured her shoulder when she tripped over her dogs - from evidence as inadmissible hearsay. Petitioner also asserts that the written statements are inadmissible because Respondent did not make the employer's former store manager available for a deposition or subpoena her after she told Respondent's attorney that she would not appear without a subpoena.

Held: Petitioner's Motion in Limine is denied. This Court reserves ruling on whether the written statements are admissible under the hearsay exception for present sense impressions, M.R.Evid. 803(1), until trial, at which time Respondent will have the opportunity to lay the required foundation. Moreover, because the store manager no longer worked for Petitioner's employer, Respondent had no duty to produce the former store manager for a deposition and no duty to subpoena the store manager to a deposition Petitioner had scheduled.

INCARCERATION

Mccuin v. Montana State Fund, 2006 MTWCC 41

(Order Denying Petitioner's Motion for Summary Judgment and Granting Summary Judgment to Respondent).

Related Topic: [Benefits](#)

Summary: Petitioner moved for summary judgment arguing that his permanent partial disability benefits did not lapse during the time he was incarcerated.

Held: While Petitioner would otherwise have been entitled to permanent partial disability benefits pursuant to § 39-71-703, MCA, he was ineligible for such benefits during the time he was incarcerated pursuant to § 39-71-744, MCA. Although Petitioner would have been entitled to any such benefits which remained subsequent to his release from prison, due to an overpayment of his temporary total disability benefits, any amount which would otherwise have been due was offset by the amount overpaid.

Hopkins v. Uninsured Employers' Fund v. Kilpatrick, 2010 MTWCC 18

(Order Denying Motion for Reconsideration).

Summary: Third-Party Respondent moves the Court to reconsider its Findings of Fact, Conclusions of Law and Judgment. Specifically, Third-Party Respondent requests the Court reconsider two factual findings.

Held: Having considered Third-Party Respondent's arguments, the Court sees no reason to reconsider either factual finding. The motion for reconsideration is denied.

INDEPENDENT CONTRACTORS

Howe v. Uninsured Employers' Fund, In re: Kurtz, 2006 MTWCC 27

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Petitioner is an independent contractor who worked on a residential construction project. Petitioner's brother worked on the project with him and introduced Petitioner to an acquaintance who then also began to work on the project. When the newly-hired worker was injured in an accident on the job, the Uninsured Employers' Fund determined that Petitioner was the employer of the injured worker. Petitioner appeals that determination.

Held: Petitioner has failed to prove by a preponderance of the evidence that he was not the employer of the injured worker.

Kinney v. Uninsured Employers' Fund, 2007 MTWCC 10

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Petitioner was injured on his first day working at a hardware store and cabinetmaking shop while he was clearing out an area of the shop in which he could create woodcarvings on cabinet doors. He claimed he was an employee hired to apprentice as a cabinetmaker and to create woodcarvings. The shop owner claimed Petitioner was an independent contractor hired only to create woodcarvings on cabinet doors and to occasionally peel logs for furniture.

Held: While only a handful of facts were established due to the short nature of Petitioner's relationship with the cabinetmaking shop prior to his injury, the facts which were established support a finding that Petitioner was an independent contractor and not an employee.

Bowler v. Independent Contractor Central Unit, 2008 MTWCC 42

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner appealed the Independent Contractor Central Unit's Determination to this Court. Petitioner argued that the ICCU wrongly determined that Gregory D. Holm performed services for Rick's Flooring as an employee between October 6, 2005, and December 23, 2006.

Held: Holm did not possess a valid independent contractor exemption certificate during the time he was working with Petitioner. The Court therefore applies the two-part test to determine Holm's employment status. Applying this test, the Court concludes that Gregory D. Holm was Petitioner's employee during the time at issue. The ICCU's Determination is affirmed.

Emergency Preparedness Systems, LLC v. Scobie, 2009 MTWCC 28

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: September 16, 2009; Dismissed: December 28, 2009

Summary: Respondent William C. Scobie filed a wage claim against Emergency Preparedness Systems, LLC, in the Wage and Hour Unit of the Montana Department of Labor on April 3, 2007. Scobie alleged he was owed wages for work performed for EPS between January 1, 2005, and March

30, 2007. The Wage and Hour Unit referred the question of whether Scobie was an independent contractor or an employee to the Independent Contractor Central Unit. The ICCU determined Scobie was an employee of EPS and not an independent contractor. EPS appealed the ICCU determination to this Court.

Held: The Court applies a two-part test to determine Scobie's employment status as either an employee or independent contractor. First, the Court must determine whether four control factors are met. Second, the Court must determine whether the individual is engaged in an independently established trade, occupation, profession, or business. Both parts of the test must be satisfied by a convincing accumulation of undisputed evidence in order to establish independent contractor status. EPS failed to satisfy the first part of the test. Therefore, the ICCU's determination that Scobie was an employee is affirmed.

McCone County v. State of Montana, et al., 2012 MTWCC 19

(Order Denying Petitioner's Motion for Summary Judgment and Granting Summary Judgment in Favor of Respondent).

Summary: Petitioner moves for summary judgment on its appeal of an Independent Contractor Central Unit Decision, finding its contract worker to be an employee rather than an independent contractor for the purposes of her unemployment insurance claim. Respondent opposes the motion and, as there are no material issues of fact, requests summary judgment in its favor as a matter of law.

Held: There being no material issues of fact remaining as to the status of a worker who contracted with Petitioner, the WCC may grant summary judgment to the non-moving party as a matter of law. Solely for the purposes of Title 39, Chapter 51, MCA, and the contract worker's unemployment insurance claim, Petitioner's contract worker does not meet the definition of an independent contractor and is therefore an employee, as she had no workers' compensation insurance on herself and no independent contractor exemption certificate. As pertains to any issues beyond Chapter 51, any determination regarding the worker's status would be an advisory ruling, from which Court is jurisdictionally constrained. As pertains to the July 12, 2011, Decision which is the subject of this de novo proceeding, the ICCU has conceded, and the WCC agrees, that Decision is vacated by operation of McCone County's appeal to WCC.

INDEPENDENT MEDICAL EXAMINATIONS

Whitford v. Montana State Fund, 2006 MTWCC 11

(Order Granting Motion to Require Independent Medical Examination).

Related Topic: [Equity - Estoppel & Waiver](#)

Summary: Respondent has requested Petitioner to submit to an independent medical examination pursuant to § 39-71-605(2), MCA (2005), and Petitioner has refused. The basis for Petitioner's refusal is his contention that his occupational disease claim predated the repeal of § 39-72-602, MCA (2003), which, Petitioner contends, controls in the present case. Petitioner also contends that Respondent should be precluded by the doctrines of waiver or estoppel from seeking an IME pursuant to § 39-71-605(2), MCA (2005), because Respondent was aware that Petitioner had sought an evaluation through the Department of Labor and Industry pursuant to § 39-72-602, MCA (2003), and failed to object to this process.

Held: Respondent's motion is granted. Because the law pertaining to independent medical examinations is procedural, the current statute applies and Respondent is entitled to an independent medical examination pursuant to § 39-71-605(2), MCA (2005). Respondent was under no affirmative obligation to object to the panel examination and its failure to do so neither constitutes a waiver of Respondent's right to seek an independent medical examination nor does it stop Respondent from seeking an independent medical examination pursuant to § 39-71-605(2), MCA (2005). Although an insurer's right to an independent medical examination is not unlimited, good cause exists in the present case to require Petitioner to submit to one.

Stillwater Mining Company v. Bunch, 2006 MTWCC 43

(Order Denying Motion to Compel IME).

Summary: Petitioner moves to compel Respondent, who resides in Vail, South Dakota, to travel to Billings, Montana, for an independent medical examination.

Held: Petitioner's motion is denied. Petitioner may renew its motion provided it submits information to the Court consistent with the four factors set forth previously by the WCC in *Mack v. Montana State Fund, 2005 MTWCC 28*.

Haman v. Wausau Ins. Co., 2007 MTWCC 49

(Order Granting Respondent's Motion to Compel Attendance at an Independent Medical Examination, and Granting in Part and Denying in Part Petitioner's Motion for Protective Order).

Summary: Respondent moved to compel Petitioner to attend a follow-up independent medical examination (IME) with Dr. Gregg Singer. Petitioner argues that a follow-up IME is unnecessary. As this motion specifically pertains to Dr. Singer, Petitioner argues that, in conducting the previous IME, Dr. Singer ignored her complaints of pain and pushed her to the point where she was in pain for several days after the examination. Moreover, Petitioner alleges that Dr. Singer did not note her pain complaints in his IME report. If the Court grants Respondent's motion to compel, Petitioner moves for a protective order to allow Petitioner's husband to be present during the entire examination and to videotape the examination.

Held: Respondent's motion to compel is granted. The Court finds good cause to allow a follow-up examination with Dr. Singer. Petitioner's motion for a protective order is granted in part and denied in part. Petitioner's husband may not be present for the examination. However, Petitioner's counsel

may be present for both the history-taking portion of the IME and the examination itself. The entire IME will be recorded by a fixed video camera.

Challinor v. Montana Ins. Guar. Assoc., 2008 MTWCC 21

(Order Denying Respondent's Motion to Compel an Independent Medical Examination).

Summary: Respondent moved this Court to compel Petitioner, who lives in Orofino, Idaho, to attend an IME it had scheduled in Missoula, Montana. Petitioner objected on the grounds that the IME was not scheduled as practical to his residence as required by § 39-71-605(1)(b), MCA, and further argued that Respondent's request was untimely as it was made only three days prior to the expert witness disclosure deadline required by this Court's scheduling order.

Held: Respondent's motion to compel the IME is denied on the ground that Respondent did not demonstrate it scheduled the IME as close to Petitioner's residence as practical. While Respondent's request for an IME was untimely, Respondent has been diligent in preparing for trial and good cause for the un-timeliness has been shown. If Respondent can cure the location issue by April 11, 2008, its request for an IME will not be barred for un-timeliness.

First Strike v. Montana Contractor Comp. Fund, 2008 MTWCC 9

(Order Granting Respondent's Motion to Compel an IME).

Summary: Respondent moved to compel Petitioner to attend an independent medical examination. Petitioner argues that since Respondent already denied liability for his claim, Respondent is not entitled to further investigation.

Held: Under § 39-71-605(2), MCA, Respondent is entitled to obtain an IME because a dispute exists concerning the claimant's physical condition and/or the cause or causes of any injury or disability the claimant may have.

Schoenen v. Uninsured Employers' Fund, 2008 MTWCC 1

(Order Denying Respondent's Motion for an Independent Medical Examination).

Summary: Respondent Uninsured Employers' Fund has moved the Court to order Petitioner to attend an independent medical examination.

Held: Respondent did not request Petitioner to attend an independent medical examination until after the deadline for designating witnesses and filing expert witness' summaries had expired. Therefore, Respondent's motion is denied as untimely.

Vandervalk v. Montana State Fund, 2009 MTWCC 15

(Order Denying Petitioner's Motion for Emergency Independent Medical Examination and Travel Reimbursement).

Summary: Petitioner moves the Court to order Respondent to arrange and pay for an IME, and to order Respondent to reimburse Petitioner for travel expenses and for certain medications he has purchased. Respondent responds that it is not statutorily obligated to arrange and pay for the IME Petitioner seeks, and further responds that the issues regarding reimbursement of certain expenses have facts in dispute and are better resolved after a trial has been held.

Held: While an insurer has a right to request an IME pursuant to § 39-71-605, MCA, the Court is aware of no statutory or case authority for the proposition that Petitioner is entitled to obtain an IME

at Respondent's expense. As to Petitioner's claim for reimbursement of certain out-of-pocket expenses, the Court agrees with Respondent that this claim is best characterized as a motion for summary judgment and is better resolved on the merits at trial. The Court therefore declines to consider this issue on summary judgment under ARM 24.5.329(1)(b). Petitioner's motion is denied.

Salazar v. Montana State Fund, 2011 MTWCC 10
(Order Denying Petitioner's Motion for Protective Order).

Summary: Petitioner moved for a protective order to prevent Respondent from obtaining an IME, arguing that Respondent does not have an absolute right to a "Rule 35 Examination," and that Respondent could have Petitioner's treating physician address Respondent's questions instead. Respondent argues that it is entitled to an IME under § 39-71-605, MCA, because Petitioner's condition has changed since it obtained a previous IME.

Held: Respondent is entitled to an IME under § 39-71-605, MCA. Salazar does not deny that his condition has changed, nor has he explained why he believes the Court should look to the Rules of Civil Procedure to the apparent exclusion of § 39-71-605(1)(a), MCA, in determining State Fund's entitlement to an IME.

Sherwood v. Watkins & Shepard Trucking, 2010 MTWCC 42
(Decision and Judgment).

Summary: Petitioner requests that he be evaluated at Respondent's expense by Dr. Bill Rosen regarding chronic pain and medication intake issues. Respondent requests the Court to require Petitioner to undergo an evaluation in a multi-disciplinary setting at the Rehabilitation Institute of Washington. Both parties request direction on the appropriate course to address Petitioner's drug addiction.

Held: In a bench ruling, the Court concluded that Petitioner presented no evidence that a new evaluation by Dr. Rosen would yield different results than the evaluation Dr. Rosen conducted in 2009. Therefore, Petitioner is not entitled to a new evaluation by Dr. Rosen. Although Respondent established that the Rehabilitation Institute of Washington is the closest available place to provide Petitioner with the in-patient treatment both parties agree is needed, it has not been established that the Rehabilitation Institute of Washington is the closest available place to provide the evaluation for such treatment. Respondent shall investigate whether the Rehabilitation Institute of Washington will accept an evaluation performed by Montana physicians and whether Montana physicians are available to perform the required evaluation closer to Petitioner's home. If the evaluation can be done closer to Petitioner's home, it shall be done as close as practical to Petitioner's home in accordance with § 39-71-605(1)(b), MCA. If the Rehabilitation Institute of Washington is the closest practical location to accomplish the evaluation, the evaluation may be conducted at the Rehabilitation Institute of Washington.

Svendsen v. Montana State Fund, 2011 MTWCC 14
(Order Granting Motion to Compel Petitioner to Attend an Independent Medical Examination).

Summary: Respondent moved this Court to compel Petitioner to attend an IME. Petitioner concedes Respondent is entitled to an IME but objects to the IME being performed by Dr. Schumpert. Petitioner argues that Dr. Schumpert has a conflict of interest because the industrial hygienist who conducted an on-site evaluation of Petitioner's workplace was employed by the same entity that employs Dr. Schumpert.

Held: Respondent's motion to compel an IME with Dr. Schumpert is granted. Petitioner cites no precedent in support of his argument that Dr. Schumpert's previous working relationship with the industrial hygienist precludes him from performing the IME. Any conflict of interest, real or perceived, may go to the weight the Court assigns to Dr. Schumpert's opinion. It does not provide a basis to preclude Dr. Schumpert from performing the IME.

Perlinski v. Montana Schools Group Insurance Authority, 2011 MTWCC 16

(Order Granting Petitioner's Motion for Protective Order and Denying Respondent's Motion to Compel an Independent Medical Evaluation).

Summary: Respondent moved for an order compelling Petitioner to attend an IME with Dr. Emil Bardana in Portland, Oregon. Respondent contends that an out-of-state IME is justified because there are no Montana physicians with the same level of experience as Dr. Bardana. Petitioner moved for a protective order holding that she not be required to attend the out-of-state IME.

Held: Respondent's motion to compel the IME in Portland is denied. Petitioner's motion for a protective order is granted. Out-of-state IMEs should be viewed with disfavor when an adequate examination can be conducted in Montana. Section 39-71-605, MCA, requires that an IME shall be conducted at a place that is as close to the employee's residence as is practical by a physician with "adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute." Respondent has failed to demonstrate that an adequate IME cannot be conducted in Montana.

Dodge v. Montana Insurance Guaranty Association, 2011 MTWCC 20

(Order Denying Respondent's Motion to Compel an Independent Medical Examination).

Summary: Respondent moved for an order compelling Petitioner to attend an IME with Dr. John R. Harrison in Missoula pursuant § 39-71-605, MCA. Respondent claims that Petitioner's condition has changed since his last IME necessitating an additional examination. Specifically, Respondent argues that it only learned of Petitioner's subjective complaints of memory loss since Petitioner underwent the last IME. Petitioner objects to the additional IME on the grounds that his condition has not changed since undergoing two separate IMEs in the past year.

Held: Respondent's motion to compel a third IME is denied. An insurer is entitled to additional IMEs where there is an indication that claimant's medical condition has changed or there is some other sound reason. Respondent has not shown a sound reason nor a change in Petitioner's condition to warrant an additional IME. Respondent has been aware of Petitioner's subjective complaints of memory loss since at least 2006, long before the most recent IMEs.

Chapman v. Smurfit-Stone Container Enterprises, Inc., 2013 MTWCC 12

(Order Affirming DOL/ERD's Order Directing Medical Examination).

Summary: Petitioner appeals an order of the Department of Labor & Industry, Employment Relations Division directing a medical examination, requiring Petitioner to submit to a two-day psychiatric evaluation by William Stratford, M.D. Petitioner argues that this independent medical evaluation is neither reasonable nor necessary under the Workers' Compensation Act.

Held: Sufficient grounds exist for an evaluation of Petitioner's psychological and cognitive conditions after being on temporary total disability benefits over seven and a half years. Respondent may pursue an independent psychiatric examination to evaluate Petitioner's condition.

New Hampshire Ins. Co. v. Matejovsky, 2016 MTWCC 8
(Order Reversing in Part Order Directing Medical Examination)

Summary: The insurer appeals that portion of the DLI's Order Directing Medical Examination which allows the claimant to videotape an IME. The insurer argues that this Court should reverse the DLI because it does not have authority to impose protective measures on an IME or because there was insufficient evidence for the DLI to order that the claimant be allowed to videotape the IME. The insurer also argues this Court should allow it to suspend the claimant's benefits until she attends the IME.

Held: To the extent that the DLI's Order Directing Medical Examination allows Matejovsky to videotape the IME, the order is reversed. Under § 39-71-605(2), MCA, the DLI may set conditions on IMEs and order protective measures when necessary. However, the claimant did not present sufficient evidence to allow her to videotape the examination. The insurer may not suspend the claimant's benefits because she did not unreasonably fail to attend the IME.

Barnhart v. Liberty Northwest Ins. Co., 2016 MTWCC 12
(Findings of Fact, Conclusions of Law and Judgment)

Related Topic: [Benefits](#)

Summary: Petitioner, who has an extensive history of neck injuries, claimed a work-related neck injury in November 2011. Respondent accepted liability and paid benefits. Petitioner and Respondent settled his claim, reserving medical benefits. However, Respondent then ceased paying medical benefits after an IME examiner opined that Petitioner suffered no injury in the work-related incident. Petitioner thereafter petitioned this Court for reinstatement of his medical benefits.

Held: Petitioner's industrial accident permanently aggravated his pre-existing neck condition and, therefore, Respondent remains liable for medical benefits. Although Petitioner has reached MMI, he is entitled to reasonable medical services under § 39-71-704, MCA, and Respondent is liable for those primary medical services Petitioner needs to sustain MMI.

MacGillivray v. Montana State Fund, 2016 MTWCC 13
(Order Reversing Order Directing Medical Examination)

Summary: Petitioner appeals DLI's Order Directing Medical Examination. Inter alia, Petitioner argues that this Court should reverse the order because the Workers' Compensation Court has exclusive jurisdiction to decide issues relating to her claim, and § 39-71-605, MCA, does not provide for multiple IMEs on a denied liability claim. Respondent argues a change in the treating physician's medical opinion and Petitioner's new assertion that she is PTD justify a second IME.

Held: DLI did not exceed its statutory authority by ruling on Respondent's motion to compel attendance at an IME; its exercise of jurisdiction was lawful under § 39-71-605(2), MCA. However, it committed reversible error because the first IME physician addressed causation, the treating physician has not changed his opinion, and no evidence indicates Petitioner's condition has changed.

Floyd v. Zurich American Ins. Co. of Illinois, 2017 MTWCC 4
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topics: [Burden of Proof](#), [Penalties](#)

Summary: Petitioner claims that he is not at MMI from his December 2014 injury, and that he is entitled TTD and medical benefits from the time Respondent terminated them. Petitioner further claims that he is entitled to reasonable costs, attorney fees, and a penalty. Although Respondent accepted liability for Petitioner's injury, Respondent argues that Petitioner's current complaints are not a result of the incident at work, Petitioner has achieved MMI, and Respondent is no longer liable for benefits. Respondent also contends that its conduct has been reasonable because Petitioner's presentation has been unique.

Held: Petitioner proved by a preponderance of the evidence that he suffered a compensable injury and that he has not reached MMI. Petitioner is entitled to TTD and medical benefits from the time Respondent terminated them, and, as the prevailing party, Petitioner is entitled to reasonable costs. Respondent's actions in terminating Petitioner's benefits were unreasonable because it disregarded the treating physician's opinions and seized upon the IME physician's opinions despite their obvious faults. Respondent's actions in failing to reinstate Petitioner's benefits after the IME physician's deposition were unreasonable because the IME physician testified on a more-probable-than-not basis that Petitioner's injury was compensable. Therefore, Petitioner is entitled to attorney fees and a penalty.

Summers v. Liberty Northwest Ins. Corp., 2017 MTWCC 5

(Order Denying Petitioner's Motion for Declaratory Ruling)

Summary: Petitioner moves this Court to declare that Respondent is not entitled to an IME in this matter on the grounds that a medical records review which Respondent obtained constitutes an "IME" under § 39-71-605, MCA, and that Respondent has no good cause to obtain a second IME. Respondent objects to Petitioner's motion, contending that a records review is not an "IME" under the statute and arguing that it has good cause for an IME where there is a dispute as to the work-relatedness of Petitioner's carpal tunnel syndrome.

Held: Petitioner's motion is denied. This Court has previously ruled that a medical records review is not an IME, and the language of § 39-71-605, MCA, clearly contemplates a physical examination. Where causation is disputed, Respondent desires the IME for the purpose of obtaining a causation opinion, and Respondent has not previously obtained an IME, Respondent has demonstrated good cause.

Ross v. Victory Insurance Co., Inc., 2017 MTWCC 14

(Order Reversing Order Directing Medical Examination)

Summary: Claimant appeals an Order Directing Medical Examination, in which the DLI ordered her to attend a second IME with the insurer's chosen psychologist for the purpose of obtaining a neuropsychological evaluation to determine if she is a candidate for a spinal cord stimulator.

Held: The Order Directing Medical Examination is reversed. The Workers' Compensation Act does not allow an insurer to designate a psychologist to be both its independent medical examiner under § 39-71-605, MCA, and the consulting psychologist for claimant's treating physician under § 39-71-1101, MCA. At this time, the insurer has not established good cause for a second IME with its designated psychologist because claimant has not first undergone an evaluation with the treating physician's chosen psychologist.

Heffernan v. Safety National Casualty Corp., 2017 MTWCC 18

(Order Affirming in Part and Modifying in Part Department of Labor and Industry's Amended Order Directing Medical Examination)

Summary: Claimant appeals an Amended Order Directing Medical Examination, in which the DLI ordered her to attend a panel IME. Claimant argues that the DLI erred because: (1) it declined her request to allow her to make an audio recording of the history portion of her examination; (2) it did not require the IME provider to send a copy of its report directly to her, despite the provider's policy not to do so being in violation of § 39-71-605(2), MCA; and (3) it directed her to attend a panel IME, which she contends is three IMEs, without good cause for "multiple" IMEs.

Held: The Amended Order Directing Medical Examination is affirmed in part and modified in part. The DLI correctly determined that claimant did not have good cause to make an audio recording of the history portion of her examination. The DLI also correctly determined that good cause exists for a panel IME, which is not "multiple" IMEs. However, Claimant is correct that she has a statutory right to a copy of the IME report directly from the IME provider. Thus, the DLI's order is modified to require the IME provider to provide its report directly to Claimant at the same time it provides it to the Insurer. The Insurer is ordered to file a written declaration from the IME provider that the provider will provide its report directly to Claimant.

Lunday v. Liberty Northwest, 2017 MTWCC 20

(Order Denying Respondent's Motion for Summary Judgment)

Summary: Respondent moves for summary judgment on the grounds that Petitioner does not have sufficient evidence to prove that his workplace exposure to grain dust caused his lung condition, nor sufficient evidence to prove that his work caused his hernias.

Held: The Court denied Respondent's motion. Petitioner met his burden of establishing there is an issue of material fact as to his lung condition by introducing medical evidence that his workplace exposure to grain dust caused his lung condition. An inference can be made from one of the records Respondent attached to its brief that one of Petitioner's medical providers is of the opinion that Petitioner's work caused his hernias. Thus, Respondent has not met its burden of establishing that there are no issues of material fact. Therefore, Respondent is not entitled to summary judgment.

Neisinger v. New Hampshire Ins. Co., 2018 MTWCC 9 (2019 MT 275)

(Order Reversing In Part and Affirming In Part, Order Directing a Medical Examination)

Appealed to Montana Supreme Court: July 12, 2018; Affirmed in Part & Reversed in Part: November 19, 2019

Summary: Claimant appeals an Order from the DLI directing him to attend a § 39-71-605, MCA, examination with a psychiatrist and an orthopedist. Claimant asserts that the DLI did not have jurisdiction to order him to attend an IME. Claimant also asserts that Insurer, which has not authorized him to see a treating psychiatrist or psychologist, is "stacking its deck" with "hired guns," and that Insurer does not have good cause for multiple IMEs. Insurer asserts that the DLI correctly ordered the examination with the psychiatrist because one of Claimant's treating physicians referred him to a psychiatrist or psychologist. Insurer also asserts that the DLI correctly ordered the examination with the orthopedist because Claimant's condition has changed.

Held: The DLI's order is reversed in part and affirmed in part. The DLI had jurisdiction. However, Insurer does not currently have good cause for an IME with the psychiatrist. Because of the potential

for bias, an insurer may not force a claimant to attend an IME with a psychiatrist of its choosing, who will provide no treatment. To balance a claimant's rights with an insurer's rights, the insurer must first authorize a treating psychiatrist or psychologist. Insurer has good cause for an IME with the orthopedist because Claimant's condition has arguably changed, the previous IME was two years ago, and Claimant's treating physicians can comment on the IME physician's opinions.

Hagberg v. Ace American Insurance Company, 2019 MTWCC 6

(Order Denying Respondent's Motion for Summary Judgment and Granting Petitioner's Motion for Summary Judgment)

Summary: Respondent argues it is entitled to summary judgment because the IME physician's opinion that Petitioner's pain is unrelated to his industrial accident should control as he is the medical professional with greater expertise. Respondent alternatively argues that the pain medications prescribed by Petitioner's treating physician constitute palliative or maintenance care rendering it outside the scope of its liability. Petitioner asserts he is entitled to summary judgment because his treating physician's opinion that Petitioner's pain stems from his industrial injury carries more weight than the IME physician's opinion, and because his prescription pain medication constitutes primary medical services.

Held: Respondent's Motion for Summary Judgment is denied, and Petitioner's Motion for Summary Judgment is granted. The physicians have equal credentials to opine as to the cause of Petitioner's current back pain, but this Court gives more weight to the opinions of Petitioner's treating physician because his opinion is based upon better evidence. Moreover, this Court determines that Petitioner's prescription pain medications constitute primary medical services because they are necessary to sustain him at MMI and are therefore not palliative or maintenance care.

Ward v. Victory Insurance Co., 2019 MTWCC 11

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner asserts that he has CRPS in his left ankle as a result of an industrial accident. Petitioner relies on his current treating physician who, like many other medical providers who examined him, observed some of the objective signs of CRPS per the Budapest criteria, which are included in the Montana Utilization and Treatment Guidelines. Respondent denied liability, relying on the opinions of the physicians who examined him under § 39-71-605, MCA, and one of his treating physicians, who opined that Petitioner does not have CRPS. The psychiatrist who examined Petitioner under § 39-71-605, MCA, concluded that Petitioner has Somatic Symptom Disorder, a psychological condition.

Held: Petitioner proved by a preponderance of the evidence that he suffers from CRPS and that it was caused by an industrial accident. This Court gives greater weight to Petitioner's current treating physician's diagnosis of CRPS under the criteria in the Montana Utilization and Treatment Guidelines primarily because his opinion was supported by the other medical evidence in this case while the opinions of the physicians who examined Petitioner under § 39-71-605, MCA, and the treating physician who agreed with them, were not.

Carlson v. Montana State Fund, 2019 MTWCC 8

(Order Denying Respondent's Motion to Compel Attendance at an Independent Medical Examination and Order Denying Respondent's Request to Vacate the Scheduling Order)

Summary: Respondent has not scheduled an examination under § 39-71-605, MCA, nor identified the physician who will conduct the examination should it be scheduled. However, Respondent seeks

an order compelling Petitioner to attend such an examination whenever it schedules it. Respondent also requests this Court to vacate the current Scheduling Order so it has more time to schedule the examination.

Held: This Court denies Respondent’s Motion to Compel. The plain language of § 39-71-605(1)(b), MCA, provides that this Court must set forth the time and place of the examination. Moreover, this Court has previously held that the insurer must notify the claimant of the identity of the examiner, the examiner’s area of expertise, and the nature of the examination so the claimant can intelligently assess whether to object to the examination. Thus, this Court cannot issue a general order compelling a claimant to attend an examination when the information about the proposed examination is unknown. This Court also denies Respondent’s request to vacate the current Scheduling Order because it has not set forth good cause to do so.

Neisinger v. New Hampshire Ins. Co., 2019 MTWCC 13

(Order Affirming and Modifying Order Directing a Medical Examination)

Summary: Claimant appeals an Order from the DLI directing him to attend a two-day § 39-71-605, MCA, examination with a psychiatrist. Claimant asserts that this Court should affirm the Order but modify it to limit the IME to a single day and require the psychiatrist to disclose all raw data and testing materials related to his evaluation of Claimant. Claimant argues that since Insurer previously scheduled him to attend several one-day panel IMEs with the same psychiatrist, it is clear the psychiatrist can obtain all the information he needs in a single day. Claimant further argues that, to protect his ability to challenge the psychiatrist’s opinions and cross-examine him at trial, he must have access to the raw data and testing materials related to the IME. Insurer asserts that this Court should affirm the Order as is. Insurer argues that a two-day IME is appropriate because Claimant has not presented any medical evidence that he is limited to a one-day evaluation, and because a single day with 15-minute breaks every hour is not enough time for the psychiatrist to administer the necessary standardized tests and conduct an interview and evaluation based on the testing responses. Insurer further argues that the psychiatrist is willing to produce all raw data and testing materials concerning his evaluation of Claimant, but, due to licensing agreements, cannot do so without a court order.

Held: The DLI’s Order directing Claimant to attend a two-day IME is affirmed but modified to require the psychiatrist to disclose all raw data and testing materials related to his evaluation of Claimant when he issues his report. Insurer has presented evidence that the psychiatrist requires two days to both accommodate Claimant’s demand for a 15- minute break every hour and complete the necessary testing, interview, and evaluation. The DLI should have addressed Claimant’s request for the raw data and testing materials related to his IME. The failure to do so amounts to a denial which prejudices Claimant’s substantial rights. Indeed, both parties need the raw data and testing materials concerning the psychiatrist’s evaluation of Claimant to properly consider his opinions.

Neisinger v. New Hampshire Ins. Co., 2020 MTWCC 4

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner suffered a compensable left-leg injury and had surgery to repair his torn quadriceps. Thereafter, Petitioner developed severe low-back pain, with pain radiating into his hips and legs. Petitioner contends that his industrial accident aggravated his preexisting lumbar spine condition. Petitioner relies on the causation opinions of physicians and chiropractors, who in large part based their opinions on Petitioner’s statements that he had an immediate onset of pain from his

lumbar spine at the time of his industrial accident or shortly thereafter. Respondent denied liability for Petitioner's lumbar spine condition, maintaining that his industrial accident did not aggravate his preexisting lumbar spine condition. Respondent relies on the causation opinion of an IME physician, who determined that, based on Petitioner's medical records, his onset of symptoms was approximately ten months after his industrial accident.

Held: Respondent is not liable for Petitioner's lumbar spine condition. Although Petitioner's symptoms significantly worsened after his industrial accident, he did not meet his burden of proving that the industrial accident was the cause of the worsening. This Court gave more weight to the opinion of the IME physician because he was correct that the onset of Petitioner's symptoms was approximately ten months after his industrial accident.

Berry v. Mid Century Insurance Company, 2020 MTWCC 10
(Findings of Fact, Conclusions of Law, And Judgment)

Related Topics: [Penalties](#)

Summary: Respondent accepted liability for Petitioner's lumbar-spine injury, which, based on an MRI, her then-treating physician diagnosed as "discogenic spinal pain." Then, using the false pretense that Petitioner was seeing a "specialist" for treatment, Respondent had Petitioner undergo an IME and then asserted that it was not liable for her lumbar-spine injury on the grounds that Petitioner did not actually suffer a lumbar-spine injury. Thereafter, Petitioner asserted that she suffered a separate hip injury in her industrial accident. After the first day of trial, Respondent re-accepted liability for Petitioner's lumbar-spine injury and accepted liability for her hip injury. Petitioner asserts that she is entitled to a penalty and her attorney fees.

Held: Respondent's denial of liability for Petitioner's lumbar-spine injury from July 22, 2017, to April 24, 2019, was unreasonable. Therefore, Petitioner is entitled to a 20% penalty on the medical benefits paid for her lumbar-spine injury during that period. However, Petitioner did not prove that Respondent unreasonably delayed acceptance of liability for her hip injury. Therefore, she is not entitled to a penalty on the medical benefits for her hip injury. Petitioner is not entitled to her attorney fees because this Court did not adjudicate the dispute over her medical benefits.

Krezelak v. Indemnity Ins. Co. of North America, 2020 MT 19
(Order Granting Petitioner's Motion to Compel)

Related Topics: [Discovery](#)

Summary: Petitioner moves to compel Respondent to produce the journal articles on which its IME physician relied; the raw data from the IME; and the advertisements for the company for which the physician performed the examination.

Held: This Court granted Petitioner's motion because the evidence sought is discoverable.

INTERVENTION

Moreau v. Transportation Insurance Co., 2015 MTWCC 17
(Order Denying Motion to be Joined or Intervene)

Summary: The decedent's employer moved to be joined under M. R. Civ. P. 19 and 20, or to intervene under M. R. Civ. P. 24, arguing that it had an interest in the litigation because it already paid the decedent's medical bills via an entity it had funded and because it has agreed to indemnify Respondent/Insurer for any occupational disease benefits Respondent/Insurer pays. It argues it would be forced to pay the decedent's medical benefits twice if Petitioner prevails. Petitioner argues that the employer cannot be liable for occupational disease benefits and that this Court has no jurisdiction to resolve a contract dispute between the employer and Respondent/Insurer if a dispute arises over the indemnity agreement.

Held: The employer's motion to be joined or to intervene is denied. Respondent/Insurer is the only entity that can be liable for occupational disease benefits. While the decedent's medical bills were paid by an entity that the employer funded and while the employer has agreed to indemnify Respondent/Insurer, neither the amounts the employer paid to fund the entity, the payments the entity made, nor the amounts that the employer might be required to pay under its indemnity agreement are "medical benefits" under § 39-71-704, MCA. The employer's interests are secondary and arise from a separate agreement with the Respondent/Insurer, which is outside of this Court's jurisdiction. The employer's interests are aligned with Respondent/Insurer's, which has and continues to vigorously defend this case.

JURISDICTION

Baker v. Transportation Insurance Co., 2007 MTWCC 6
(Order on Respondent's Motion in *Limine*).

Summary: Respondent moved in *limine* to preclude Petitioner from presenting (1) evidence regarding Bruce Baker's medical expenses, and (2) a letter from Dr. Alan Whitehouse assigning various impairment ratings to Mr. Baker.

Held: Respondent's motion to preclude Petitioner from using the letter from Dr. Whitehouse at trial is moot in light of the Court's earlier ruling that Petitioner is not entitled to benefits in the form of an impairment rating. Respondent's motion to preclude Petitioner from presenting evidence regarding Mr. Baker's medical expenses based on this Court's lack of jurisdiction is denied. Under the 1985 Occupational Disease Act, jurisdiction of a claim is conferred on this Court when a dispute over benefits exists. In a letter dated August 8, 2002, Respondent denied Petitioner's claim in its entirety based on the ostensible running of the statute of limitations. Therefore, a dispute exists and this Court has jurisdiction of the claim.

Horizon Custom Homes, Inc. v. Uninsured Employers' Fund, In re: Flink, 2007 MTWCC 8 (Order Granting Motion to Dismiss).

Related Topics: [Constitutional Law](#), [Mediation](#), [Uninsured Employers' Fund](#)

Summary: Respondent moved for an order to dismiss Petitioner's action on the grounds that Petitioner did not request mediation of Respondent's determination within 90 days as required by § 39-71-520(1), MCA. Petitioner argues that § 39-71-520, MCA, is unconstitutional because it violates Petitioner's right to equal protection under the law. Petitioner further argues that it should be entitled to review the medical records of the claimant because Petitioner believes Respondent may have improperly paid all or part of the claim.

Held: Section 39-71-520, MCA, is not unconstitutional because the classes at issue are not similarly situated. Petitioner is not entitled to review the claimant's medical records because Petitioner failed to appeal Respondent's determination to mediation within 90 days. Therefore, this Court is without jurisdiction to review Respondent's determination.

Michalak v. Liberty Northwest Ins. Corp., 2007 MTWCC 14A
(Order Granting Petitioner's Motion Nunc Pro Tunc).

Summary: Pursuant to ARM 24.5.337, Petitioner moved to amend the Court's Findings of Fact, Conclusions of Law and Judgment in this matter, *nunc pro tunc*. Respondent opposed the motion, arguing that this Court lacks jurisdiction to decide the motion because Respondent has already appealed the Court's Findings of Fact, Conclusions of Law and Judgment to the Montana Supreme Court.

Held: Petitioner's motion is granted. Pursuant to Rule 60(a) of the Montana Rules of Civil Procedure, this Court may correct clerical mistakes at any time of its own initiative or on the motion of any party. The Montana Supreme Court has ruled that a district court retains jurisdiction to correct clerical errors even after an appeal has been perfected. The Court made a clerical error in its decision when it misidentified a person in the Findings and Conclusions. Therefore, the Court retains jurisdiction to correct its clerical error.

Montana State Fund v. Simms, 2008 MTWCC 3
(Order Denying Respondent's Motion to Dismiss).

Summary: Respondent moved to dismiss Petitioner's Petition for Declaratory Ruling on the grounds that this Court lacks the jurisdiction to reopen its Order and Judgment Dismissing with Prejudice more than a year and a half after it was entered. Petitioner responds that, pursuant to § 39-71-2909, MCA, this Court may review, diminish, or increase awarded benefits which were allegedly obtained through fraudulent representations.

Held: Respondent bases its motion upon *State Comp. Ins. Fund v. Chapman*. *Chapman* was decided under a previous version of § 39-71-2909, MCA, which did not include fraud or deception as grounds upon which this Court could review an award of benefits. Since the current version of the statute permits the Court to do so, the Court has the jurisdiction to consider Petitioner's Petition for Declaratory Ruling. Respondent's motion to dismiss is therefore denied.

Stavenjord v. Montana State Fund, 2008 MTWCC 4
(Order Regarding Identification and Notification of Potential Beneficiaries)

Appealed to Montana Supreme Court: May 8, 2008; Remanded: August 20, 2008; Dismissed: November 5, 2008

Summary: After denying common fund status in this matter, the Montana Supreme Court remanded it to this Court to determine an appropriate procedure by which potential Stavenjord beneficiaries will be identified and notified of their interests related to increased Stavenjord-type benefits and to determine whether it is impracticable or impossible for this Court to comply with the Supreme Court's remand order without the assistance of a common fund counsel.

Held: Having considered the issues presented, the Court concludes it is impossible for this Court to comply with the Supreme Court's remand order. Therefore, no further action can be taken by the Court as this matter now stands.

Robinson v. Montana State Fund, 2008 MTWCC 55
(Order Granting in Part Respondent's Motion to Dismiss).

Pertinent Notes: WCC now a "court of record" pursuant to § 3-1-102, MCA (2007).

Summary: Respondent moved this Court to dismiss certain causes of action which were petitioned for by Petitioner. After oral argument clarified the present status of the claims set forth in the Petition, the Court considered whether it had subject matter jurisdiction to hear Petitioner's claims.

Held: Under *Thompson v. State of Montana*, this Court lacks subject matter jurisdiction to hear Petitioner's causes of action for declaratory judgment. Petitioner's causes of action relating to benefits and a penalty on those benefits remain.

***Benton v. Uninsured Employers' Fund*, 2008 MTWCC 41**

(Order Granting Respondent Alan Meyer and Erica Rodriguez, d/b/a Rogue Transportation's Motion for Summary Judgment).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Rogue Transportation, an Oregon business, moves the Court for summary judgment arguing, *inter alia*, that pursuant to § 39-71-117(4), MCA, it was not an employer of Mickey Benton at the time of his accident and death because it did not maintain a place of business in Montana. Petitioner contends that Rogue did maintain a place of business in Montana because Rogue maintained a place of business wherever its vehicle was located.

Held: Rogue did not maintain a place of business in Montana pursuant to § 39-71-117(4), MCA. Rogue's motion for summary judgment is granted.

***Miller v. Liberty Mut. Fire Ins. Corp.*, 2008 MTWCC 18**

(Order Denying Respondent's Motion to Dismiss).

Summary: Respondent moved to dismiss Petitioner's Petition for Trial on the grounds that this Court lacks jurisdiction to hear Petitioner's constitutional challenge to an administrative rule under the Montana Supreme Court's holding in *Thompson v. State of Montana and Liberty Northwest Ins. Corp.* as Petitioner's claim does not make a direct claim for benefits. Petitioner responded that his claim does make a direct claim for benefits and furthermore, that the holding of *Thompson* does not preclude this Court's jurisdiction in cases where indirect claims for benefits are made but only in cases where no claims for benefits are made. The Department of Labor and Industry as *amicus curiae* argued that Petitioner's claim involves a claim for benefits and that this Court therefore has jurisdiction to hear the case.

Held: In his Petition for Trial, Petitioner's prayer for relief includes asking the Court to order Respondent to pay for medical expenses for which Respondent has denied coverage because Petitioner did not obtain preauthorization as required by ARM 24.29.1515(2), the administrative rule which Petitioner argues is unconstitutional. Therefore, Respondent is mistaken in its assertion that Petitioner did not make a direct claim for benefits and this Court does have jurisdiction to hear Petitioner's claim. Whether Respondent is correct in asserting that *Thompson* does not allow this Court to hear constitutional issues which indirectly involve a claim for benefits is immaterial.

***Woodards v. Montana Ins. Guar. Assoc.*, 2008 MTWCC 11**

(Order Denying Petitioner's Motion for Reconsideration).

Summary: Petitioner seeks reconsideration of the Court's Order granting summary judgment in favor of Respondent and denying Petitioner's motion for summary judgment. Petitioner argues that the Court failed to consider Petitioner's entitlement to an impairment award in rendering its decision.

Held: The Court cannot reconsider Petitioner's entitlement to an impairment award because this issue was never submitted for the Court's consideration in the first place. Accordingly, Petitioner's Motion for Reconsideration is denied.

Montana State Fund v. Simms, 2009 MTWCC 9

(Order Denying Motion for Grant of Use and Derivative Use Immunity).

Summary: Respondent moved this Court for an Order granting use and derivative use immunity for himself and his wife. Petitioner and the Office of the Attorney General for the State of Montana both objected to Respondent's motion.

Held: This Court lacks the authority to grant the immunity Respondent seeks. His motion is denied.

Montana State Fund v. Simms, 2010 MTWCC 40

(Order Denying Respondent's Motion to Dismiss and Granting Petitioner's Motion to Compel).

Related Topic: [Procedure](#)

Summary: The parties signed a settlement agreement. Respondent accepted a post signature payment for the agreed-to amount from Petitioner, but neither party submitted the settlement agreement to the Department of Labor and Industry for approval. Respondent moves for dismissal of the present case, arguing that the Court lacks jurisdiction to hear Petitioner's petition for a declaratory ruling because no "settlement" occurred. Respondent further alleges that the Court lacks jurisdiction since the settlement agreement purported to settle Respondent's claim in its entirety, when the parties had only disputed and mediated the issue of his entitlement to domiciliary care benefits. Petitioner also moves this Court to compel Respondent to respond to its First Combined Discovery Requests. Respondent responds that he believes the Court should first rule on his motion to dismiss, since the motion would dispose of the case if the Court grants it.

Held: Respondent's motion to dismiss is denied. The parties entered into a binding settlement agreement and this Court has jurisdiction to review its validity. Since the motion to dismiss is denied, Respondent must respond to Petitioner's discovery requests.

Charlson v. Montana State Fund, 2010 MTWCC 23

(Order Denying Respondent's Motion to Dismiss).

Related Topics: [Mediation](#), [Penalties](#), [Attorneys' Fees](#)

Summary: Respondent moves to dismiss Petitioner's Petition for Hearing for lack of subject matter jurisdiction. Respondent contends the mediation requirements have not been fully satisfied because Petitioner did not reject the mediator's recommendation. Alternatively, Respondent moves the Court to dismiss Petitioner's claim for attorney fees and penalty because there is no evidence Respondent acted unreasonably in the adjustment of Petitioner's claim. Respondent contends that Petitioner can move to amend his petition to reinstate his claim for attorney fees and penalty if discovery reveals unreasonable conduct by Respondent.

Held: Respondent's motion is denied. Petitioner's counsel's letter to the mediator constituted a rejection of the mediator's recommendation. Regarding Petitioner's claim for attorney fees and penalty, the Court has a well-established procedure for pursuing a claim for attorney fees and penalty. ARM 24.5.301(3) required Petitioner to claim attorney fees and penalty in his petition or risk waiving that claim. Petitioner is required to file a particularization of the grounds or basis for his claim in accordance with the Court's scheduling order. Both the parties and the Court are better served by following the procedure established by the Court's rules and scheduling order.

Jensen v. Uninsured Employers' Fund, et al., 2011 MTWCC 24
(Order Dismissing Uninsured Employers From First-Party Petition).

Related Topic: [Jurisdiction](#)

Discussion: (¶ 1) During a conference call with the parties, I raised the issue of whether the Workers' Compensation Court has jurisdiction to hear an action by Jensen against Paul Kessler, Steven Kessler, and Jeff Hunter d/b/a Artistic Exteriors, and Daniel Christianson (collectively "uninsured employers"). (¶ 2) An employee cannot bring an action for benefits directly against an uninsured employer in the Workers' Compensation Court. Such an action can only be brought in District Court pursuant to §§ 39-71-515 and -516, MCA. In *Raymond v. Uninsured Employers' Fund and Foothills Research Institute, LLC, Market Research Group, and Joseph Seipel*, I dismissed the uninsured employer because the Court lacked Order Dismissing Uninsured Employers from First-Party Petition - Page 2 jurisdiction over a dispute between an injured worker and the uninsured employer pursuant § 39-71-516, MCA.

Order: (¶ 3) Paul Kessler, Steven Kessler, and Jeff Hunter d/b/a Artistic Exteriors, and Daniel Christianson are DISMISSED from the first-party petition. (¶ 4) As reflected above, the caption is amended consistent with this Order.

McCoy v. Travelers Casualty & Surety Company, 2014 MTWCC 3
(Order Granting Respondent's Motion for Summary Judgment)

Summary: Respondent moved for summary judgment in this matter, arguing that jurisdiction lies in North Dakota since Petitioner was injured while working there. Petitioner objected and contends that this Court has jurisdiction over her claim under § 39-71-402(1), MCA.

Held: Petitioner was not employed in Montana at the time of her industrial injury and therefore this Court does not have jurisdiction over her claim under § 39-71-402(1), MCA. Respondent's motion for summary judgment is therefore granted.

McCoy v. Travelers Casualty & Surety Company, Dept. of Labor and Industry, 2014 MTWCC 3A
(Order Granting Intervenor's Motion for Leave to Intervene, Motion to Intervene, and Intervenor's Motion to Amend, and Order Amending Summary Judgment Order Nunc Pro Tunc and Denying Intervenor's Motion for Reconsideration)

Related Topic: [Procedure](#)

Summary: After the Court issued an order granting summary judgment in this matter, Intervenor moved for leave to file a motion to intervene, and further moved to intervene, to amend the Court's decision, or alternatively for reconsideration. Intervenor asked the Court to remove certain language which discussed extraterritorial agreements which Intervenor argued was problematic to other matters, but did not affect the outcome of the summary judgment in this matter. Petitioner had no objection to Intervenor's motions. Respondent took no position, but reserved its right to object if the Court determined that the changes sought by Intervenor altered the Court's ultimate ruling.

Held: Intervenor's motions for leave to file a motion to intervene, to intervene, and to amend are granted. Since the motion to amend is granted, Intervenor's motion for reconsideration is moot. The Court orders the language Intervenor cited to be removed and replaced with new language nunc pro tunc.

Moreau v. Transportation Insurance Co., 2014 MTWCC 9

(Order on Standing and Jurisdiction)

Summary: Petitioner accepted Respondent's settlement offer, which included an agreement that Respondent would reimburse providers for certain medical expenses relating to the claimant's occupational disease. The Libby Medical Plan subsequently refused to accept Respondent's offer to reimburse it for medical bills it paid for the claimant's care. Petitioner argues that Respondent should not be allowed to retain those funds but rather should be required either to pay the funds to Petitioner or to a charity of Petitioner's choice. Upon order of the Court, the parties briefed issues of standing and jurisdiction which have arisen in this matter.

Held: This Court lacks the jurisdiction to hear Petitioner's case under § 39-71-2905, MCA, since no benefits remain in dispute. Petitioner lacks standing to bring this litigation since she has no personal stake in the outcome of the case.

Wommack v. National Farmers Union Property & Casualty, Co., et al., 2014 MTWCC 22

(Order Dismissing Petition)

Summary: During oral argument on pending motions it was revealed that Petitioner had recently undergone an occupational disease evaluation in August 2014, pursuant to § 39-72-602(2), MCA (1995-2003). Since Petitioner had filed the Petition for Trial before the OD evaluation, the Court required the parties to brief the issue of subject matter jurisdiction. While Petitioner maintains that an OD panel evaluation is not a prerequisite to filing a petition before this Court, all Respondents agree that sufficient doubt exists as to this Court's continued subject matter jurisdiction of the pending Petition for Trial so as to warrant dismissal without prejudice in order to remove any cloud over this Court's authority to proceed to hearing.

Held: This Court did not have jurisdiction when this case was filed, as § 39-72-602, MCA (1997), contains "mandatory language" that "an OD evaluation must occur before a dispute can be presented to and resolved by the WCC." The post-petition OD evaluation at least places a cloud of uncertainty over this Court's continued subject matter jurisdiction. As this Court has done in similar circumstances since 2005, this case is dismissed without prejudice.

Larson v. Montana State Fund, 2015 MTWCC 1

(Order Denying Petitioner's Motion to Dismiss Without Prejudice or Alternatively to Vacate and Place Case in Administrative Closure)

Summary: Petitioner moves to dismiss this case without prejudice. He claims that while he currently suffers from an occupational disease, he is not seeking any benefits and argues that this Court does not have subject matter jurisdiction over initial compensability disputes in occupational disease claims. If this Court has jurisdiction, Petitioner alternatively asks that this case be placed in "administrative closure" until such time as he seeks occupational disease benefits. Respondent opposes Petitioner's motion.

Held: Petitioner's motion is denied. Under the plain language of § 39-71-2905(1), MCA (2007), this Court has subject matter jurisdiction regarding disputes over the initial compensability of an occupational disease claim under the grant of "exclusive jurisdiction" to decide disputes under the Workers' Compensation Act and because such disputes concern benefits. This Court does not have the authority to place a case in abeyance indefinitely over an objection.

New Hampshire Ins. Co. v. Matejovsky, 2015 MTWCC 15
(Order Affirming Interim Benefits Under § 39-71-610, MCA)

Related Topic: [Benefits](#)

Summary: Petitioner appealed from a Department order granting interim benefits to Respondent under § 39-71-610, MCA, arguing that that the Department did not have jurisdiction to award interim benefits and that Respondent had neither demonstrated financial hardship nor presented a prima facie case which are required for her to be entitled to such benefits.

Held: The Department had jurisdiction to order interim benefits, and Respondent has met the four factors this Court considers in determining whether a claimant is entitled to interim benefits under § 39-71-610, MCA. Therefore, the Department's order granting interim benefits is affirmed.

Car Werks, LLC v. Uninsured Employers' Fund, et al, 2015 MTWCC 13
(Order Denying Third Party Respondent's Motion for Summary Judgment)

Related Topics: [Mediation](#), [Uninsured Employer's Fund](#)

Summary: Third Party Respondent moves for summary judgment on the grounds that this Court lacks jurisdiction, contending that Petitioner is only contesting the mediator's "decision" and that this Court cannot reverse a mediator's "decision," which is nonbinding. Third Party Respondent also argues this Court lacks jurisdiction because the specific issue mediated in this case was Respondent/Third Party Petitioner's acceptance of liability for Petitioner's claim and not the issue in this case, which is medical causation.

Held: This Court has jurisdiction. Petitioner's initial pleading makes it clear that it is contesting the UEF's acceptance of liability of Third Party Respondent's claim and not just the mediator's "decision." The evidence also shows that Petitioner mediated the dispute over the UEF's acceptance of liability which includes the issue of medical causation. Petitioner has followed the procedure set forth in § 39-71-520, MCA, to contest the UEF's determination to accept liability and pay benefits.

Hall v. New Hampshire Ins. Co., 2016 MTWCC 10
(Order Granting Respondent's Motion to Dismiss and Denying Respondent's Motion to Strike as Moot)

Related Topic: [Mediation](#)

Summary: Respondent moved to dismiss the Petition for Hearing, arguing that this Court lacks jurisdiction because Petitioner filed his petition in this Court prior to the issuance of the mediator's Report and Recommendation. Petitioner objected to Respondent's motion, arguing that he could cure any jurisdictional defect because the mediator had issued a Report and Recommendation after Respondent filed its motion to dismiss, and alternatively arguing that he could file his Petition for Hearing because more than 10 working days had passed since the mediation conference, in accordance with ARM 24.28.108(2).

Held: This Court granted Respondent's motion to dismiss. A supplemental pleading cannot cure this jurisdictional defect because it would defeat the purpose of the mediation statutes. Furthermore, since the parties agreed that they pended the mediation to allow them to submit additional evidence for the mediator's consideration, Petitioner failed to prove precisely when the case was no longer in a pending status and that more than 10 working days had passed since the mediation conference.

Davis v. Liberty Insurance Corp., 2017 MTWCC 10
(Order Denying Respondent’s Motion to Amend)

Related Topic: [Procedure](#)

Summary: Respondent moved to amend its Response to Petition for Hearing to assert affirmative defenses based on its contention that the compromise settlement of Petitioner’s wage-loss benefits precludes him from asserting that he is permanently totally disabled. Respondent maintains that Petitioner’s medical benefits terminated under the 60-month limitation of medical benefits in § 39-71-704(1)(f)(i), MCA (2011), and that Petitioner does not have the right to ongoing medical benefits under § 39-71-704(1)(f)(ii), MCA, (2011) which provides that the 60-month limitation “does not apply to a worker who is permanently totally disabled as a result of a compensable injury.”

Held: This Court denied Respondent’s Motion to Amend because its proffered affirmative defenses are not legally tenable defenses. As a matter of law, the issues settled via a compromise settlement remain “uncertain or undetermined.” Thus, Petitioner may litigate the issue of whether he is permanently totally disabled under the definition at § 39-71-116(28), MCA (2011), for purposes of establishing his right to medical benefits under § 39-71-704(1)(f)(ii), MCA (2011), notwithstanding the compromise settlement of his asserted right to PTD benefits under § 39-71-702, MCA (2011). Moreover, Petitioner expressly reserved medical benefits “to the extent allowed under the Workers’ Compensation Act,” which includes the contractual right to maintain that he is permanently totally disabled for purposes of medical benefits under § 39-71-704(1)(f)(ii), MCA (2011).

Davis v. Liberty Insurance Corp., 2017 MTWCC 11
(Order Denying Respondent’s Motion to Dismiss or in the Alternative Motion for Summary Judgment)

Related Topic: [Benefits](#)

Summary: Respondent moved to dismiss Petitioner’s claim that he is permanently totally disabled and therefore has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA (2011). Respondent contends that this Court does not have jurisdiction because Petitioner has not gone through the administrative process to reopen his medical benefits. In the alternative, Respondent alleges that Petitioner settled the issue of whether he is permanently totally disabled, and must reopen his settlement before he can argue he is permanently totally disabled.

Held: This Court denied Respondent’s motion. Under the plain and unambiguous language of § 39-71-704(1)(f)(ii), MCA, a permanently totally disabled claimant’s medical benefits do not terminate 60 months from his date of injury, and a permanently totally disabled claimant is not required to petition the DLI to “reopen” his medical benefits. Moreover, Petitioner is not attempting to reopen his settlement agreement. He did not settle the issue of whether he is permanently totally disabled; he settled his claimed right to PTD benefits on a compromise basis, thereby leaving the issue of whether he is permanently totally disabled “uncertain” and “undetermined.” And, the settlement agreement states that his medical benefits remained open “to the extent such benefits are allowed under the Workers’ Compensation Act.” This includes the contractual right to medical benefits under § 39-71-704(1)(f)(ii), MCA.

Kunz v. Electric Insurance Company, 2018 MTWCC 2
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: March 12, 2018; Dismissed: January 14, 2019

Summary: Petitioner, a Montana resident, was hired in Montana, but traveled to work at power plants throughout the United States, and one in Europe, for four to six months out of each year. Petitioner's employer had not assigned him to any of its Montana jobs. After Petitioner was injured on a job in Texas, the person who handled claims for his employer reported his claim to its insurer as a Montana claim, filled out a Montana First Report of Injury and Occupational Disease and put it in his claims file, and told Petitioner he did not need to file a claim in Texas. Notwithstanding, Respondent denied liability on the grounds that Petitioner's employment was not covered by the Montana Workers' Compensation Act's extraterritorial statute, § 39-71-402(1)(a), MCA, and on the grounds that it was not stopped from denying Petitioner's claim because it is a Plan No. 2 insurer and the employer's employees could not bind it.

Held: Petitioner's claim falls under the Montana Workers' Compensation Act's extraterritorial statute, § 39-71-402(1)(a), MCA. Petitioner was a Montana employee who temporarily left Montana incidental to his employment and was injured in the course of his employment. Respondent is therefore liable for his claim.

Herman v. Montana Contractor Compensation Fund, 2020 MTWCC 16

(Order Granting Respondent's Motions for Partial Summary Judgment)

(Denying Petitioner's Cross-Motion for Partial Summary Judgment)

Summary: Petitioner filed his Petition for Trial and for Declaratory Judgment seeking, *inter alia*, a ruling designating a particular physician as his treating physician, a ruling that Respondent is liable for medical benefits and for his attorney's *Lockhart* fees, and a declaration that § 39-71-1101(2), MCA — which allows an insurer to designate a physician as an injured worker's treating physician — is unconstitutional. Within days, Respondent designated the particular physician as Petitioner's treating physician and conceded that it was liable for Petitioner's medical benefits and his attorney's *Lockhart* fees. Respondent moved for partial summary judgment, arguing that this Court no longer has subject matter jurisdiction over these claims under § 39-71-2905(1), MCA, and *Thompson v. State of Montana*, because there is no longer a dispute concerning benefits. In the alternative, Respondent argues that this Court does not have jurisdiction over these claims because they are moot. Petitioner cross-moved for partial summary judgment, arguing that this Court has subject matter jurisdiction over his claim that § 39-71-1101(2), MCA, is unconstitutional because, after *Thompson*, the Legislature made this Court a court of record. Petitioner asserts that, as a court of record, this Court has jurisdiction to issue declaratory judgments absent a dispute concerning benefits under the Uniform Declaratory Judgments Act. Petitioner also argues that these claims are not moot because Respondent's conduct is capable of repetition yet evading review and because Respondent's "voluntary cessation" does not render the claims moot. Petitioner also asserts that he is entitled to summary judgment on his penalty claim under § 39-71-2907, MCA, because Respondent unreasonably delayed payment of benefits, and on his claim that he is entitled to attorney fees under the private attorney general doctrine. In a separate partial summary judgment motion, Respondent argues that it is entitled to summary judgment on Petitioner's claim for attorney fees under § 39-71-611, MCA, because it has conceded liability for the benefits at issue and, therefore, this Court will not adjudicate the dispute over whether it is liable for these benefits. Petitioner asserts that he can obtain attorney fees under §§ 39-71-611 and -612, MCA, because Respondent has incorrectly and unreasonably calculated the amounts of medical benefits due under the fee schedules and has therefore not paid the full amount of benefits owing.

Held: Respondent's motion for partial summary judgment on Petitioner's claims to designate the particular physician as his treating physician, to rule that Respondent is liable for medical benefits and *Lockhart* attorney fees, and to declare § 39-71-1101(2), MCA, unconstitutional is granted because

this Court no longer has subject matter jurisdiction over these claims. This Court is a court of limited jurisdiction which only has “such power as is expressly conferred by statute.” Under § 39-71-2905(1), MCA, and *Thompson*, this Court’s jurisdiction is limited to “dispute[s] concerning any benefits” under the Workers’ Compensation Act. A dispute concerning Respondent’s liability for benefits no longer exists because Respondent has designated the particular physician as Petitioner’s treating physician and conceded that it is liable for the medical benefits at issue and for *Lockhart* attorney fees. This Court does not have subject matter jurisdiction to issue a declaratory judgment in the absence of a dispute concerning benefits because the specific grant of jurisdiction in the Workers’ Compensation Act controls over a general grant of jurisdiction in the Uniform Declaratory Judgments Act. Because this Court does not currently have subject matter jurisdiction over Petitioner’s constitutional challenge to § 39-71-1101(2), MCA, this Court does not address his challenge nor his claim for attorney fees under the private attorney general doctrine. This Court does not reach Petitioner’s justiciability arguments because this Court must first have subject matter jurisdiction before it can rule on justiciability. Respondent’s motion for partial summary judgment on the issue of claimant’s entitlement to attorney fees is granted because Respondent has conceded its liability for the benefits at issue and this Court cannot award attorney fees under § 39-71-611, MCA, unless it adjudicates a dispute over an insurer’s liability for benefits and finds that the insurer’s denial of liability was unreasonable. This Court does not address Petitioner’s argument under § 39-71-612, MCA, because Petitioner did not make a claim under this statute. Petitioner’s motion for partial summary judgment on his penalty claim is denied because there are issues of fact as to whether Respondent’s initial denials of liability for medical benefits were reasonable.

Hogan v. Federated Mutual Insurance Company, 2021 MTWCC 8
(Order Denying Petitioner’s Motion to Enter Judgment)

Related Topic: [Sanctions](#)

Summary: Petitioner moves for entry of final judgment, asserting that this Court has ruled that Respondent’s subrogation lien is invalid. He argues that this was the only issue in this case or, in the alternative, that this Court’s ruling is dispositive. Respondent points out that this Court did not rule that its subrogation lien was invalid; instead, this Court expressly ruled that Respondent has a right of subrogation, which is a lien against Petitioner’s tort recovery, and that it may exercise its right when Petitioner is made whole. Respondent contends that this Court cannot enter final judgment because the parties’ made-whole claims are still pending before this Court. Petitioner counters that this Court does not have jurisdiction over the made-whole claims, alleging that they did not mediate their dispute as to whether he has been made whole. He also argues that the made-whole claims do not present a justiciable controversy.

Held: This Court denied Petitioner’s Motion to Enter Judgment. In its summary judgment order, this Court expressly ruled that Respondent has a right of subrogation and that it can exercise its right when Petitioner is made whole. The parties’ made-whole claims are still pending before this Court and present a justiciable controversy because Respondent asserts that Petitioner has been made whole and that it can exercise its right of subrogation against his third-party claim. This Court has jurisdiction over the parties’ made-whole claims because they mediated the issue of whether Petitioner has been made whole.

Allum v. Montana State Fund, et al., 2022 MTWCC 6

(Order Dismissing Respondents State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen for Lack of Subject Matter Jurisdiction)

Summary: In addition to his claim for benefits against the workers' compensation insurer, Petitioner brings claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State, alleging that they have violated his rights by failing to perform their official duties.

Held: This Court dismissed Petitioner's claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State because this Court does not have subject matter jurisdiction over Petitioner's claims against them. The only claim over which this Court has subject matter jurisdiction is Petitioner's claim for benefits against the workers' compensation insurer.

Guidetime, Inc. v. Clinch, 2022 MTWCC 13

(Order Dismissing Appeal for Lack of Jurisdiction)

Appealed to Montana Supreme Court; Appeal Dismissed by Voluntary Request of the Parties

Summary: Pursuant to § 39-71-415(2)(c), MCA, which gives this Court jurisdiction to decide appeals of employment status determinations from the DLI's Independent Contractor Central Unit, Petitioner asserts that this Court has jurisdiction to review the DLI's Wage and Hour Unit's determination that Respondent was its employee for purposes of Respondent's wage claim.

Held: This Court dismissed Petitioner's appeal for lack of jurisdiction because the DLI's Wage and Hour Unit, and not the Independent Contractor Central Unit, decided Petitioner's and Respondent's employment status dispute. Jurisdiction pursuant to § 39-71-415(2)(c), MCA, does not vest in this Court unless and until such dispute is decided by the Independent Contractor Central Unit. The DLI's rules state that if there is an employment status dispute in a wage claim, the Wage and Hour Unit must forward the dispute to the Independent Contractor Central Unit for a decision and then incorporate the Independent Contractor Central Unit's decision. The DLI must follow its own rules and does not have the authority to declare that a decision of the Wage and Hour Unit constitutes a decision of the Independent Contractor Central Unit.

King v. District of Columbia Office of Risk Management (ORM), WCC No. 2023-6331 (February 28, 2023, unpublished)

Summary: Petitioner asks this Court to enjoin the judge presiding over his Washington, D.C., workers' compensation case from enforcing subpoenas issued to banks in Washington, D.C., by the D.C. Public Sector Workers' Compensation Program, which is the entity potentially liable for his workers' compensation benefits. Relying on M.R.Civ.P. 28(c), Petitioner contends that because he is a Montana resident, the D.C. Public Sector Workers' Compensation Program was required to have the foreign subpoenas submitted to this Court and, thereafter, to have Montana subpoenas issued and served on him.

Held: This Court dismissed Petitioner's case with prejudice because it lacks subject matter jurisdiction over workers' compensation claims in jurisdictions outside of Montana and does not have authority to enjoin a judge in a foreign jurisdiction from enforcing subpoenas in his jurisdiction. Even though Petitioner is a Montana resident, the D.C. Public Sector Workers' Compensation Program did not need to have foreign subpoenas submitted to this Court nor have Montana subpoenas issued and

served upon Petitioner under M.R.Civ.P. 28(c), which applies when a party to a case in a foreign jurisdiction seeks to conduct discovery in Montana. The D.C. Public Sector Workers' Compensation Program was not conducting discovery in Montana. Instead, it directed the subpoenas to banks in Washington, D.C., and was therefore conducting discovery in Washington, D.C. Thus, M.R.Civ.P. 28(c) is inapplicable and does not confer jurisdiction on this Court.

LAST INJURIOUS EXPOSURE

Johnson v. Liberty Northwest Ins. Corp., 2009 MTWCC 20
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner Raymond Johnson petitioned the Court for occupational disease benefits arising out of and in the course of his employment with Stimson Lumber Company. Johnson has lived in Libby, Montana, since 1963. He worked at the lumber mill in Libby from 1963 to 2001. Stimson purchased the mill in 1993 and was the owner on Johnson's last day of work. The mill contained asbestos in several areas including the top and floor of the big dryer and the pipe wrap surrounding steam pipes. In 2001, Johnson was diagnosed with asbestosis.

Held: Johnson suffers from an occupational disease as a result of his employment with Stimson Lumber Company. Johnson was exposed to copious amounts of asbestos during his employment at the mill from multiple sources – including his employment from 1993 through 2001, while the mill was owned by Stimson. The negative pressure environment created in the plywood plant further exacerbated Johnson's asbestos exposure. Both of Johnson's treating physicians diagnosed him with asbestosis. Johnson's exposure to asbestos during the eight years he worked for Stimson was sufficient to cause his asbestos-related diseases. Johnson's exposure to asbestos during the years he was employed by Stimson constituted his last injurious exposure to the hazard of his disease.

Banco v. Liberty Northwest Insurance Corp., 2011 MTWCC 13 (2012 MT 3)
(Order and Judgment on Stipulated Record)

Appealed to Montana Supreme Court: June 20, 2011; Affirmed: January 1, 2012

Summary: Petitioner worked part-time as a food server for Respondent's insured and concurrently worked full-time as a cook for an employer insured under the federal workers' compensation system. Petitioner left her employment at Respondent's insured while continuing to work at her other job. Petitioner filed a workers' compensation claim, alleging that she developed an occupational disease in her right shoulder. Respondent denied liability.

Held: Under the "last injurious exposure" rule as set forth in *In re Mitchell*, the employer who is liable for an occupational disease is the employer at which the claimant was last exposed to the working conditions of the same type and kind which gave rise to the occupational disease. In this case, Petitioner continued to be exposed to those working conditions at her other employment after she quit her job at Respondent's insured. Therefore, Respondent is not liable for Petitioner's occupational disease.

Liberty Northwest v. Montana State Fund in re Claim of Gary Mitchell, 2008 MTWCC 54 (2009 MT 386)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: August 5, 2009; Affirmed: November 12, 2009

Related Topic: [Major Contributing Cause](#)

Summary: The claimant suffers from a low-back condition as a result of his lifetime of employment in heavy-labor positions. He worked for State Fund's insured in 2002 and his back condition began to worsen at that time, although the claimant continued to work. He was employed by Liberty Northwest's insured from August through October 2005. The claimant filed separate claims with Liberty Northwest and State Fund for his low-back condition. Liberty Northwest argues that it is not

liable for the claimant's claim under the last injurious exposure rule. Liberty Northwest also argues that the WCA requires a claimant to prove that the major contributing cause of his OD is the employment where he was last injuriously exposed to the hazard of the disease.

Held: The plain meaning of § 39-71-407(9), MCA, contains no requirement that the "employment" which is the major contributing cause of a claimant's occupational disease (OD) derive from a particular employer. Rather, the statute calls for a comparison between occupational and non-occupational factors as part of the determination as to whether the OD is considered to "arise out of employment or be contracted in the course and scope of employment." In the present case, I conclude that the claimant's lifetime of heavy-labor employment was the major contributing cause of his low-back condition, and that the claimant was last injuriously exposed to the hazard of his OD while he was employed by Liberty Northwest's insured. Therefore, Liberty Northwest is liable for the claimant's lowback condition.

Baeth v. Liberty NW Ins. Corp., 2014 MTWCC 10
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Penalties](#)

Summary: Petitioner alleges that her work at a plywood plant in Libby from 1989 to March 1994 caused her asbestos-related lung disease. The plant was owned and operated initially by Champion International Co., then was taken over by Stimson Lumber Company in November 1993. Respondent denies that Petitioner suffers from an OD and claims that her respiratory problems are instead related either to COPD or emphysema caused by a long history of smoking. It also argues that even if Petitioner has asbestos-related disease, her non-employment exposure was greater than her exposure during her employment, and that she is judicially estopped from claiming an OD. Petitioner alleges she is entitled to attorney fees and a penalty.

Held: Petitioner's two treating physicians both opined that she has asbestos related disease and that her employment at the plywood plant substantially contributed to it. Petitioner's work for Stimson was of the type and kind that could have caused her asbestos-related disease, and although she had worked relatively briefly for Stimson as compared to Champion, applying the "potentially causal" standard set forth in *In re Claim of Mitchell*, Petitioner was last injuriously exposed to the hazard of the disease while working for Stimson. Petitioner is not judicially estopped from claiming an OD. As Respondent did not act unreasonably in denying Petitioner's claim, Petitioner is not entitled to attorney fees or a penalty.

Monroe v. MACo Workers Comp Trust, 2014 MTWCC 7
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Statutes of Limitation](#)

Summary: Petitioner alleges her late husband, a W.R. Grace & Co. employee for over twenty years, was exposed to asbestos while later working with the Lincoln County Road Department in the Libby area for over ten years. Petitioner's husband was diagnosed with asbestos-related lung disease in 2001 and died in 2010. The decedent's claim for compensation with W.R. Grace was settled on a disputed liability basis. Petitioner alleges Lincoln County is liable for her husband's death under the last injurious exposure rule. Respondent denies liability on the grounds that Petitioner's claim is untimely pursuant to § 39-71-601, MCA, and that Petitioner's husband developed asbestos-related disease as a result of his work with W.R. Grace and not Lincoln County.

Held: Respondent is liable for Petitioner's claim under the "potentially causal" standard enunciated in *In re Claim of Mitchell*. Because no one at the Lincoln County Road Department had filed for asbestos-related disease at the time Petitioner submitted her claim, the Court concluded that Petitioner neither knew nor should have known that her husband's work for the county was directly related to his asbestos-related disease until informed by her attorney. Petitioner's claim is not time-barred, and she is entitled to widow's benefits and burial expenses. Petitioner is not entitled to PPD benefits based on a 100% impairment.

LOCKHART LIENS

***Dildine v. Liberty Northwest Ins. Corp.*, 2008 MTWCC 14** (2009 MT 87)

(Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Cross-Motion for Summary Judgment)

Appealed to Montana Supreme Court: April 15, 2008; Affirmed: March 24, 2009

Related Topic: [Jurisdiction](#)

Summary: Petitioner moved the Court for summary judgment on the issue of her attorney's entitlement to a 20% fee on medical benefits pursuant to a *Lockhart* lien. Respondent cross-motivated for summary judgment, arguing that Petitioner's attorney was not entitled to the *Lockhart* fee because the attorney's efforts were not the cause of its acceptance of liability. Respondent further argued that this Court lacked jurisdiction to decide the issue of *Lockhart* liens in light of Justice Nelson's concurring opinion to the Montana Supreme Court's ruling in *Pinnow v. Montana State Fund*.

Held: Petitioner's motion is granted. As recently reiterated by the Montana Supreme Court in its majority opinion in *Pinnow v. Montana State Fund*, this Court has jurisdiction to decide disputes concerning attorney fees. Petitioner's attorney is entitled to a *Lockhart* fee because the Court finds that his efforts led to Respondent's acceptance of Petitioner's claim.

***Webster v. Liberty Northwest Ins. Co.*, 2018 MTWCC 18**

(Order Denying Respondent's Motion for Summary Judgment, and Granting in Part and Denying in Part Petitioner's Cross-Motion for Summary Judgment)

Summary: Petitioner petitioned this Court for a ruling that his attorney earned fees on the reopening of his medical benefits and that Respondent unreasonably refuses to honor his attorney's *Lockhart* lien. On the latter basis, Petitioner requests a penalty and attorney fees. Respondent moves for summary judgment on the basis that a claimant's attorney cannot obtain fees by doing the work pursuant to which medical benefits that were terminated by operation of law were reopened; rather, Respondent asserts that a claimant's attorney is entitled to fees only when an insurer denies liability for the medical benefits and the claimant thereafter obtains the medical benefits due to his attorney's efforts. Respondent also argues that Petitioner's attorney did not do enough legal work to earn attorney fees. Petitioner cross-moves for summary judgment on the relief requested in his Petition for Hearing.

Held: Respondent's Motion for Summary Judgment is denied, and Petitioner's Cross-Motion for Summary Judgment is granted in part and denied in part. An insurer's denial of liability is not a condition precedent to a *Lockhart* lien; the relevant inquiry is whether the attorney did the work that resulted in the additional medical benefits. And here, Petitioner is receiving two years of additional medical benefits entirely due to his attorney's efforts, which were far more than "initiating a process." Petitioner's attorney obtained the evidence necessary to reopen Petitioner's medical benefits and then successfully petitioned the Department to reopen his medical benefits. However, Respondent's legal argument with respect to there being a condition precedent to a *Lockhart* lien is not unreasonable because this is an issue of first impression and there is a conflict within the Department of Labor & Industry's Attorney Retainer Agreement, and within its rule governing attorney fees. Thus, Respondent is not liable for a penalty or Petitioner's attorney fees.

LUMP SUMS

Miller v. Sears, 2005 MTWCC 54

(Findings of Fact, Conclusions of Law and Judgment).

Summary: The petitioner petitioned for a lump-sum conversion of his lifetime expectancy of permanent total disability benefits.

Held: Conversion of lifetime permanent total disability benefits to a lump sum is granted. The petitioner demonstrated financial need that relates to the necessities of life. The petitioner and his wife provide a home for themselves, two of their adult children, and his elderly, disabled mother. The petitioner and his family currently reside in a multilevel rental home that is difficult for both the petitioner and his mother to navigate because of the stairs. The petitioner and his wife demonstrated that a lump sum would enable them to build or buy and modify a home which would accommodate the petitioner's and his mother's disabilities. The petitioner, with the assistance of his wife, is competent to handle his financial affairs. The petitioner and his wife have thus far managed their financial affairs with limited resources and setbacks beyond their control. However, it is apparent from the testimony that the petitioner and his wife's ability to manage their resources is being heavily taxed by their need to borrow against the petitioner's wife's retirement plan and that their ability to continue to borrow against this retirement plan is nearly exhausted. Although the Court might not otherwise exercise jurisdiction over a dispute regarding the total conversion of permanent total disability benefits pursuant to section 39-71-741(2)(d), MCA (1989), the parties in this case have agreed that this Court may properly exercise jurisdiction over this dispute pursuant to section 39-71-2905, MCA (1989).

Barnard v. Liberty Northwest, 2006 MTWCC 35 (2008 MT 254)

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: November 13, 2006; Affirmed: July 22, 2008

Summary: Petitioner petitioned for a lump-sum conversion of his permanent total disability benefits, testifying that he would use the money for a new mobile home, driveway improvements, a newer motor vehicle, and additional cattle. Respondent responded that Petitioner's request should not be granted because his lump sum exceeds the \$20,000 limit permissible under § 39-71-741, MCA, or in the alternative, because Petitioner will not use the lump sum to obtain necessities of life.

Held: Section 39-71-741(1)(c), MCA, limits the Department of Labor and Industry to awarding lump-sum conversions in part to a total of \$20,000. However, it does not limit conversions in whole to that amount. Petitioner's planned use for the proposed lump-sum conversion meets Petitioner's necessities of life pursuant to § 39-71-741(1)(c), MCA. Furthermore, it is in his and his family's best interests and is therefore granted.

Sanchez v. Montana State Fund, 2007 MTWCC 25

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned for a lump-sum conversion of his permanent total disability benefits pursuant to § 39-71-741, MCA. Respondent argues that a lump-sum conversion is not in Petitioner's best interests.

Held: Petitioner has not met the lump-sum criteria of § 39-71-741(1)(c), MCA. He has failed to demonstrate financial need and the Court is not persuaded that a lump-sum conversion is in his best interests.

Benhart v. Liberty Northwest Ins. Co., 2008 MTWCC 6

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner petitioned the Court to order Respondent to convert his PTD benefits to a lump sum.

Held: Petitioner's petition is denied. He has not demonstrated that he is entitled to a lump-sum conversion pursuant to § 39-71-741, MCA.

Jimenez v. Liberty NW Ins. Corp, Employment Relations Division., 2016 MTWCC 17

(Order Granting in Part and Denying in Part Respondent's Motion to Dismiss)

Summary: Respondent moved to dismiss Petitioner's Petition for Hearing, wherein Petitioner asks this Court to award him a lump sum of his PTD, medical, and domiciliary care benefits, the total of which is approximately \$3.5 million. Respondent argued that the Workers' Compensation Act does not allow for a lump-sum conversion of medical and domiciliary care benefits on a claimant's demand, and Petitioner failed to adequately plead the statutory requirements for a lump-sum conversion of PTD benefits.

Held: The Workers' Compensation Act does not allow this Court to grant Petitioner a lump-sum conversion of his medical and domiciliary care benefits on his demand and those claims are dismissed. However, Petitioner sufficiently pleaded his demand for a lump-sum conversion of his PTD benefits, which the Workers' Compensation Act allows under certain circumstances. Respondent's Motion to Dismiss is therefore granted in part and denied in part.

MAJOR CONTRIBUTING CAUSE

Faulkner v. Hartford Underwriters Ins. Co., 2007 MTWCC 15
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Causation](#), [Constitutional Law](#), [Last Injurious Exposure](#)

Summary: Faulkner petitioned the Court for payment of wages and medical benefits which he argues he is entitled to as a result of an occupational disease suffered while performing his duties as a janitor at National Electronics Warranty (“NEW”). Faulkner began working at NEW as maintenance worker on March 4, 2002, and his work in this position included sweeping, mopping, and scrubbing, and other activities involving lifting and working with his arms raised above shoulder level. Prior to his employment at NEW, Faulkner was employed by Big Sky Transfer & Storage (“Big Sky”), and filed a workers’ compensation claim on January 11, 2000, relating to a lifting injury to his neck and shoulder for which Montana State Fund accepted liability. After reaching MMI for the injury, Faulkner settled his claim with the State Fund, leaving medical benefits open. He thereafter continued to treat with Dr. Peterson for his neck and shoulder pain. Beginning in March 2004, Faulkner began to experience increased right shoulder and neck pain, decreased range of motion, daily headaches, and numbness in his hands. His symptoms did not improve, and additional symptoms developed over time. On September 12, 2005, Dr. Peterson noted Faulkner’s right shoulder and upper extremity symptoms had worsened and that the symptoms were an aggravation of his previous injury from January 11, 2000, and not a new injury. Dr. Peterson took Faulkner off work as of that date, and later opined in a letter to Faulkner’s counsel that Faulkner’s work activity at NEW “materially and substantially aggravated his pre-existing injury” of January 11, 2000, after Faulkner had reached MMI on August 4, 2000. Following an IME of Faulkner, Dr. Schumpert noted that Faulkner’s status changed over the course of less than one year after he began working at NEW, as he had markedly reduced right shoulder range of motion as of October 2004. Dr. Schumpert also opined, on a more-likely-than-not basis, that Faulkner’s work at NEW aggravated his pre-existing shoulder condition.

Held: Petitioner suffers from an occupational disease as a result of performing his duties as a janitor and is entitled to wage-loss and medical benefits.

Under the 2005 version of the Montana Workers’ Compensation Act, an occupational disease is defined as “harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.” § 39-71-116(20)(a), MCA. An occupational disease is considered to have arisen out of employment if: (1) the occupational disease is established by objective medical findings; and (2) the events occurring on more than a single work day or work shift are the “major contributing cause” of the occupational disease in relation to other factors contributing to the occupational disease. § 39-71-407(a) and (b), MCA. Under the new statutory framework, “major contributing cause” means “a cause that is the leading cause contributing to the result when compared to all other contributing causes.” § 39-71-407(13), MCA. “When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.” § 39-71-407(10), MCA.

Under the 2005 version of the Workers’ Compensation Act, the Court does not need to determine whether Faulkner’s OD is related to the January 2000 injury, or is a new distinct OD unrelated to the 2000 injury. The Court only needs to determine whether the events that occurred during Faulkner’s employment at NEW were the “major contributing cause” of his OD in relation to other factors. Based on the trial testimony of Dr. Peterson, the medical evidence, and the evidence regarding Faulkner’s work activities, the Court concludes Faulkner sustained an OD in the course and scope of

his employment at NEW. Faulkner's employment activities at NEW were the "major contributing cause" of his OD in relation to other factors.

Liberty Northwest v. Montana State Fund in re Claim of Gary Mitchell, 2008 MTWCC 54 (2009 MT 386)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: January 16, 2009; Affirmed: November 12, 2009

Related Topic: [Last Injurious Exposure](#)

Summary: Mitchell suffers from a low-back condition as a result of his lifetime of employment in heavy-labor positions. He worked for State Fund's insured in 2002 and his back condition began to worsen at that time, although he continued to work. Mitchell was employed by Liberty Northwest's insured from August through October 2005. He filed separate claims with Liberty Northwest and State Fund for his low-back condition. Liberty Northwest argues that it is not liable for the claimant's claim under the last injurious exposure rule. Liberty Northwest also argues that the WCA requires a claimant to prove that the "major contributing cause" of his OD is the employment where he was last injuriously exposed to the hazard of the disease.

Held: The plain meaning of § 39-71-407(9), MCA, contains no requirement that the "employment" which is the "major contributing cause" of a claimant's occupational disease derive from a particular employer. The WCC concluded that Mitchell's lifetime of heavy-labor employment was the "major contributing cause" of his low-back condition, and that he was last injuriously exposed to the hazard of his OD while he was employed by Liberty Northwest's insured. Therefore, Liberty Northwest is liable for Mitchell's low back condition.

Grande v. Montana State Fund, 2011 MTWCC 15 (2012 MT 67)
(Findings of Fact, Conclusions of Law, and Judgment)

Appealed to Montana Supreme Court: August 22, 2011; Affirmed: March 20, 2012

Summary: Petitioner left his job as a truck driver due to arthritic condition in his hands and filed an occupational disease claim. Respondent denied Petitioner's claim, arguing that the conditions were not caused by Petitioner's employment and that aggravations of non-work-related conditions are not compensable as occupational diseases.

Held: Petitioner has proven that his job duties are the major contributing cause of his condition and he is therefore suffering from a compensable occupational disease. He has further proven that his occupational disease currently precludes him from returning to his time-of-injury employment. Petitioner is entitled to TTD benefits, reasonable medical benefits, and his costs.

MAXIMUM MEDICAL IMPROVEMENT

Copeland v. Montana State Fund, 2006 MTWCC 45

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Disability](#)

Summary: Three years after a head injury, Petitioner continues to exhibit symptoms and has not returned to work. Petitioner alleges he is not at MMI and that he has not received proper treatment for his industrial injury, including treatment for a preexisting depression that was exacerbated by his injury, and his TTD benefits should be reinstated. Respondent alleges that Petitioner is at MMI, has received an impairment rating, has been released to work at approved jobs, and is therefore not eligible for TTD benefits.

Held: Petitioner has not reached MMI and is entitled to reinstatement of his TTD benefits.

Wilson v. Uninsured Employers' Fund v. Elk Mountain Motor Sports, Inc., 2010 MTWCC 33

(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Disability](#) (PTD), [Attorneys' Fees](#), [Penalties](#)

Summary: Petitioner suffered an industrial injury on January 8, 2004, while working for Third-Party Respondent. Third-Party Respondent was not enrolled in a workers' compensation insurance program at the time. Respondent/Third-Party Petitioner accepted the claim. Petitioner alleges he is permanently totally disabled and entitled to a penalty and attorney fees. Respondent/Third-Party Petitioner and Third-Party Respondent contend that Petitioner has not reached maximum medical healing and, therefore, is not permanently totally disabled. Petitioner, Respondent/Third-Party Petitioner and Third-Party Respondent ask this Court to determine: 1) whether Petitioner has reached maximum medical healing; 2) whether Petitioner is permanently totally disabled; 3) whether a preponderance of the objective medical findings supports entitlement to permanent total disability; 4) if Petitioner is not permanently totally disabled, whether he is temporarily totally disabled, permanently partially disabled, or otherwise disabled; 5) whether Third-Party Respondent is obligated to indemnify Respondent/Third-Party Petitioner for all benefits paid or payable; 6) whether Petitioner is entitled to a penalty and attorney fees; and 7) whether Third-Party Respondent's contentions are improper in light of this Court's ruling granting Respondent/Third-Party Petitioner's motion for partial summary judgment.

Held: Petitioner has reached maximum medical healing within the meaning of § 39-71-116(18), MCA. Petitioner is permanently totally disabled within the meaning of § 39-71-116(24), MCA. A preponderance of objective medical findings supports Petitioner's entitlement to permanent total disability. Issue 4 is moot, and Issues 5 and 7 were resolved by this Court's Order Granting Respondent/Third-Party Petitioner's motion for partial summary judgment. Petitioner is not entitled to a penalty or attorney fees.

Sherwood v. Watkins & Shepard Trucking, Great West Casualty Co., 2011 MTWCC 4

(Order Denying Respondent Watkins & Shepard Trucking's Motion for Reconsideration, Resolving Petitioner's Request for Amendment to Findings of Fact and Conclusions of Law, and Granting Petitioner's Application for Taxation of Costs).

Summary: Respondent moved for reconsideration of the Court's Findings of Fact, Conclusions of Law and Judgment, arguing that the Court erred in finding that Petitioner was not at MMI and

concluding that Petitioner was therefore entitled to TTD benefits. Petitioner moved for amendment of the Court's findings of fact and conclusions of law, arguing that he is entitled to TTD benefits retroactively from an earlier date than the Court held. Petitioner further applied for taxation of his costs.

Held: Petitioner is not at MMI. The medical evidence demonstrates that Petitioner is currently unable to perform any job duties due to his medication regimen. He is therefore entitled to TTD benefits and Respondent's motion for reconsideration is denied. Petitioner is entitled to TTD benefits retroactive to the date a physician opined he was unable to work. Petitioner's Application for Taxation of Costs is granted.

Hale v. Liberty Mutual Middle Market, 2010 MTWCC 28

(Findings of Fact, Conclusion of Law and Judgment).

Related Topics: [Benefits](#)

Summary: Petitioner suffered an injury to his left leg on January 2, 2006. He is currently off work and receiving temporary total disability benefits. Petitioner alleges that he is permanently totally disabled. He argues that his benefits should be converted to permanent total disability benefits and that it is in his best interest to receive those benefits in a lump sum. Petitioner further alleges that Respondent has unreasonably refused to convert his benefits and that he is entitled to his costs, attorney fees, and a penalty.

Held: Petitioner is not at maximum healing. Under § 39-71-116(25), MCA, a worker cannot be declared permanently totally disabled until after he reaches maximum healing. Therefore, Petitioner is not permanently totally disabled. Since this issue is dispositive of Petitioner's case, the Court does not reach the other issues presented.

Newman v. Montana State Fund, 2011 MTWCC 12

(Order Denying Petitioner's Motion for Partial Summary Judgment).

Summary: Petitioner moves for partial summary judgment on the issue of whether Respondent properly terminated her indemnity and medical benefits. Petitioner seeks judgment, as a matter of law that Respondent acted without medical or legal basis when it terminated her medical benefits and refused to reinstate her indemnity and medical benefits. Respondent argues that factual disputes exist concerning whether Petitioner had reached maximum medical improvement before it terminated her benefits and whether any continuing treatment is causally related to Petitioner's industrial injury.

Held: Material factual disputes regarding Petitioner's MMI status preclude summary ruling. Petitioner's motion is therefore denied.

MEDIATION

Howe v. Uninsured Employers' Fund, In re: Kurtz, 2005 MTWCC 59
(Order Denying Motion To Dismiss).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Respondent, Uninsured Employers' Fund, sought to dismiss the Petition for Appeal for failure to file a timely appeal to mediation. Respondent argued that § 39-71-520(1), MCA (2003), required Petitioner to file for mediation with the mediation unit within ninety days if Petitioner disputed Respondent's determination that he was the employer of the claimant. Although Petitioner did not complete the specific form used by the UEF to appeal a determination, he did send a letter addressed to "Labor & Industry" on January 20, 2004, which expressed his disagreement with Respondent's determination and stated unambiguously that he was not the Claimant's employer. The letter was received by Respondent on January 23, 2004. However, Respondent did not forward the letter to the mediation unit until after the ninety-day period to appeal had expired.

Held: The motion to dismiss is denied. Section 39-71-520(1), MCA (2003), states that a dispute concerning Uninsured Employers' Fund benefits must be appealed to mediation within ninety days. The statute does not specifically address in any way, however, the method by which an appeal is perfected. Petitioner, acting *pro se*, notified Respondent by letter that he disputed its determination. This letter was addressed to the Department of Labor and Industry and was received by Respondent within the ninety-day period. Although Petitioner did not use the form provided by Respondent, his letter dated January 20, 2004, put Respondent on notice of Petitioner's disagreement and substantively complied with the requirement of § 39-71-520(1), MCA (2003), to appeal to mediation within ninety days.

Auchenbach v. Uninsured Employers' Fund, 2006 MTWCC 13
(Order Denying Respondent's Motion to Dismiss).

Related Topics: [Equity - Estoppel & Waiver](#), [Uninsured Employers' Fund](#)

Summary: Respondent Uninsured Employers' Fund filed a motion to dismiss based on lack of jurisdiction due to Petitioner's failure to file her Petition for Hearing with the Workers' Compensation Court within sixty days after the mailing of the Mediator's Report and Recommendation, as required under § 39-71-520(2), MCA (2003). The UEF, however, had failed to respond to the Mediator's Report and Recommendation within twenty-five days, as required under § 39-71-2411(6), MCA (2003). Moreover, Respondent failed to respond to the Recommendation within sixty days, leaving Petitioner in the dark regarding Respondent's position on the Recommendation and whether settlement had been achieved. Pursuant to § 39-71-520(2)(c), MCA (2003), Petitioner could not file a petition before this Court until there had been a failure to reach settlement through mediation. Until Respondent fulfilled its statutory obligation to either accept or reject the Mediator's Report and Recommendation, there was no failure to reach settlement.

Held: Respondent's motion to dismiss is denied. As a fundamental matter of equity, this Court cannot allow a party to sit on its hands while a time limitation runs on a *pro se* petitioner while, at the same time, ignoring its own affirmative statutory duty to act. Respondent is equitably estopped from relying on § 39-71-520(2)(c), MCA (2003), because it failed to comply with § 39-71-2411(6), MCA (2003), by failing to respond to the Recommendation within twenty-five days. The elements of both equitable estoppel and estoppel by silence or acquiescence are satisfied in this case. Respondent cannot stay silent in the face of a statute requiring it to respond, continue its silence after receiving a

letter from the Mediation Unit requesting Respondent's response, and then rely on a time limitation set forth in a statute which precludes Petitioner from filing a petition with this Court prior to Respondent's response to the Recommendation.

Wood v. Montana State Fund, 2007 MTWCC 53
(Order Granting Petitioners' Motion to Amend Petition).

Summary: Petitioners move the Court to allow them to amend their petition after a deposition allegedly revealed new information regarding Respondent's adjusting of this claim. Respondent opposes the motion, arguing that the new contentions raise issues which have not been mediated.

Held: Petitioners' motion to amend is granted. Mont. R. Civ. P. 15(a) allows amendment of a petition to be freely given where justice so requires. Although Petitioners' amended petition adds new contentions, it does not raise new issues and therefore mediation is not required.

Benton v. Uninsured Employers' Fund, 2008 MTWCC 23
(Order Granting Respondent Uninsured Employers' Fund's Motion to Dismiss).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Respondent Uninsured Employers' Fund moves the Court to dismiss Petitioner's Petition for Hearing because the petition was not timely filed pursuant to § 39-71-520, MCA, which requires a petition for trial in this Court be filed within sixty days of the mailing of the mediator's report. Petitioner's response brief to the UEF's motion to dismiss challenging the constitutionality of § 39-71-520, MCA, was untimely filed and the UEF argues that Petitioner's constitutional challenge should not be considered.

Held: Because Petitioner's response brief was not timely filed pursuant to ARM 24.5.316, Petitioner's substantive argument that § 39-71-520, MCA, is unconstitutional will not be considered. Pursuant to § 39-71-520, MCA, a party must file a petition with this Court within sixty days of the mailing of the mediator's report if the parties fail to reach a settlement and the parties do not stipulate in writing to a longer time period. If a petition is not filed within sixty days, the Department's determination is final. In the present case, the mediator's report was mailed on October 29, 2007. Petitioner filed the Petition for Hearing on February 27, 2008. Petitioner's petition was filed several days late and therefore must be dismissed with prejudice.

Emergency Preparedness Systems, LLC v. Scobie, 2008 MTWCC 44
(Order Denying Respondent's Motion to Dismiss).

Summary: Respondent moved to dismiss Petitioner's petition arguing that Petitioner failed to timely request mediation of the Independent Contractor Central Unit's employment status determination as prescribed by § 39-71-415, MCA. The crux of Respondent's argument is that Petitioner's September 12, 2007, letter – which unambiguously identified itself as an appeal of both the ICCU's Determination and the Wage and Hour Unit's Determination, and which went on for five pages to detail the manner in which Respondent disagreed with both Determinations – was not sufficient to constitute a request for mediation of the ICCU's Determination because Petitioner did not employ the precise verbiage necessary to request mediation and Petitioner did not address his letter to the correct individual at the Department of Labor and Industry. Respondent also argued that the petition should be dismissed because Petitioner failed to secure replacement counsel in a timely manner.

Held: Respondent's motion is denied. Petitioner's detailed letter satisfies the mediation request requirements set forth in § 39-71-415, MCA. Petitioner's letter clearly expressed his disagreement with the ICCU Determination and was timely submitted to the Department of Labor and Industry. To accept Respondent's argument would be to exalt form over substance – an argument that this Court rejected in *Howe v. UEF*. Regarding Respondent's argument that the petition should be dismissed for Petitioner's failure to secure replacement counsel in a timely manner, Respondent fails to cite to any authority in support of this argument. Accordingly, Respondent's argument on this ground is not well-taken.

Schreckendgust v. Montana Schools Group Ins. Auth., 2009 MTWCC 23

(Order Granting Respondent's Motion to Strike, Granting Respondent's Motion for Summary Judgment, and Denying Petitioner's Cross-Motion for Summary Judgment).

Related Topic: [Statute of Limitations](#)

Summary: Montana Schools Group Insurance Authority moved for summary judgment on the grounds that Petitioner Judy Schreckendgust failed to file her claim in this Court within two years of MSGIA's denial of benefits, as required by § 39-71-2905, MCA. Schreckendgust contended that the parties agreed that she could seek treatment from her treating physician and MSGIA reneged on this agreement. Schreckendgust cross-motivated for summary judgment against MSGIA for "failing to uphold the agreement." In purported support of her contention that MSGIA had accepted liability for Schreckendgust to treat with her treating physician, Schreckendgust submitted the department mediator's report for the Court's consideration. MSGIA moved to strike the mediator's report and all references to the report pursuant to § 39-71-2410, MCA.

Held: MSGIA's motion to strike is granted. Section 39-71-2410, MCA, requires that, but for limited exceptions, all proceedings before the department mediator are confidential. This case does not fall within one of those exceptions. Regarding the cross-motions for summary judgment, § 39-71-2905, MCA, requires that a petition for hearing before the Workers' Compensation Judge be filed within two years after benefits are denied. MSGIA denied Schreckendgust's claim on May 18, 2005, and Schreckendgust did not file her petition in this Court until January 16, 2009, nearly three years and eight months after benefits were denied. Schreckendgust's claim is therefore time-barred pursuant to § 39-71-2905, MCA. Accordingly, MSGIA's motion for summary judgment is granted and Schreckendgust's cross-motion for summary judgment is denied.

Emmons v. MHA Workers Compensation Reciprocal, 2009 MTWCC 10

(Order Denying Petitioner's Motion for Summary Judgment, and Respondent's Cross-Motion for Summary Judgment, Granting Respondent's Motion to Strike Petitioner's Addendum to Her Summary Judgment Brief, and Granting Respondent's Motion to Strike Petitioner's Reply Brief).

Related Topic: [Sanctions](#)

Summary: Petitioner moved for summary judgment. Respondent cross-motivated for summary judgment, alleging Petitioner failed to provide notice of her injury within thirty days, as required by § 39-71-603(1), MCA. Respondent further moved the Court to strike two of Petitioner's pleadings related to the motions for summary judgment on the grounds that Petitioner's pleadings contained inadmissible information regarding confidential mediation proceedings.

Held: Petitioner's motion for summary judgment is denied because Petitioner failed to comply with the requirements of ARM 24.5.329(3). Irrespective of Petitioner's failure to comply with this rule, it is readily apparent from the briefs that Petitioner's claim is not appropriate for summary judgment

because there are facts in dispute. Respondent's cross-motion for summary judgment is denied because Petitioner timely provided notice to her employer of her alleged injury in compliance with § 39-71-603(1), MCA. Respondent's motions to strike two of Petitioner's pleadings are granted on the grounds that the substance of Petitioner's pleadings attempted to place confidential mediation information before the Court which is specifically prohibited under § 39-71-2410, MCA. Petitioner has made multiple attempts to introduce information from the confidential mediation proceedings in contravention of § 39-71-2410, MCA. Petitioner is cautioned that any further attempts will result in an order to show cause why sanctions should not be imposed.

Burke v. Roseburg Forest Products Co., 2009 MTWCC 32
(Order Granting Respondent's Motion to Dismiss).

Summary: Respondent moved to dismiss Petitioner's petition based on Petitioner's failure to complete the mediation process before filing her Petition for Hearing as required by § 39-71-2408(1), MCA and § 39-71-2905, MCA. Although the mediator had not issued her report prior to the filing of Petitioner's petition, Petitioner argued that the Court should nevertheless exercise jurisdiction because the purposes of mediation had been served.

Held: Respondent's motion is granted. The Court lacked jurisdiction over this matter prior to the completion of the statutorily-mandated mediation process. Although the Court might conceivably exercise jurisdiction now that the statutorily-mandated mediation process had been completed, albeit two months after the petition was filed, the case would be moving forward under a cloud of uncertainty as to whether jurisdiction could be retroactively restored. Although dismissing the petition and restarting the process is inconvenient at this juncture, it is much more impractical to proceed to trial with the specter of restarting the process after an appeal. The more prudent course of action is to dismiss the petition without prejudice.

Young v. New Hampshire Ins. Co., 2015 MTWCC 14
(Order Dismissing for Lack of Subject Matter Jurisdiction)

Related Topic: [Jurisdiction](#)

Summary: Respondent contended in its Response to Petition for Hearing that the parties had not completed the mandatory mediation process when Petitioner filed his Petition for Hearing (Injury). Petitioner concedes that the parties had not completed the mediation process when he filed his Petition for Hearing (Injury). However, relying on maxims of jurisprudence, such as "The law neither does nor requires idle acts," Petitioner argues that this Court has jurisdiction because the parties were entrenched in their positions and that the mediation process was therefore "a complete waste of time."

Held: This Court does not have subject matter jurisdiction and therefore this case is dismissed without prejudice. In 2004, the Montana Supreme Court held, "the Workers' Compensation Court does not have jurisdiction during the pendency of a statutorily-mandated mediation, given that a claimant may only petition the Workers' Compensation Court 'after satisfying dispute resolution requirements otherwise provided' in the Workers' Compensation Act—such as mandatory mediation." Thus, in 2005, this Court warned, "[I]n the future, all petitions which are filed before completion of mandatory mediation will be dismissed." This case is no exception.

Andrews v. Montana State Fund, 2020 MTWCC 2
(Order Denying Respondent's Motion for Summary Judgment)

Related Topic: [Summary Judgment](#)**Error! Bookmark not defined.**

Summary: Respondent asserts that Petitioner did not timely file this case under the two-year statute of limitations in § 39-71-2905(2), MCA.

Held: Respondent is not entitled to summary judgment. The evidence Respondent submitted shows that there is a material issue of fact as to whether the parties mediated the dispute over Respondent's denial of liability for his SI joint condition at the first mediation conference. If the parties mediated that dispute, then the statute of limitations was tolled during the first mediation proceeding, and Petitioner filed his Petition for Hearing approximately one month before the statute of limitations ran.

NOTICE OF INJURY

Siebken v. Liberty Northwest Ins. Co., 2007 MTWCC 48 (2008 MT 353)
(Decision and Judgment)

Appealed to Montana Supreme Court: January 17, 2008; Affirmed: October 21, 2008

Summary: Petitioner was involved in a work-related physical altercation on December 11, 2004. He reported the incident to his supervisor the same day, but did not report any injury because he did not know he was injured. On May 26, 2006, he learned that he had a cervical condition which was likely caused by the altercation. Petitioner filed a claim for compensation on July 3, 2006. Respondent argues that it is not liable for Petitioner's condition because Petitioner did not report an accident and injury within 30 days as required by § 39-71-603, MCA.

Held: Petitioner failed to notify his employer within 30 days of when he learned that his work-related incident was the probable cause of his injury. His claim is therefore time-barred under § 39-71-603, MCA.

Siebken v. Liberty Northwest Ins. Co., 2007 MTWCC 56
(Order Denying Petitioner's Motion for Reconsideration).

Summary: Petitioner asks the Court to reconsider its decision in this matter. It alleges that the Court erred in failing to take into account Montana Supreme Court precedent regarding what constitutes an unexpected traumatic incident or unusual strain. Respondent responds that the issue was not whether Petitioner suffered an unexpected traumatic incident or unusual strain, but whether he reported it in a timely manner. Respondent argues that the Court correctly determined that while Petitioner suffered an unexpected traumatic incident or unusual strain, Petitioner failed to report it to his employer within 30 days as required by § 39-71-603, MCA.

Held: While Petitioner may have suffered a strain which was unusual in its effect, he nonetheless did not report it within 30 days of learning that he had done so. His motion for reconsideration is denied.

Fournier v. Montana Schools Group Insurance Authority, 2009 MTWCC 34
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner Jeannine Fournier petitioned the Court for a determination of whether she properly reported her accident within thirty days pursuant to § 39-71-603(1), MCA. Petitioner worked as a special education paraprofessional at Kalispell Middle School. She slipped and fell on some ice in the school parking lot and injured her ankle. The following day, Petitioner's ankle was examined by a physician and he diagnosed her with a "SPRAIN OF ANKLE DELTOID." Approximately three to four weeks after Petitioner's accident, she approached a teacher in the school hallway and inquired about what she needed to do to report her injury. The teacher advised Petitioner to proceed to the school office and obtain an accident report form. Petitioner obtained the accident report form from the school office, but did not complete and return the form within thirty days of her accident.

Held: Petitioner failed to properly report her injury to her employer pursuant to § 39-71-603(1), MCA. The Court concluded that Petitioner did not satisfy the notice requirement when she approached a teacher and inquired as to what she needed to do to report her injury because the teacher was not in a supervisory capacity relative to Petitioner at the time of her accident. The Court also concluded that Petitioner did not satisfy the notice requirement because she did not complete and return the school's accident report form within thirty days of her accident. Finally, the Court

concluded that although the notice requirement may not have begun to run until after Petitioner sought medical care, she did so the day after her accident. The evidence established that a completed accident report form was not returned to the school office until thirty-four days after she sought medical care. Therefore, Petitioner's notice was untimely.

Delong v. Montana State Fund, 2012 MTWCC 3

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner contends he injured his back while lifting a motor at work. Although Petitioner's employer had no formal policy for reporting work-related injuries, Petitioner informed him that he had injured his back, that his pain was not resolving, and that he intended to seek medical treatment. Petitioner did not file a workers' compensation claim until more than 30 days after the incident. The employer denied any knowledge of Petitioner's industrial injury until getting a call about the report from Respondent. Respondent denied Petitioner's claim for failure to give timely notice to his employer, pursuant to § 39-71-603, MCA.

Held: Petitioner and two former coworkers testified that everyone at the business, including the employer, knew about Petitioner's industrial accident shortly after its occurrence. The employer's deposition testimony to the contrary was not credible. The Court concluded the employer had actual notice of Petitioner's industrial injury within 30 days of its occurrence.

Morse v. Liberty Northwest Ins. Corp., 2012 MTWCC 16

(Findings of Fact, Conclusions of Law and Judgment).

Summary: In 2009, Petitioner sought medical treatment for hip pain and learned that his condition was likely attributable to two industrial accidents which occurred in the fall or winter of 2006. Although no one has located a contemporaneous incident report, Petitioner contends that he reported both accidents to his employer's safety officer. The safety officer testified that he recalls filling out an incident report for Petitioner's first accident and recalls Petitioner reporting the second accident. Respondent denied Petitioner's claims on the grounds that he did not timely report his injury to his employer within 30 days, as required by § 39-71-603, MCA, and that he failed to comply with the claims filing time limitations found in § 39-71-601, MCA.

Held: Petitioner reported his industrial accidents to his employer, and the employer later mislaid the paperwork for one injury, and failed to prepare a report for the second. The employer's actions can be imputed to Respondent, and Petitioner is entitled to an additional 24 months in which to file his claim under § 39-71-601, MCA. Petitioner's second industrial accident falls within the additional time limit and is therefore compensable.

Begger v. Montana Health Network WC Ins. Trust, 2019 MTWCC 7

(Order Denying Cross Motions for Summary Judgment)

Summary: Respondent moved for summary judgment and Petitioner filed a cross-motion for summary judgment on the issue of whether Petitioner notified her employer of her accident and resulting injury within the 30-day period required by § 39-71-603, MCA. Respondent argues that Petitioner's claim is time-barred because she missed the notice deadline by 10 days and did not have a "latent injury" sufficient to toll the statute because she knew, within 30 days of her accident, that she had suffered an injury and would require medical treatment. Petitioner argues that although she had pain, she had previously experienced like symptoms and they always went away with time. She contends that the notice period began running the day she first scheduled a medical appointment, and that the notice she gave her employer 24 days later was timely.

Held: Both parties' motions for summary judgment are denied. Under the latent injury doctrine, "An employee who has a reasonable belief at the time of an accident that he has suffered no injury which will require treatment or is otherwise compensable, is not barred from recovery under § 603 because he learns otherwise beyond the 30-day period." Whether the 30-day notice requirement may be equitably tolled here depends on whether it was reasonable for Petitioner to believe she did not suffer an injury which would require treatment until 30 days prior to giving her employer notice. Because reasonableness is a question of fact, summary judgment on this issue is not appropriate.

NOTICE OF TERMINATION OF BENEFITS - *COLES* REQUIREMENTS

Schoeneman v. Liberty Ins. Corp., 2007 MTWCC 28
(Order Granting Petitioner's Motion for Summary Judgment).

Summary: Petitioner moved for summary judgment, requesting reinstatement of his temporary total disability benefits because Respondent terminated them without 14 days' written notice. Respondent argues that it was paying these benefits pursuant to § 39-71-608, MCA, and because Petitioner was not at maximum medical improvement when his treating physician released him to work in some capacity, § 39-71-609(2), MCA, allows an insurer to terminate temporary total disability benefits without notice.

Held: Petitioner's motion for summary judgment is granted. Respondent bases its case on reading a single sentence of a statute out of the context of the remainder of the statute and the Workers' Compensation Act as a whole. The Court is not persuaded by this interpretation.

Dostal v. Uninsured Employers Fund, 2012 MTWCC 5
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Respondent ceased paying Petitioner TTD benefits when it came to believe she had returned to work, and additionally because her treating physician had placed her at MMI and approved job analyses. Respondent refused to pay Petitioner her impairment award because it alleged it had overpaid TTD benefits. Petitioner alleges that she is entitled to ongoing TTD benefits and her impairment award and that Respondent has unreasonably withheld these payments, thus entitling her to attorney fees and a penalty award.

Held: Petitioner does not receive wages in any form for the occasional labor she performs for her ex-husband's lawn care business. Therefore, she has not returned to work. The job analyses approved by Petitioner's treating physician are not for jobs in Petitioner's labor market and therefore Respondent did not comply with the Coles criteria prior to terminating Petitioner's TTD benefits. Respondent has not overpaid Petitioner's TTD benefits. Petitioner is entitled to reinstatement of her TTD benefits and payment of her impairment award. Respondent unreasonably withheld these payments. The Court will hear oral argument on the issue of whether Respondent can be ordered to pay Petitioner's attorney fees and a penalty.

National Union Fire Ins. of Pittsburgh v. Rainey, 2021 MTWCC 10
(Order Affirming Order Reinstating Benefits Pending a Hearing (Per 39-71-610, MCA))

Related Topic: [Section 39-71-610 Benefits](#)

Summary: An insurer appeals an order from the DLI awarding interim benefits under § 39-71-610, MCA. The insurer asserts that the claimant's treating physician gave him a full duty release and contends that it had the right to immediately terminate his TTD benefits without complying with § 39-71-609(2)(a)-(d), MCA, which are commonly called the "Coles criteria."

Held: The DLI correctly awarded interim benefits. As one of the insurer's adjusters noted, the full duty release generated by the treating physician's office was most likely a mistake because it could not be reconciled with the claimant's other medical records, which indicate that his physical restrictions preclude him from returning to his time-of-injury job. Moreover, even if the physician

intended to release the claimant to work, a general release to work in some unknown job is insufficient grounds for an insurer to terminate TTD benefits under the first sentence of § 39-71-609(2), MCA. Montana law requires an insurer to have a physician approve a job analysis for an actual job that the claimant is physically able, and vocationally qualified, to perform. Finally, the insurer did not have grounds to terminate the claimant's TTD benefits under the first clause of the second sentence of § 39-71-609(2), MCA, because the Medical Status Form purporting to release him to full duty cannot reasonably be construed as the treating physician's determination that he had reached MMI, had fully recovered, and could return to his time-of-injury job.

PENALTIES

Brown v. Hartford Ins. Co. of the Midwest, 2009 MTWCC 38

(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Benefits](#), [Burden of Proof](#)

Summary: Petitioner worked full-time cutting hair at a salon and began to experience pain and numbness in her hands and wrists. A PA-C diagnosed her with carpal tunnel syndrome and requested referral to a physician. Respondent did not grant the referral until after it denied Petitioner's claim, citing a lack of causative evidence within the 30-day investigative period. Although the physician disagreed with the specific diagnosis of carpal tunnel syndrome, he concluded that Petitioner suffered from "an occupational disease related to overuse." Respondent again denied the claim, asserting that the physician's diagnosis was "ambiguous." Petitioner's employer then discontinued allowing her to work in a modified position to accommodate her restrictions, stating that it provided modified positions only for workers with accepted workers' compensation claims. Petitioner argues that she is entitled to acceptance of her claim, medical and indemnity benefits, and her costs, attorney fees, and a penalty for Respondent's unreasonable denial of her claim.

Held: Respondent is liable for Petitioner's occupational disease claim. Petitioner is entitled to medical and indemnity benefits. Respondent unreasonably denied Petitioner's claim and Petitioner is entitled to her attorney fees and a 20% penalty.

Popenoe v. Liberty Northwest Ins. Corp., 2006 MTWCC 37

(Order Granting Petitioner's Motion for Summary Judgment)

Appealed to Montana Supreme Court: December 15, 2006; Dismissed and Remanded: February 7, 2007

Summary: Petitioner moved for summary judgment after Respondent denied his claim for workers' compensation benefits. Respondent filed a cross-motion for summary judgment. Petitioner broke his ankle when he fell in his employer's parking lot while removing his bicycle from the back of a friend's truck approximately five minutes before the start of his shift. Petitioner claims that his injury is compensable under the "premises rule," while Respondent argues that Petitioner's injury is not compensable because it falls under the "going and coming" rule, now codified by § 39-71-407, MCA, and because Petitioner's actions at the time of his injury were not within the scope of his employment.

Held: Summary judgment is granted in favor of Petitioner. Montana case law has established that after an employee has arrived at his employer's premises and he is no longer engaged in traveling to or from the site of his employment, an injury suffered by the employee is compensable under the "premises rule." Petitioner is entitled to attorney fees and a penalty because, in light of the applicable statutes and case law, Respondent's denial of benefits was unreasonable.

Porter v. Liberty Northwest Ins. Corp., 2007 MTWCC 42

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner injured his back in an industrial accident for which Respondent accepted liability. Petitioner sought chiropractic treatment and subsequently alleged that the treatment aggravated a preexisting cervical condition. Petitioner ceased to treat with the chiropractor and began to treat with a physician who had previously treated his cervical condition without Respondent's approval to change treating physicians. Months after he last treated Petitioner, the chiropractor declared him to be at MMI and released him to his time-of-injury job without restriction. The

chiropractor withdrew that opinion when he learned Petitioner had treated with other doctors. Prior to filing this lawsuit, Petitioner's counsel requested a complete copy of Respondent's claims file and Respondent provided only certain material until compelled to remit the remainder pursuant to subpoena. Petitioner moved this Court to adopt guidelines to compel insurers to turn over claims files upon request. Petitioner further alleged that Respondent's adjusting of his claim was unreasonable.

Held: Petitioner failed to prove that the chiropractic treatment aggravated his preexisting cervical condition. Except for the chiropractor's withdrawn opinion, no doctor has found Petitioner to be at MMI and he is therefore entitled to TTD benefits retroactive to the date of termination. Respondent's refusal to reinstate TTD benefits in light of the lack of a doctor's opinion that Petitioner was at MMI or released to return to work is unreasonable and Petitioner is therefore entitled to a penalty. Respondent's adjustment of this claim, taken as a whole, was likewise unreasonable and Petitioner is entitled to his attorney fees. This Court has no jurisdiction to set forth the claims file guidelines Petitioner desires because it does not have jurisdiction over a claim until a petition has been filed.

Driggers v. Liberty Northwest Ins. Corp., 2007 MTWCC 60

(Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: January 28, 2008; Dismissed: March 14, 2008

Summary: Petitioner moved this Court for summary judgment, arguing that he was injured in the course and scope of his employment because he was injured while driving to work in a vehicle furnished by his employer and for which the employer paid for gas, oil, maintenance, and insurance. Respondent opposed the motion and cross-motivated for summary judgment, contending that Petitioner failed to satisfy both parts of the two-part test set forth at § 39-71-407(3)(a)(i), MCA. Petitioner further requested an award of attorney fees, costs, and a penalty.

Held: Petitioner's motion for summary judgment is granted and Respondent's cross-motion for summary judgment is denied. Respondent is correct that both parts of the two-part test set forth at § 39-71-407(3)(a)(i), MCA, must be satisfied for Petitioner's injury to be compensable. Petitioner satisfies the first part of the test because he was injured while driving a vehicle furnished by his employer. Petitioner satisfies the second part of the test, that the travel was necessitated by and on behalf of the employer as an integral part or condition of his employment, based upon the well-established case law in Montana regarding the exceptions to the going and coming rule. This Court fails to appreciate any notable distinctions between the present case and the cases of *McMillen*, *Ellingson*, and *Gordon*, which establish that an employee is usually entitled to compensation when injured during travel to or from his employment where he receives a specific allowance to get to and from his job. To the extent that there is any distinction between the present case and the Montana Supreme Court's decisions in *McMillen*, *Ellingson*, and *Gordon*, it may be only that the incident in this case is even more squarely within the scope of the exception to the going and coming rule. Therefore, the Court also finds Respondent's denial of Petitioner's claim unreasonable and he is entitled to attorney fees, costs, and a penalty.

Quick v. Montana State Fund, 2008 MTWCC 27 (2009 MT 162)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: July 1, 2008; Affirmed: May 13, 2009

Related Topic: [Benefits](#): (Domiciliary Care)

Summary: Petitioner petitioned the Court for retroactive and future domiciliary care benefits, a higher rate of pay for domiciliary care provided by Petitioner's wife, Dolly, a 20% penalty, attorney fees, and costs. Petitioner argued that Respondent was placed on notice that Petitioner required domiciliary care at the time of his 1984 accident, and that Dolly has been providing the care since then. Respondent argued that it did not have notice that Petitioner needed domiciliary care until February 1, 2007, the first day a medical opinion was received by it stating that domiciliary care was warranted. Prior to trial, Respondent conceded that Petitioner required 24-hour domiciliary care. Respondent began paying a rate of \$7.50 per hour to Dolly, effective February 1, 2007.

Held: Petitioner is not entitled to retroactive domiciliary care prior to February 1, 2007, because Respondent was not put on notice that domiciliary care was warranted until this date. Significantly, Petitioner's attorney in 2005 stated in a letter to Respondent that a claim for domiciliary care benefits had never been made. Respondent's rate of \$7.50 per hour is unreasonable. The evidence establishes that similar rates were paid for domiciliary care not provided by a person with RN skills in the late 1980s, and in the present case, the evidence establishes that Petitioner requires his care to be provided by a person with RN skills. The Court finds that, based upon the testimony of a qualified professional, \$20.00 per hour is a reasonable rate of pay for Dolly because she is an RN. Further, the Court finds that Petitioner is entitled to a 20% penalty because Respondent's rate is an unreasonable rate.

Narum v. Liberty Northwest Ins. Corp., 2008 MTWCC 30 (2009 MT 127)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: July 1, 2008; Affirmed: April 14, 2009

Related Topic: [Attorneys' Fees](#)

Summary: In March 2004, Petitioner and Respondent settled Petitioner's claim for a hip condition with Respondent accepting liability and leaving medical benefits reserved. In December 2006, Respondent ceased paying for Petitioner's medical treatment for his hip, and further refused to pay for hip replacement surgery, stating that it did not believe Petitioner's need for a hip replacement was caused by his industrial accident.

Held: Respondent cannot accept liability for a hip condition and settle a claim with medical benefits reserved and then later simply change its mind and refuse to pay benefits. Petitioner is entitled to payment of his medical benefits for treatment of his left hip, and is further entitled to his costs, attorney fees, and a penalty for Respondent's unreasonable refusal to pay benefits which were agreed to as part of the settlement of Petitioner's claim.

Montana State Fund v. Simms, 2008 MTWCC 39
(Order Granting Petitioner's Motion for Sanctions).

Summary: Petitioner moved for sanctions against Respondent's former counsel Geoffrey C. Angel pursuant to §§ 39-71-2901, -2914, MCA, after Angel entered a Notice of Conflict and Motion to Withdraw from his representation days before multiple depositions were scheduled to be taken. In his

Notice of Conflict and Motion to Withdraw, Angel alleged that “newly discovered information” led him to recognize a potential conflict in the matter which necessitated his withdrawal from the case. In his response to Petitioner’s motion for sanctions, however, Angel asserted that it was actually the denial of his motion to dismiss and the failure of mediation to resolve the case that led him to conclude he should withdraw his representation. Finally, at a hearing on these issues ordered by the Court, Angel claimed that he had recognized the potential conflict from the time the Petition for Declaratory Ruling was filed, but that what actually triggered his motion to withdraw was learning that Petitioner was contacting witnesses for a potential criminal fraud investigation. Angel asserted that he did not provide this as a basis for withdrawing in any of his previous pleadings because he believed it might be privileged information.

Held: Angel violated § 39-71-2914, MCA, causing unnecessary delay and needless expense on Petitioner’s part. Not only did Angel fail to withdraw promptly when it became evident that withdrawal would be necessary, but he also continued to take action in this case which caused Petitioner to expend time and money for depositions which then had to be cancelled because of his withdrawal. Sanctions are ordered.

Skiff v. Montana State Fund, 2009 MTWCC 8
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: April 3, 2009; Dismissed: July 20, 2009

Summary: Respondent accepted liability for Petitioner’s industrial accident which caused Petitioner’s paraplegia. Respondent currently pays Petitioner’s wife \$7.50 per hour for .75 hours of daily domiciliary care. Respondent converted Petitioner’s benefits after Petitioner informed Respondent that he disagreed with Respondent’s vocational rehabilitation proposal. Petitioner argues that he is entitled to 2.8 hours of daily domiciliary care at a rate of either \$9.84 or \$18.88 per hour. Petitioner further argues that Respondent’s vocational proposal was unreasonable, that Respondent unreasonably converted his benefits, and that Respondent has been unreasonable in its adjustment of Petitioner’s claim, and therefore the Court should award Petitioner his costs, attorney fees, and a penalty.

Held: Petitioner is entitled to have his wife provide .5 to 1 hour of daily domiciliary care at an hourly rate of \$7.50 per hour until June 22, 2007, and \$9.84 thereafter. Regarding the reasonableness of Respondent’s vocational rehabilitation plan, after Petitioner rejected Respondent’s initial proposal, Respondent requested Petitioner’s input in developing an alternative plan and Petitioner failed to respond to Respondent’s request. The Court therefore finds that Respondent has not failed to offer a reasonable vocational plan. Respondent properly converted Petitioner’s benefits. Respondent did not act unreasonably and therefore Petitioner is not entitled to attorney fees or a penalty.

Briese v. Ace American Ins. Co., 2009 MTWCC 5
(Order Granting in Part and Denying In Part Respondent’s Motion for Summary Judgment, Denying Petitioner’s Cross-Motion for Summary Judgment, and Denying Respondent’s Request for Sanctions).

Related Topics: [Sanctions](#), [Wages](#)

Summary: Respondent moved this Court for summary judgment and also requested sanctions against Petitioner and Petitioner’s counsel. Petitioner cross-motivated for summary judgment. Petitioner petitioned this Court for an increase in his average weekly wage calculation and for a 20% penalty on unpaid *Lockhart* attorney fees. Petitioner argues that vacation pay accrued during the four pay periods prior to his injury and paid post-injury should be included in his average weekly wage calculation.

Petitioner further argues that the funds he withdrew from his company-sponsored 401(k) account should be utilized in his wage calculation. Respondent contends that accrued vacation paid after the date of injury and monies withdrawn from a 401(k) account are both excluded from the definition of wages pursuant to § 39-71-123, MCA (2003). Respondent also contends that Petitioner is not entitled to a 20% penalty on his *Lockhart* fees pursuant to § 39-71-2907, MCA. Respondent requests the Court to sanction Petitioner and Petitioner's counsel for their allegedly frivolous and meritless claims.

Held: Respondent's motion for summary judgment on Petitioner's entitlement to an increase in his average weekly wage calculation is granted. Respondent's motion for summary judgment regarding the 20% penalty on a *Lockhart* lien is denied. Petitioner's cross-motion for summary judgment on the constitutionality of § 39-71-123, MCA, is denied. Respondent's request for sanctions is also denied. Vacation pay accrued pre-injury but paid post-injury and employer contributions to a pension plan are excluded from the definition of wages when all parts of § 39-71-123, MCA, are read as a whole. Petitioner may seek a 20% penalty on a *Lockhart* lien because the *Lockhart* lien represents a portion of the "full amount of benefits due" Petitioner. Section 39-71-123, MCA, does not violate Petitioner's right to equal or due process. The Court does not find that Petitioner or his attorney have acted in such a way as to warrant sanctions. Even though I do not find some of Petitioner's arguments persuasive, I do not find that the arguments were advanced in bad faith or for any improper purpose.

Long v. New Hampshire Ins. Co., 2009 MTWCC 14

(Findings of Fact, Conclusions of Law and Judgment) (*Judgment Vacated and Withdrawn Pursuant to Stipulation of Parties*).

Summary: Although he remained off work from his time-of-injury employment, Petitioner returned to work at his concurrent employment as a car salesman. He informed the claims adjuster assigned to his case that he was returning to his concurrent employment, and the adjuster consented to Petitioner's continued receipt of biweekly benefits while working as a car salesman. Petitioner's claim was then transferred to another claims adjuster, who denied that Petitioner had received consent to receive benefits while working. She terminated Petitioner's benefits and demanded repayment of the benefits he had received. Petitioner requested the adjuster notes from his claim, believing that the notes would substantiate his claim that he had consent to return to his concurrent employment. The new adjuster refused to provide them and informed Petitioner he would have to petition this Court to receive them. Petitioner then petitioned this Court, arguing that he is entitled to ongoing benefits and alleging that Respondent was unreasonable in its adjustment of his claim. Respondent moved to strike Petitioner's spreadsheet which was attached to his response brief regarding waiver defense.

Held: The adjuster's notes which authorized Petitioner to receive temporary total disability (TTD) benefits after he had returned to work at his alternate employment constitutes written consent. Respondent acted unreasonably in its adjustment of Petitioner's claim by attempting to conceal the existence of the adjuster's note which authorized Petitioner's TTD benefits, by threatening Petitioner with legal action if he failed to return benefits he was rightfully paid, and by failing to maintain its claims file in accordance with § 39-71-107(3), MCA. Petitioner is entitled to ongoing and back-owing TTD benefits, his costs, attorney fees, and a 20% penalty. Although not identical, the spreadsheet attached to Petitioner's response brief regarding waiver defense was substantially similar to the exhibit which was withdrawn at trial and was not probative of the legal issue under consideration. Respondent's motion to strike is granted.

Koch v. Employers Insurance Group, 2014 MTWCC 14

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: After this Court held that Petitioner's claim was compensable and ordered Respondent to pay medical benefits for reasonable primary medical treatment as prescribed by her treating physician,

Petitioner's treating physician ordered a new MRI and began diagnostic epidural injections in an attempt to locate the source of Petitioner's ongoing symptoms. After paying for the MRI and the first injection, Respondent denied further liability and ceased paying for Petitioner's prescription medications, arguing that Petitioner could not prove a causal connection between the new MRI findings and her industrial injury. Petitioner contends that she is entitled to ongoing medical benefits and coverage of her prescription medications. She further contends that Respondent has unreasonably denied her benefits and that she is entitled to her attorney fees and a penalty.

Held: Petitioner is entitled to the medical treatment prescribed by her treating physician, and is further entitled to coverage for the medications he prescribes for treatment of her injuries related to her industrial injury claim. Respondent unreasonably terminated Petitioner's benefits when it ceased authorizing her treating physician's recommended diagnostic tests, and when it later refused to pay for Petitioner's prescription medication. Petitioner is therefore entitled to a penalty and her attorney fees.

Stevens v. Montana State Fund, 2019 MTWCC 15
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Course and Scope](#)

Summary: Petitioner fell in the parking lot of the strip mall in which her employer leased a space. Respondent initially denied liability for Petitioner's severe concussion on the grounds that she was not in the course of her employment under the going and coming rule. Respondent relied upon evidence indicating that Petitioner fell before she started working and maintained that the premises rule – which provides that an employee is in the course of her employment when she is on her employer's premises a reasonable time before her shift – did not apply because the parking lot in which Petitioner fell was not part of the employer's premises because the employer leased its space, shared the parking lot with other businesses, and did not maintain it. Petitioner argued that she was in the course of her employment under the premises rule because the parking lot was part of her employer's premises under established Montana law. Alternatively, Petitioner argued that she was within the course of her employment because she had already started working when she fell. After the parties deposed witnesses, Respondent accepted liability on the grounds that the weight of the evidence showed that Petitioner had already started working when she fell. Petitioner now asserts that Respondent's initial denial was unreasonable and that she is therefore entitled to a penalty under § 39-71-2907, MCA.

Held: Respondent's initial denial was reasonable because the law of Montana was not clearly established at the time Respondent denied liability. While the established law of Montana provides that an employer-owned parking lot is part of the employer's premises, there is no case law addressing whether an employer's premises includes a parking lot that it leases, shares with other businesses, and does not maintain. Moreover, at the time Respondent denied liability, there were legitimate issues of material fact as to whether Petitioner fell immediately before or after she began working.

Winslow v. New Hampshire Insurance Co., 2020 MTWCC 8
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topic: [Attorneys' Fees](#)

Summary: Respondent initially denied liability for Petitioner's claim, asserting that Petitioner's lumbar-spine condition preexisted his employment and that Petitioner did not injure his lumbar spine

in the course of his employment. However, shortly before trial, Respondent accepted liability. Petitioner proceeded to trial, seeking a penalty and his attorney fees.

Held: Petitioner is not entitled to a penalty or his attorney fees. Respondent's denial of liability was reasonable because it had a legitimate defense to liability. Moreover, Petitioner is not entitled to his attorney fees or costs because this Court did not adjudicate his claim for benefits.

PHYSICIANS

Montana State Fund v. Pardis, 2006 MTWCC 21
(Decision and Judgment).

Summary: Insurer appealed ruling by hearing officer for the Department of Labor and Industry which held that insurer was liable for payment to chiropractor for treatments provided to four patients even though those treatments far exceeded statistical averages presented by insurer's experts. The insurer did not obtain independent medical examinations of the patients and therefore could not prove the patients had reached maximum medical improvement prior to the cessation of treatment. Furthermore, as regards one of the four patients, the insurer did not have the authority to direct the patient to obtain treatment from another physician.

Held: The Final Agency Decisions are affirmed.

Alberts v. Transportation Insurance Co., 2006 MTWCC 34
(Order Granting Petitioner's Motion to Allow Medical Treatment, Granting Respondent's Motion to Preserve Evidence, and Denying Petitioner's Motion for Interim Benefits Pursuant to § 39-71-610, MCA).

Related Topic: [Independent Medical Examinations](#)

Summary: Petitioner's treating physician diagnosed her with Thoracic Outlet Syndrome (TOS) and opined it is more likely than not a work-related condition. Respondent has refused to authorize surgery to alleviate the condition because three other doctors have disagreed with the diagnosis. Petitioner moved this Court for an order allowing her to obtain medical treatment for her TOS. Respondent objected, but requested that if the Court grants Petitioner's motion, that Respondent be allowed to have a physician observe the surgery. Petitioner further moved for interim benefits pursuant to § 39-71-610, MCA.

Held: Petitioner's motion to allow medical treatment is granted. The opinion of a treating physician is entitled to greater weight, and the diagnosis of TOS was reached with reasonable medical judgment on the part of Petitioner's treating physician. Respondent's motion to allow observation of the surgery is granted. Petitioner's motion for interim benefits pursuant to § 39-71-610, MCA, is denied because Petitioner has not demonstrated that she is entitled to them.

Mack v. Transp. Ins. Co., 2007 MTWCC 16
(Findings of Fact, Conclusions of Law, and Judgment).

Summary: Petitioner petitioned the Court for an increase in his impairment award based on the opinion of his treating physician.

Held: Petitioner is entitled to an increased impairment award.

PLEADINGS

Lanz v. Liberty Northwest Ins. Corp., 2006 MTWCC 2

(Order Denying Motion for Reconsideration).

Summary: Following this Court's Order dismissing Bozeman Deaconess Health Services, Petitioner filed a motion for rehearing.

Held: The motion for reconsideration is denied. ARM 24.5.337 states that a motion for reconsideration "shall" be filed within twenty days from service of the Order for which reconsideration is sought. In this case, Petitioner's motion was filed eleven days after the time by which her motion was required to be filed.

Shell v. Valor Ins. Co., et al., 2006 MTWCC 12

(Order Granting Leave to File Amended Petition).

Summary: Petitioner Nita Marlene Shell moved the Court for leave to file an amended petition, asserting that she was within the deadline set for amending pleadings from this Court's scheduling order, and further arguing that she is entitled to amend her pleading under Mont. R. Civ. P. 15(a). Respondent Valor Insurance Company filed a pleading captioned Response to Motion; however, Respondent did not substantively address the merits of Petitioner's motion, but rather raised arguments regarding the substance of Petitioner's petition.

Held: Petitioner's motion is granted. This Court has consistently held that leave to amend pleadings shall be freely given when justice so requires. Furthermore, failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken. Merely captioning a document as a "Response to Motion" but failing to substantively address the merits of that motion within the body of the brief is insufficient to constitute substantive opposition to that motion. Petitioner's motion is granted.

Kratovil v. Liberty Northwest Ins. Corp., 2007 MTWCC 38 (2008 MT 443)

(Order Denying Respondent's Motion for Reconsideration)

Appealed to Montana Supreme Court: September 25, 2007; Affirmed and Remanded: December 29, 2008

Summary: Respondent asks the Court to reconsider its decision in this matter because it alleges that it raised the issue of Petitioner's alleged failure to comply with the one-year claim filing period, and that this Court did not address Respondent's argument when deciding this case. Petitioner responds that Respondent's motion should be denied because Respondent never pled a statute of limitations affirmative defense.

Held: Pursuant to ARM 24.5.302(1)(a), the Court will not consider a statute of limitations defense unless it is listed in the contentions of the Response to Petition for Hearing, and Respondent did not do so in this case. Moreover, Respondent failed to set forth a statute of limitations defense in the Pretrial Order, which supersedes all pleadings. Therefore, Respondent's motion for reconsideration on the grounds that Petitioner allegedly failed to comply with the one-year claim filing period is denied.

Wood v. Montana State Fund, 2007 MTWCC 53
(Order Granting Petitioners' Motion to Amend Petition).

Summary: Petitioners move the Court to allow them to amend their petition after a deposition allegedly revealed new information regarding Respondent's adjusting of this claim. Respondent opposes the motion, arguing that the new contentions raise issues which have not been mediated.

Held: Petitioners' motion to amend is granted. Mont. R. Civ. P. 15(a) allows amendment of a petition to be freely given where justice so requires. Although Petitioners' amended petition adds new contentions, it does not raise new issues and therefore mediation is not required.

Stokes v. Liberty Mutual, 2009 MTWCC 21
(Order Denying Respondent's Motion to Dismiss).

Summary: Liberty moved to dismiss Stokes' petition, alleging that Stokes failed to state a claim for which relief could be granted. Stokes responded that Liberty has not paid medical benefits to which he is entitled under the settlement, and further discussed his dissatisfaction with the settlement, including allegations of mutual mistake of fact.

Held: In his petition, Stokes asked the Court to order Liberty to pay for medical expenses that he believes are related to his industrial injury, and further requested that his settlement be reopened "due to ongoing disability." His response to Liberty's motion further expounds upon these prayers for relief. While not perfectly pled, Stokes' petition states a claim for which relief could be granted. Liberty's motion is therefore denied.

Keller v. Liberty Northwest, Inc., 2009 MTWCC 25
(Order Granting Leave to File Amended Response to Petition for Hearing).

Summary: Respondent Liberty Northwest, Incorporated, moved to amend its response to Petitioner Kimberly M. Keller's Petition for Hearing. Liberty's amendment would include a contention that Keller's request to reopen her settlement is barred by the two-year statute of limitations found in § 27-2-203, MCA. Keller opposes Liberty's motion on the grounds that the amendment Liberty seeks would be futile because the two-year statute of limitations had not run.

Held: Liberty's motion is granted. This Court has consistently held that leave to amend pleadings shall be freely given when justice so requires. In this case, Liberty sought to amend its response only a day after it had timely filed its response to Keller's petition. Although Keller characterizes Liberty's proposed statute of limitations defense as "nonviable," that is not readily apparent from the pleadings. Liberty should be allowed to pursue discovery on this matter and determine whether the defense is viable.

Flynn, Miller v. Montana State Fund, Liberty Northwest Ins. Corp., 2010 MTWCC 26
(Order Granting Petitioners' Motion to Amend Petition for Hearing).

Related Topic: [Attorneys' Fees](#)

Summary: Petitioners ask the Court for leave to amend their Petition for Hearing to include claims for attorney fees and penalties, alleging that the insurers have failed to identify and pay benefits owing to claimants whose entitlement to those benefits are undisputed.

Held: Petitioners' motion to amend is granted. Leave to amend is freely granted where justice so requires. Petitioners filed their motion to amend in accordance with the deadlines set by this Court.

Ivie v. MUS Self-Funded Workers' Compensation Program, 2010 MTWCC 15
(Order Granting Respondent's Motion to Strike and Correct Heading).

Related Topic: [Procedure](#)

Summary: Petitioner Michael A. Ivie filed a petition in which he identified the Respondents as Intermountain Claims, Inc. and Montana University System Workers' Compensation Program. Montana University System Workers' Compensation Program moved to strike Intermountain from the caption and to correct the heading to identify it by its correct name, MUS Self-Funded Workers' Compensation Program. Ivie does not oppose the motion to correct the caption but does oppose the motion to strike Intermountain from the caption. Ivie argues that Intermountain should remain a party to the action because it was responsible for adjusting Ivie's claim.

Held: MUS's motions are granted. Intermountain is a third-party claims administrator MUS contracted to adjust Ivie's claim. MUS is the insurer. Under the Montana Workers' Compensation Act, any potential liability for benefits, penalty, and attorney fees lies with MUS as the insurer. Although the Court may be able to exercise jurisdiction over Intermountain as a respondent in this case, Ivie has presented no reason why the Court should exercise such jurisdiction.

PROCEDURE

Fleming v. International Paper Co., Liberty Northwest Ins. Corp., 2005 MTWCC 57 (2008 MT 327)
(Order Denying the Filing of a Reply Brief and Reconsideration of Order Dismissing International Paper Company)

Appealed to Montana Supreme Court: December 27, 2005; Reversed and Remanded: September 23, 2008

Summary: The petitioner alleges he suffers from asbestos-related lung disease as a result of his employment at a Libby, Montana, lumber mill from 1960 to May 28, 1998. The mill was owned by Champion International Company until November 1, 1993. It was thereafter owned by Stimson Lumber Company, which is insured by Liberty Northwest Insurance Corporation. Upon its motion, this Court previously dismissed International Paper Company pursuant to § 39-72-403, MCA (2003). Liberty Northwest's motion to dismiss was denied. From the Court's order dismissing International Paper, Petitioner sought reconsideration. This motion was denied on August 17, 2005. Petitioner then filed a second motion for reconsideration of this Court's Order denying Petitioner's first motion for reconsideration. With respect to Petitioner's second motion for reconsideration, he also moves the Court for leave to file a reply brief.

Held: Petitioner's motion for leave to file a reply brief is denied. ARM 24.5.337 provides only for the filing of an initial brief in support of a motion for reconsideration and, upon receipt of a response or the expiration of the time for filing a response, the motion is deemed submitted. The rule does not allow for the filing of a reply brief in support of a motion for reconsideration and the Court declines to read such a provision into the rule. Being fully briefed, Petitioner's motion for reconsideration is deemed submitted and is denied. Although ARM 24.5.337(1) allows for reconsideration of *any* order or decision of the Workers' Compensation Court, which would include an order denying a motion for reconsideration, the interests of judicial economy and finality mandate that the Court will entertain motions for "re-reconsideration" only under compelling circumstances. The Court finds no such circumstances in the present case. To the extent that Petitioner raises a new argument which was not raised in either his response to International Paper's motion to dismiss, by way of Petitioner's own motion before International Paper was dismissed from this suit, or in Petitioner's first motion for reconsideration, the Court does not reach the merits of this argument because it is being raised for the first time in Petitioner's second motion for reconsideration. Petitioner has offered no compelling reason why this argument was not raised before a second motion for reconsideration. Absent such a compelling reason, the Court will not consider an issue that has not been raised previously despite ample opportunity to do so.

Thompson v. State of Montana, 2006 MTWCC 4
(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.

Satterlee v. Lumberman's Mut. Cas. Co., 2006 MTWCC 8
(Order Granting Respondents' Motions to Strike).

Summary: Respondents, Montana State Fund and Lumberman's Mutual Casualty Company, filed motions to strike a reply brief and affidavit filed by Petitioners in support of a motion for reconsideration.

Held: Respondents' motions to strike are granted. ARM 24.5.337 provides only for the filing of an initial brief in support of a motion for reconsideration and, upon receipt of a response or the expiration of the time for filing a response, the motion is deemed submitted.

Lapier v. Montana State Fund, Associated Loggers Exchange, 2006 MTWCC 25
(Order Granting Motion to Join Third-Party Respondent).

Summary: Respondent moved to join another insurer as a third-party respondent because Petitioner worked for an employer insured by the proposed third party, Associated Loggers Exchange (ALE), after Petitioner worked for Respondent's insured. Petitioner has filed an occupational disease claim. Respondent alleges that ALE is liable for Petitioner's occupational disease pursuant to § 39-72-303(1), MCA (2003) – the last injurious exposure rule. Petitioner objects to the joining of the third party as untimely. ALE objects on the grounds that Petitioner's claim against it, if any, would be barred by the statute of limitations. Alternatively, ALE argues that it could not be subject to the last injurious exposure rule because Petitioner did not reach maximum medical improvement before working for ALE's insured.

Held: While the proposed third-party respondent may have valid defenses in this case, those defenses cannot be resolved in a motion to join, but must be decided on their merits. Furthermore, the alleged un-timeliness of Respondent's motion to join was caused by Petitioner's delayed response to Respondent's discovery request. Motion to join is granted.

Satterlee v. Lumberman's Mut. Cas. Co., 2006 MTWCC 29
(Order Granting Petitioners' Motion for Reconsideration, Continuing Respondents' Cross-Motion for Summary Judgment, and Granting Petitioners Leave to File a Motion and Brief Pursuant to Mont. R. Civ. P. 56(F)).

Summary: This Court erroneously certified the Order denying Petitioners' motion for partial summary judgment as final for purposes of appeal. Petitioners filed a motion for reconsideration asking the Court to remove final certification of the Order. In this same motion, Petitioners also request leave to conduct additional discovery before a final Order is entered.

Held: Petitioners' motion for reconsideration is granted to the extent that final certification is removed from the Order denying Petitioners' motion for partial summary judgment. The Court prematurely certified the Order as final in light of the fact that the Order was a denial of Petitioners' motion for summary judgment. Since the denial of Petitioners' motion did not constitute a final judgment, the Court was required to justify its certification pursuant to Rule 54(b), Mont. R. Civ. P. Also pending before this Court is a cross-motion for summary judgment by Respondent Montana State Fund. Before any final Order is entered in this matter, however, Petitioners request leave to conduct additional discovery. In their motion, Petitioners do not specify the nature or subject matter of the discovery they are seeking although the Court can infer it would pertain to the financial evidence adduced by Respondents. With respect to this request, the Court will temporarily reserve ruling on State Fund's motion for summary judgment and will entertain a motion, pursuant to Rule

56(f), Mont. R. Civ. P., in which Petitioners shall state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment for Respondents.

Satterlee v. Lumberman's Mut. Cas. Co., 2006 MTWCC 36 (2009 MT 368)

(Order Denying Petitioners' Motion to Allow Discovery and Granting Respondents' Cross-Motion for Partial Summary Judgment)

Appealed to Montana Supreme Court: December 1, 2006; Dismissed Re: Rule 54(b) Certification: December 11, 2007; Re-Appealed to Montana Supreme Court: July 1, 2008; Affirmed: November 3, 2009

Related Topics: [Constitution](#), [Discovery](#), [Summary Judgment](#)

Summary: In its July 12, 2006, Order, this Court granted Petitioners leave to file a motion and brief pursuant to Mont. R. Civ. P. 56(f) to state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment for Respondents. Additionally, the Court continued Respondents' cross-motion for partial summary judgment.

Held: Petitioners' motion for an order allowing discovery is denied. Respondents' cross-motion for partial summary judgment is granted.

Cardwell v. Uninsured Employers' Fund, 2007 MTWCC 31

(Order On Costs).

Summary: Petitioner filed an application for costs twelve days after this Court's entry of Findings of Fact, Conclusions of Law and Judgment. Respondent objected upon the grounds that Petitioner's application was untimely pursuant to ARM 24.5.342(1).

Held: ARM 24.5.303(3) states that three days shall be added to the prescribed period of time whenever service of a notice or other paper is accomplished by mail. Accordingly, Petitioner had thirteen days from this Court's entry of judgment within which to file his application for costs. Therefore, the application, which was filed twelve days after the Court's entry of Findings of Fact, Conclusions of Law and Judgment was timely.

Benton v. Uninsured Employers' Fund et al., 2008 MTWCC 40

(Order Granting Petitioner's Motion for Reconsideration).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Petitioner moves the Court for reconsideration of its Order Granting the Uninsured Employers' Fund's Motion to Dismiss because Petitioner's brief in opposition to the Uninsured Employers' Fund's Motion was not timely.

Held: Petitioner's motion is granted. The Court granted the UEF's motion to dismiss with prejudice because Petitioner failed to set forth any circumstances establishing good cause for the untimely filing of her response brief. In her Motion for Reconsideration, Petitioner explained that her brief was untimely because her counsel mistakenly calendared the deadline pursuant to Mont. R. Civ. P. 6(a) instead of ARM 24.5.303. In light of the dispositive nature of the Order granting UEF's motion and the explanation Petitioner has now offered, the Court is satisfied that Petitioner's motion for reconsideration should be granted.

Pinnow v. Halverson, Sheehy & Plath, P.C., 2008 MTWCC 31

(Order Granting Intervenor's Motion for Summary Judgment, Dismissing Intervenor, and Changing Caption).

Summary: Intervenor moved for summary judgment on whether the Stipulation for Settlement is valid and enforceable. Respondent concurred with Intervenor's arguments. Petitioner did not file a response to Intervenor's motion.

Held: Under ARM 24.5.329(3), any party opposing a motion for summary judgment shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. Under ARM 24.5.316(4), failure to file briefs may subject the motion to summary ruling. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Intervenor's motion for summary judgment is therefore well-taken.

Raymond v. Uninsured Employers' Fund, et al., 2008 MTWCC 45

(Order Dismissing Uninsured Employers, Denying All Pending Motions, and Amending Caption).

Related Topic: [Uninsured Employers' Fund](#)

Summary: Various motions have been submitted and are pending in this case. This order resolves underlying issues concerning which parties are properly named in this action at this time.

Held: Upon consideration of the motions and the applicable statutes, the Court concludes that the procedural posture of this case is such that the alleged uninsured employers are not proper parties to this action at this time. They are dismissed from this case and all pending motions are denied. The caption shall be amended to reflect only Petitioner and Respondent as named parties.

Florence v. Morales, Uninsured Employers' Fund, 2011 MTWCC 5

(Order Granting Respondent Uninsured Employers' Fund's Motion to Dismiss).

Related Topic: [Mediation](#)

Summary: Respondent Uninsured Employers' Fund moved for dismissal of Petitioners' Petition for Hearing on the grounds that the petition was time-barred and therefore beyond the jurisdiction of this Court. Respondent Victor Morales joined in the UEF's motion. Petitioners responded that they do not believe Morales suffered a work-related injury and that they missed the deadlines due to their own medical issues.

Held: Petitioners' Petition for Hearing is dismissed since they failed to request mediation of the UEF's determination within 90 days pursuant to § 39-71-520(1), MCA.

Bailey v. Uninsured Employers' Fund, et al., 2010 MTWCC 34

(Order Granting Third-Party Respondent's Motion to Dismiss)

Appealed to Montana Supreme Court: January 31, 2011; Dismissed: April 11, 2011

Related Topic: [Mediation](#)

Summary: Third-Party Respondent moves to dismiss Petitioner's Petition for Hearing because it was filed more than 60 days after the mediator's report was mailed to the parties and was therefore

untimely pursuant to § 39-71-520(2), MCA. Petitioner filed his petition 62 days after the mediator's report was mailed. Petitioner responds that Rule 6(e), M. R. Civ. P., applies to the 60-day deadline set forth in § 39-71-520(2), MCA, and extends the time Petitioner had to file his petition by 3 days. Petitioner argues that his petition was therefore filed timely.

Held: Third-Party Respondent's motion is granted. Rule 6(e), M. R. Civ. P., does not apply to the time limit prescribed by § 39-71-520(2), MCA. Petitioner's petition was therefore untimely.

Dostal v. Uninsured Employers' Fund, 2010 MTWCC 38

(Order Denying Partial Summary Judgment).

Summary: Respondent moved for partial summary judgment, arguing that Petitioner failed to timely appeal the Uninsured Employers' Fund's denial of her claim for reinstatement of temporary total disability benefits to mediation within 90 days of the determination and did not petition this Court within 60 days of the mailing of the mediator's report on two occasions. Petitioner argued that her claim is not susceptible to the time limits set forth in § 39-71-520, MCA, because those time limits did not exist on the date of her industrial injury.

Held: Although Respondent argued that Petitioner's claims were subject to the statutes of limitations set forth in § 39-71-520, MCA, because the time limits are procedural and not substantive, the Montana Supreme Court held in *Fleming v. Int'l Paper Co.* that the statutes of limitations in effect on the date of the worker's industrial injury are the time limits which apply. Since the time limits set forth in § 39-71-520, MCA, did not exist on the date of Petitioner's industrial injury, they do not apply to her claim. Respondent's motion for partial summary judgment is denied.

Chapman v. Twin City Fire Ins. Co., 2010 MTWCC 43

(Order Denying Petitioner's Motions for Clarification and New Hearing).

Summary: Petitioner has filed a "Motion for Clarification" and a "Motion for New Hearing." The motion for clarification was submitted on December 28, 2010. The motion for new hearing is not fully briefed. On December 29, 2010, Petitioner filed a Notice of Appeal.

Held: The Court lacks jurisdiction to consider the merits of the motions because jurisdiction over the case passed to the Montana Supreme Court when Petitioner filed her Notice of Appeal. Accordingly, the motions are denied.

Hopkins v. Uninsured Employers' Fund v. Kilpatrick, 2010 MTWCC 12

(Order Denying Rule 60(a), M. R. Civ. P. Motion to Amend Judgment to Correct Clerical Mistake).

Summary: The Uninsured Employers' Fund (UEF) moved the Court to amend its Judgment to require the third-party respondent to indemnify the UEF for any benefits paid or payable by the UEF to Petitioner. The UEF characterized the omission of this issue in the Court's Findings of Fact, Conclusions of Law and Judgment as a "clerical mistake."

Held: The UEF's motion is denied. The omission of this issue in the Court's Findings of Fact, Conclusions of Law, and Judgment was not a "clerical mistake." The Court did not address the issue of whether the third-party respondent was obligated to indemnify the UEF because it was not presented as a disputed issue in the final pretrial order.

Malcomson v. Liberty Northwest, 2011 MTWCC 11
(Order Granting Respondent's Motion for Reconsideration).

Summary: Respondent moves for reconsideration of this Court's prior Order Granting Petitioner's Motion for Summary Judgment for the reason that the Court did not grant Respondent's timely request for a hearing on Petitioner's motion for summary judgment prior to entering its Order.

Held: The motion for reconsideration is granted. ARM 24.5.329(5) provides that when a party timely requests a hearing on a summary judgment motion, "[t]he court will thereupon set a time and place for hearing." The rule is not discretionary. The prior Order is vacated. Counsel shall confer and contact the Court to schedule a hearing.

Cissel v. Employers Compensation Ins. Co. et al., 2012 MTWCC 12
(Order Resolving Employers Compensation Ins. Co.'s Motion for More Definitive Statement).

Summary: One of the named respondents moved for a more definite statement, arguing that, from Petitioner's Petition for Hearing, it could not discern the roles nor potential liability of the other respondents, nor could it avail itself of the defenses otherwise available to it because Petitioner's prayer for relief did not set forth her claims with sufficient specificity.

Held: Only Employers Compensation Insurance Company is properly before the WCC as a respondent in this case and Petitioner shall amend her petition accordingly. Petitioner provided additional contentions in her response to this motion which shall also be incorporated into her amended petition. Although Respondent further alleges that Petitioner did not comply with ARM 24.5.301 in her Petition for Hearing, Respondent has not set forth with any specificity the nature of Petitioner's alleged non-compliance. The Court concluded Petitioner otherwise satisfied the requirements of notice pleading and the additional information Respondent seeks is best obtained through discovery.

Baker v. Fireman's Fund Ins. Co., 2012 MTWCC 15
(Order Certifying Prior Decision as Final).

The Findings of Fact, Conclusions of Law and Judgment filed March 22, 2012, was not certified as final due to the outstanding issue of Petitioner Troy Baker's entitlement to attorney fees and costs, which was to be determined after the parties had conferred to determine when Respondent Fireman's Fund Ins. Co. paid Baker's disputed medical bills.

On April 20, 2012, the Court received counsel for Respondent's e-mail notification which represented the parties had resolved the dispute on attorney fees and costs.

Accordingly, pursuant to ARM 24.5.348(2), the Findings of Fact, Conclusions of Law and Judgment filed March 22, 2012, is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

Any party to this dispute may have twenty days in which to request reconsideration from the Findings of Fact, Conclusions of Law and Judgment filed March 22, 2012.

Baldwin v. Old Republic Ins. Co., 2012 MTWCC 20
(Order Resolving Petitioner’s Motion to Compel).

Summary: Petitioner moved to compel Respondent to answer certain discovery requests, contending that Respondent has stated that it intends to provide most of the discovery sought, but has failed to do so in spite of having a significant amount of time to do so. Petitioner further seeks her fees and costs in bringing this motion. Respondent acknowledges that Petitioner is entitled to most of the discovery she seeks, but argues that an order to compel is unnecessary as it intends to supplement its discovery responses at some point in the future. Respondent argues that one of the interrogatories Petitioner has posed is unnecessary and unduly burdensome.

Held: Respondent shall not be compelled to answer the interrogatory it has objected to as the information sought does not appear relevant to the case before this Court. Respondent is compelled to answer the remaining interrogatories Petitioner has brought forth for this motion. Petitioner is entitled to her fees and costs in bringing this motion.

Gerber v. Montana State Fund, 2012 MTWCC 21
(Order Denying Petitioner’s Motions for Joinder and Class Action Status).

Summary: Petitioner moved for joinder of his petition with that of another, and subsequently clarified that he also seeks class action status. Respondent opposed Petitioner’s motions, arguing that Petitioner has not proven that he is entitled to joinder or class action status.

Held: Although Petitioner contends that his case meets the requirements for joinder and for class action status, he has put forth no evidence in support of his contentions. His motions are therefore denied.

Morse v. Liberty Northwest Ins. Corp., 2012 MTWCC 24
(Order Denying Respondent’s Petition for New Trial and Denying Respondent’s Request for Amendment to the Findings of Fact and Conclusions of Law).

Summary: Respondent petitioned for a new trial and requested amendment to the findings of fact and conclusions of law the Court issued in this matter. Respondent contended that the Court reached issues beyond the issue presented by the parties for resolution, the Court erred in determining that Respondent’s insured acted as its agent when it accepted Petitioner’s accident report, and the Court erroneously found that Petitioner’s industrial accident occurred on a specific date. Petitioner objected to Respondent’s contentions of error.

Held: The Court’s decision did not exceed the scope of the issue presented in the Pretrial Order. The Court correctly concluded that the employer acted as Respondent’s agent when it accepted Petitioner’s accident report. Finally, the Court determined that Respondent’s belief that the Court found a date certain for Petitioner’s industrial accident to be in error. Respondent’s petition and request are therefore denied.

Cornelius v. Lumbermen’s Underwriting Alliance, 2012 MTWCC 29
(Order Denying Respondent’s Motions for a New Trial, Amendment to Findings of Fact and Conclusions of Law, and for Reconsideration).

Summary: Respondent moved for a new trial, amendment to this Court’s findings of fact and conclusions of law, and reconsideration of this Court’s decision, arguing that the Court erred in

finding it liable for Petitioner's occupational disease claim and for awarding Petitioner TTD and medical benefits, plus her attorney fees and a penalty.

Held: Respondent has not proven that it is entitled to any of the relief sought in its motions. Its motions for a new trial, amendment to the findings of fact and conclusions of law, and reconsideration are denied.

Mackey v. ACE American Ins. Co., 2012 MTWCC 46

(Order Granting Respondent's Motion to Exclude Evidence or Argument Regarding Petitioner's OD Claim, Striking Confidential Mediation Information from Petitioner's Response Brief, and Vacating Scheduling Order).

Summary: Respondent moved in limine to preclude Petitioner from presenting any evidence or argument regarding a newly-asserted occupational disease claim. Petitioner opposes Respondent's motion, arguing that although he had filed a petition for trial contending that he had suffered an industrial injury and his petition for mediation stated that his claim did not involve an occupational disease, the parties had in fact mediated the occupational disease issue, and Respondent could not argue that it was surprised by Petitioner's assertion of this claim.

Held: The evidence presented establishes that the parties did not mediate the issue of an occupational disease claim. As mediation of an issue is a jurisdictional prerequisite, the parties must mediate the issue before the Court can hear it. The portion of Petitioner's response brief in which he sets forth information from the parties' mediation before the department is stricken as it is inadmissible pursuant to § 39-71-2410, MCA. The Scheduling Order is vacated pending mediation of the occupational disease claim.

Hirth v. Montana State Fund, 2013 MTWCC 2

(Order Denying Petitioner's Motion in Limine).

Summary: Petitioner moved in limine to exclude the testimony of two of Respondent's expert witnesses, contending that Respondent's witness disclosures were inadequate.

Held: Petitioner has not followed this Court's procedure for resolving disputes regarding allegedly inadequate witness disclosures and therefore the Court will not consider Petitioner's motion.

Hartford Ins. Co. of the Midwest v. Montana State Fund, In re: McKirdy, 2013 MTWCC 4

(Order Granting Petitioner's Motion for Reconsideration).

Summary: Petitioner moved for reconsideration of this Court's Order which denied Petitioner's cross-motion for summary judgment in part. Petitioner asked the Court to reconsider its determination that Petitioner failed to prove the third element of equitable estoppel regarding its claim against Respondent. Respondent objected to Petitioner's motion for reconsideration.

Held: Petitioner's motion for reconsideration is granted. The Court concluded that Petitioner fulfilled the third element of equitable estoppel. Therefore, the Court further considered Petitioner's arguments regarding the remaining elements of equitable estoppel and determined that Petitioner likewise fulfilled the requirements for the fourth, fifth, and sixth elements. The Court therefore determined that Respondent is equitably estopped from asserting a defense against Petitioner under § 39-71-603(2), MCA.

Overholt v. Liberty Northwest Ins., 2013 MTWCC 5

(Order Denying Petitioner's Motion to Exclude Evidence and Limit Discovery and Ordering Respondent to Produce Audio Recording of Statement).

Summary: Petitioner moved to prohibit Respondent from pursuing discovery concerning any previous injuries, medical records, and employment information, arguing that since Respondent had denied liability because Petitioner's industrial injury occurred in North Dakota, the discovery information Respondent sought would be irrelevant to its grounds for denial. Petitioner further sought to prohibit Respondent from using a recorded statement Petitioner gave since Respondent had failed to provide Petitioner with a copy of the audio recording. Respondent objected to Petitioner's motion, arguing that it is entitled to this discovery under the broad rules applicable to this matter.

Held: Under the broad rules of discovery applicable to this matter, Respondent is entitled to pursue the discovery of the information it may seek regarding Petitioner's previous injuries, medical records, and employment information insofar as such discovery is reasonably calculated to lead to the discovery of admissible evidence. Therefore, Petitioner's motion is denied. Respondent is ordered to produce to Petitioner a copy of the audio recording of Petitioner's statement.

Trevino v. Montana State Fund, 2013 MTWCC 10

(Order Granting Petitioner's Motion for Reconsideration).

Summary: Petitioner moved for reconsideration of this Court's order which granted summary judgment in favor of Respondent. Petitioner argues that the Court incorrectly concluded as a matter of law that she can perform her time-of-injury job when such a conclusion requires a factual analysis necessitating a trial. Respondent objected to Petitioner's motion, arguing that she is merely re-arguing the same position she set forth in her opposition to Respondent's summary judgment motion.

Held: Petitioner's motion is granted. As the Court noted in its summary judgment order, the WCC views summary judgment motions with disfavor and all reasonable inferences must be made in favor of the non-moving party. Petitioner presented evidence which, at a minimum, raised a question of fact as to whether her employer did not return her to her time-of-injury job because she was unable to perform it, whether the FCE evaluator's "reservations" actually constitute restrictions that preclude a return to her time-of-injury job, and whether Trevino's subjective belief as a lay person that she can return to her job must be viewed in the context of her history at this job which has twice resulted in her injury.

Nease v. Montana Contractor Compensation Fund, 2013 MTWCC 20

(Order Denying Petitioner's Motion in Limine and Objection to Medical Records)

Summary: Petitioner moved to exclude testimony of law enforcement officers, law enforcement records, and medical records relating to an altercation which occurred after his industrial injury, arguing that these witnesses and records were irrelevant and prejudicial. Respondent responded that it had not identified any law enforcement officers as witnesses and that it had not obtained any law enforcement records, but that it intended to offer the medical records which it believed to be relevant because the records indicated that the injuries Petitioner sustained in the altercation were to the same area of the body as his industrial injury.

Held: Since Respondent indicated that it does not intend to call any law enforcement officers as witnesses nor offer the law enforcement records regarding the altercation, Petitioner's motion to exclude those witnesses and records is premature. Petitioner's objections to the medical records go to

their weight and not admissibility. Petitioner's motion to exclude the medical records is therefore denied.

Peters v. American Zurich Ins. Company, 2014 MTWCC 4
(Order Denying Petitioner's Motions to Amend and/or Reconsider)

Related Topic: Motions for Reconsideration

Summary: Petitioner moved for amendment or reconsideration of decisions reached by the Court in two underlying Orders regarding portions of his claims against Respondent. Respondent objected to Petitioner's motions, arguing that the Court correctly resolved the pertinent issues.

Held: Petitioner's motions are denied. In one instance, Petitioner has requested that the Court reach the same result it reached in the underlying decision, and therefore no "reconsideration" is necessary. In the other instance, Petitioner addresses only one of the two reasons as to why the Court reached its decision and fails to support his argument with any citation to case law or statute.

Brown v. Morin, et al, 2015 MTWCC 10
(Order Denying Respondent's Motion for Contempt)

Summary: Respondent moved to hold Petitioner and his attorney in contempt and sought sanctions, including dismissal of this case, on the grounds that Petitioner did not produce documents at his deposition pursuant to a subpoena duces tecum.

Held: Petitioner had no obligation to produce the documents at his deposition because he was not properly served with the subpoena duces tecum under M. R. Civ. P. 45.

Spencer v. Montana Schools Group Ins. Authority, 2015 MTWCC 11
(Order Granting Respondent's Motion to Amend Response to Petition)

Related Topic: [Statutes of Limitation](#)

Summary: Respondent moved to amend its response to the Petition for Hearing to raise a statute of limitations defense under § 39-71-2905(2), MCA, which states, "A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." Petitioner argues that Respondent should not be allowed to amend on the grounds that Respondent's motion is untimely and that it would be unduly prejudicial to allow Respondent to raise another statute of limitations defense because he has spent "thousands" of dollars in expert witness fees.

Held: Respondent's motion to amend is granted. This Court follows M. R. Civ. P. 15(a), which provides that leave to amend a pleading is to be freely given when justice so requires. Respondent's motion to amend was timely under the Scheduling Order. Since cases in this Court are heard on an expedited basis when compared to civil actions in Montana's district courts, amendments to pleadings will often occur shortly before trial. After considering the Petitioner's objections, the amendment is not unduly prejudicial because Petitioner was aware of the statute of limitations defense under § 39-71-2905(2), MCA, and was on notice that there was another statute of limitations defense affirmatively pled in the response to the petition. Nevertheless, he proceeded forward with his case.

Hogan v. Federated Mutual Insurance Company, 2020 MTWCC 17

(Order Denying Respondent's Motion to Dismiss Petitioner's Petition Without Prejudice)

Summary: Respondent moves to dismiss this case without prejudice on the grounds that Petitioner's claim to invalidate its subrogation lien is premature. Respondent argues that Petitioner cannot prove that he will not be made whole until he reaches MMI because he will not be able to prove the amount of workers' compensation benefits to which he will be entitled until then.

Held: Respondent's motion to dismiss is denied because Montana law does not require an injured worker to reach MMI before he brings a case to invalidate a subrogation lien under the made whole doctrine. In the formula the Montana Supreme Court has set forth to calculate whether an injured worker has been made whole, this Court is to consider the amounts "to be received under the workers' compensation claim." Thus, an injured worker may bring a claim to invalidate a subrogation lien under the made whole doctrine before he reaches MMI and while he is still receiving benefits. Based on the well-pleaded facts in his Petition for Hearing, Petitioner could prove with sufficient certainty the amount of workers' compensation benefits he will receive.

REOPENING OF SETTLEMENTS

Stokes v. Liberty Mutual, 2009 MTWCC 39

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner settled his indemnity benefits on an accepted-liability low-back claim in August 2008. Petitioner subsequently required an additional back surgery for which the insurer paid medical benefits. Petitioner argues that his settlement should be reopened because he did not foresee the need for an additional surgery at the time he settled his claim and because he has been unable to obtain employment. Petitioner asserts that he has applied for the positions approved by job analyses submitted to his treating physician, but the actual positions exceed his physical restrictions and he has therefore been ineligible for them.

Held: The Court found no mutual mistake of fact and therefore no grounds exist to support reopening Petitioner's settlement.

Vandervalk v. Montana State Fund, 2009 MTWCC 35

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: February 11, 2010; Dismissed and Remanded: May 11, 2010

Summary: Petitioner argued that one of his settled workers' compensation claims should be reopened and that he should receive wage-loss and vocational rehabilitation benefits. He further argued that his use of Vioxx for his carpal tunnel syndrome caused him to suffer cardiovascular problems and that Respondent should be liable for his cardiovascular condition. Petitioner further argued that Respondent should reimburse him for travel expenses and for out-of-pocket expenses he has incurred in filling prescriptions. Respondent responded that it is only liable for medical expenses incurred in the treatment of Petitioner's carpal tunnel syndrome for which it accepted liability. Respondent further responded that the evidence demonstrates that Vioxx did not cause Petitioner's cardiovascular condition and further contends that it has paid for all of Petitioner's prescriptions relating to his carpal tunnel syndrome symptoms. Respondent alleges that Petitioner is not entitled to reopen his settlement, and that Petitioner is not statutorily entitled to rehabilitation benefits or reimbursement of the specific travel expenses he has incurred.

Held: Petitioner has not presented evidence upon which the Court can order his settlement reopened. He is therefore not entitled to additional indemnity or rehabilitation benefits. Petitioner has not proven that his cardiovascular condition was accelerated by his use of Vioxx. Petitioner is not entitled to reimbursement of the travel expenses he seeks as these expenses are not compensable under § 39-71-704, MCA. As for his out-of-pocket prescription expenses, Petitioner has proven that he is entitled to reimbursement of \$142.99 for an OxyContin prescription from September 2006.

Gamble v. Sears, 2006 MTWCC 5 (2007 MT 131)

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Supreme Court: February 23, 2006; Affirmed: June 5, 2007

Summary: Petitioner petitioned for the May 15, 2001 settlement by the parties to be set aside based on a mutual mistake of fact.

Held: Where Petitioner and Respondent mistakenly believed Petitioner had reached MMI at the time the parties entered a settlement agreement, when in fact she had a non-healed fracture in her neck

which required surgical treatment, the mutual mistake of fact was material and the settlement agreement is set aside.

Kruzich v. Old Republic Ins. Co., 2006 MTWCC 23 (2008 MT 205)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: June 14, 2006; Reversed: June 10, 2008

Summary: Petitioner, who suffered a traumatic brain injury as a result of an industrial accident, petitioned to have the compromise and settlement agreement set aside when he developed a movement disorder many years later as a result of the injury.

Held: The settlement is set aside because of a mutual mistake of a material fact.

Harter v. Liberty Northwest Ins. Corp., 2006 MTWCC 39
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: December 18, 2006; Dismissed: May 23, 2007

Summary: Petitioner petitioned to reopen his settlement with Respondent. Petitioner alleged that Respondent committed fraud in settling Petitioner's claim and asked the Court to award past and future workers' compensation benefits.

Held: Petitioner is not entitled to reopen his settlement. Respondent did not commit fraud when it settled Petitioner's claim. No mutual mistake of fact exists. Petitioner is not entitled to any further workers' compensation benefits.

Drury v. International Paper Co., O'Brien v. International Paper Co., 2010 MTWCC 32
(Order Denying Petitioner's Motions to Enforce Settlement and Granting Petitioner's Alternative Motions for Trial).

Note: This is not a Re-Open case but rather the Settlement was never enforceable.

Summary: Petitioners agreed to settle their respective claims with Respondent. The agreement was reflected in an e-mail exchange between Petitioners' counsel and Respondent's counsel. The e-mail specifically reserved medical benefits but was silent as to whether the settlement included potential death benefit claims. When Petitioners' counsel forwarded proposed stipulations for judgment to Respondent's counsel which specifically reserved death benefits, Respondent's counsel objected, contending that he had never agreed to reserve death benefits. Petitioners move to enforce the settlements. Respondent argues that the settlement agreements should not be forced because the parties never reached a meeting of the minds regarding resolution of potential death benefit claims.

Held: Petitioners' motions to enforce the settlements are denied. Petitioners' counsel's e-mail to Respondent's counsel was silent as to the resolution of death benefits. It would be no more reasonable to infer that death benefits were excluded from the settlement, as Petitioners suggest, than to infer that they were included in the settlement, as Respondent believed. There was no meeting of the minds as to this material term. Petitioners' motions for trial are granted.

Keller v. Liberty Northwest Ins. Corp., 2010 MTWCC 4 (2010 MT 279)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: March 16, 2010; Reversed and Remanded: December 28, 2010

Summary: Petitioner petitioned the Court for reinstatement of her medical benefits. Petitioner argues that a mutual mistake of fact occurred in this case. Petitioner contends that the parties failed to account for the onset of nerve damage and/or chronic nerve inflammation and winging of her right scapula as the major injury and cause of Petitioner's pain at the time they entered into two settlement agreements.

Held: No mutual mistake of fact occurred in this case. Even if Petitioner was unaware that her condition at the time she entered into the settlement agreements included scapular winging and long thoracic nerve damage, she failed to establish that Respondent entered into the settlement agreements under the same mistaken belief. Therefore, the settlement agreements will not be set aside.

McGlinchey v. Montana State Fund, 2011 MTWCC 30
(Findings of Fact, Conclusions of Law and Judgment).

Summary: After Petitioner received a Social Security determination that she was disabled from the time of her industrial accident forward, she sought to reopen her settlement agreement, arguing that the parties entered into the agreement under a mutual mistake of fact since neither believed at the time of the settlement that she would never be able to work again.

Held: Notwithstanding the Social Security determination, the evidence presented demonstrates that Petitioner was able to, and in fact did, return to work following her industrial accident. Therefore no mutual mistake of fact occurred and Petitioner is not entitled to reopen her settlement.

Pearson v. Montana Insurance Guarantee Association, 2012 MTWCC 1
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered an industrial injury, including a traumatic brain injury, in 1995. In 1997, he settled his claim. Petitioner contends that his settlement agreement with Respondent is void, invalid, or unenforceable and that this Court should order his claim reopened. Petitioner further argues that the insurer unreasonably adjusted his claim and that he should be entitled to reasonable attorney fees and a penalty. Respondent contends that: Petitioner's claim is barred by a statute of limitations; no grounds exist to order reopening of Petitioner's settlement; and statutorily, it cannot be held liable for attorney fees or a penalty.

Held: Petitioner was not competent to enter into the settlement agreement and it is therefore void. Respondent is not an insurer within the meaning of that term under the Workers' Compensation Act. Therefore, it cannot be subject to attorney fees or a penalty under §§ 39-71-611, -2907, MCA.

Baker v. Fireman's Fund Ins. Co., 2012 MTWCC 9
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner attempts to reopen a settlement agreement based on a mutual mistake of fact. Petitioner's counsel entered into settlement discussions with Respondent. Respondent contends that the parties reached a binding settlement agreement closing all benefits. Petitioner argues that his counsel did not have authority to settle his claim and maintains he has always intended to reopen the settlement.

Held: Petitioner entered into a binding settlement agreement. Petitioner authorized his counsel to negotiate and settle his claim. The parties reached an agreement after several offers and counteroffers. Petitioner's unvoiced intention to not be bound to the terms of the agreement until reviewed in writing does not prevent the formation of a binding agreement.

Griffin v. Liberty Northwest Ins. Corp., 2013 MTWCC 11

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner contends that he is entitled to reopen a settlement he entered into with Respondent. He further argues that Respondent is liable for the payment of certain medical bills. Respondent responds that the parties entered into a valid settlement agreement which closed Petitioner's medical benefits and that Petitioner has no grounds for reopening the settlement agreement.

Held: Petitioner has not proven that he is entitled to reopen his settlement nor that he was coerced into entering into the settlement. Since the parties agreed to close Petitioner's entitlement to medical benefits as part of the settlement terms, Respondent is not liable for the payment of medical bills which were incurred from treatment which occurred after the date of settlement.

Bond v. Associated Loggers Exchange, 2013 MTWCC 13

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner sought to reopen a settlement agreement, arguing that Respondent should be liable for additional benefits relating to medical treatment Petitioner recently obtained which he contended related to his industrial injury. Respondent objected, arguing that Petitioner had no grounds for reopening the settlement, and further arguing that Petitioner's claim must fail either for causation or because his claims for medical benefits are barred by § 39-71-704(1)(e), MCA.

Held: Petitioner has not demonstrated any legal grounds for reopening the settlement agreement. Therefore, his claims for additional medical, indemnity, and vocational rehabilitation benefits are denied.

Hartung v. Montana State Fund, 2016 MTWCC 3

(Findings of Fact, Conclusions of Law and Judgment)

Summary: Petitioner maintains that the settlement of his workers' compensation claim should be reopened or rescinded because he lacked the mental capacity to consent to the settlement or because his consent to settle was obtained through undue influence. Respondent counters that the facts of the case do not show any undue influence exerted on Petitioner to settle his claim, and the fact that Petitioner has entered into two marriages, a dissolution of marriage, and two attorney retainer agreements with his current legal counsel is evidence of his capacity to contract. Respondent also points out that Petitioner does not have a guardian or a conservator appointed to help him manage his affairs, and he has never been adjudicated incompetent.

Held: Petitioner has failed to prove he lacked the mental capacity to understand the terms of the Petition for Settlement and has failed to prove that Respondent exerted undue influence over him. He is not entitled to reopen or rescind the settlement on the grounds asserted.

Handy v. Montana State Fund, 2016 MTWCC 15
(Findings of Fact, Conclusions of Law and Judgment)

Related Topic: [Statute of Limitations](#)

Summary: Petitioner sought rescission of his settlement, arguing: (1) he did not understand he was fully settling his claim because he did not read the settlement agreement; (2) he could not have understood the settlement agreement if he had read it; (3) he was under economic duress; and (4) the settlement is unconscionable. Respondent maintains that Petitioner's claim is time-barred and that he has not met his burden of proof.

Held: Petitioner's claim is not time-barred. However, Petitioner has presented no viable grounds on which to rescind the settlement. Therefore, the settlement agreement remains in effect.

Miller v. Montana State Fund, 2020 MTWCC 21
(Order Granting Partial Summary Judgment to Respondent and Dismissing Petitioner's Tort Claims)

Appealed To Montana Supreme Court: March 15, 2021; Affirmed July 27, 2021

Summary: For the third time in this Court, Petitioner seeks to rescind his 1988 settlement agreement with Respondent. Petitioner also seeks relief from a Judgment and Order that this Court entered in 2001, which adjudged that the parties had fully and finally settled Petitioner's 1983 workers' compensation claim. Petitioner also makes tort claims and prays for damages. Respondent moves for summary judgment, asserting that Petitioner's claims to rescind their 1988 settlement agreement are barred by the doctrines of res judicata or collateral estoppel.

Held: This Court granted summary judgment to Respondent on Petitioner's claims to rescind their 1988 settlement agreement under the doctrine of res judicata because Petitioner litigated identical claims to final judgment in his second case against Respondent. Indeed, in Petitioner's second case, this Court ruled that these claims were barred by res judicata because Petitioner could have litigated them in his first case against Respondent, in which Petitioner also sought to rescind their 1988 settlement agreement. These claims remain barred by res judicata. This Court dismissed Petitioner's tort claims because this Court does not have subject matter jurisdiction over tort claims.

Miller v. Montana State Fund, 2021 MTWCC 3

(Order: (1) Denying Petitioner's Motion Requesting the Court To Alter or Amend Judgment [In] WCC No. 2000-0059; (2) Granting Respondent's Motion For Summary Judgment; (3) Certifying Judgments as Final; and (4) Giving Notice Of Entry Of Final Judgment)

Appealed To Montana Supreme Court: March 15, 2021; Affirmed: July 27, 2021

Summary: Pursuant to a full and final settlement Petitioner and Respondent reached at a settlement conference in 2001, this Court entered a judgment. Petitioner now seeks relief from the judgment under M.R.Civ.P. 60(b) on the grounds of mistake, newly discovered evidence, and fraud, misrepresentation, and misconduct. He also makes an independent claim to set aside the judgment, alleging fraud upon this Court. Respondent moved for summary judgment, asserting that Petitioner's motion for relief from the judgment is time-barred and that Petitioner has not presented any evidence of fraud upon this Court.

Held: This Court denied Petitioner's motion for relief from the judgment because he did not make his motion within a reasonable time and his motion is time-barred by the 60-day statute of limitations in the 2001 version of Rule 60(b). This Court granted summary judgment to Respondent on Petitioner's independent claim to set aside the judgment because Petitioner has not presented any evidence supporting his claim of fraud upon this Court.

SANCTIONS

The St. Paul Travelers Companies, Inc. v. Liberty Northwest Ins. Corp., 2007 MTWCC 44
(Order Granting Motion to Compel and Awarding Attorneys' Fees and Costs).

Summary: Petitioner moved this Court to compel Respondent to answer certain requests for production and an interrogatory to which Respondent had either objected to or provided answers which Petitioner argued were incomplete. Petitioner further requested sanctions pursuant to ARM 24.5.326 in the form of attorney fees and costs.

Held: Respondent's refusal to answer certain of Petitioner's discovery requests on the basis that the information sought was irrelevant does not satisfy the requirements of Mont. R. Civ. P. 26 because these requests could reasonably lead to the discovery of admissible evidence. The Court agrees with Petitioner that certain of Respondent's responses were incomplete or nonresponsive. Petitioner is entitled to reasonable attorney fees and costs pursuant to ARM 24.5.326.

Gordon v. Continental Western Ins. Co., 2020 MTWCC 13
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner asserts that the Department of Labor & Industry erred by allowing Respondent to suspend his TTD benefits for unreasonably failing to attend an examination under § 39-71-605, MCA. Petitioner argues that he had a reasonable reason for failing to attend the examination.

Held: The Department of Labor & Industry's order is affirmed. Petitioner missed previous appointments, assured the examiner that he would attend the examination, and assured Respondent that he would attend the examination. Nevertheless, Petitioner was a "no call, no show" for the appointment and did not attempt to contact the examiner to reschedule until after his examination was scheduled to start. Petitioner's claim that the examiner scheduled the appointment with knowledge that he might not be able to attend was not credible. Moreover, Petitioner's excuses did not convince this Court that his failure to attend scheduled appointments was not his fault. Petitioner's failure to attend the examination was unreasonable.

Meyer v. Church Mutual Insurance Co., 2021 MTWCC 14
(Order Granting Petitioner's Motion to Strike Surveillance Videos of Petitioner and to Strike Any and All Testimony of Thomas McClure, MD, Regarding the Surveillance Videos)

Related Topic: [Discovery](#)

Summary: Petitioner moves to exclude surveillance videos from evidence and to strike the portions of a physician's testimony regarding the videos because Respondent did not truthfully answer discovery asking about surveillance until after the physician's deposition. Respondent concedes that sanctions are appropriate but asserts that the appropriate sanction is to reopen the physician's deposition at its expense.

Held: This Court granted Petitioner's motion in full. The sanctions that Petitioner seeks are appropriate and proper to remedy the prejudice to her, to punish Respondent for its discovery abuses, and to deter other litigants from engaging in the same or similar discovery abuses. The sanctions are also commensurate to the sanctions this Court has assessed in similar circumstances.

SECTION 39-71-610 BENEFITS

Brickman v. Air Tech Heating & Cooling, Inc., 2016 MTWCC 11

(Order Denying Petitioner's Request for Benefits under § 39-71-610, MCA)

Appealed to Montana Supreme Court: August 11, 2016; Dismissed: October 13, 2016

Summary: Claimant appeals the order by the DLI denying his request for interim TTD benefits under § 39-71-610, MCA. The DLI denied Claimant's request on the grounds that he continued to receive biweekly compensation benefits because his biweekly compensation benefits were not terminated; rather, his benefits were converted from TTD benefits to PPD benefits.

Held: Claimant does not qualify for interim TTD benefits under § 39-71-610, MCA, because he continues to receive biweekly compensation benefits.

Larson v. Liberty Northwest Ins. Corp., 2017 MTWCC 15

(Order Affirming Department of Labor & Industry's Order Denying Interim Benefits)

Summary: Appellant appeals from a Department order denying his petition for interim benefits under § 39-71-610, MCA. Appellee argues this Court should affirm because Appellant has not tendered a strong prima facie case for reinstatement of his TTD benefits.

Held: The Department's order is affirmed. Appellant did not tender a strong prima facie case for reinstatement of his TTD benefits. He declined the temporary work assignment his time-of-injury employer offered to him and did not introduce sufficient evidence to prove that the job exceeded his restrictions, or that his employer would not have actually accommodated his restrictions. His claim that Appellee would not have paid him TPD benefits is unsupported, and had that occurred, he could have sought resolution in this Court instead of declining work.

Wetch v. Montana State Fund, 2021 MTWCC 18

(Order Granting Appellant Interim Benefits Under § 39-71-610, MCA)

Summary: Appellant seeks an order granting interim benefits under § 39-71-610, MCA. Appellee resists, arguing that wage-loss benefits were not paid for a significant length of time, termination of those benefits was not the cause of any financial hardship, and that Appellant's medical opinion is not credible and, thus, does not support a prima facie case.

Held: This Court ordered that Appellee pay Appellant interim benefits. Wage-loss benefits were previously paid. The length of time they were paid can be considered but is not dispositive. Appellant will suffer financial hardship if interim benefits are not ordered. She would have gone into default on her personal automobile loan if she had not borrowed money from her uncle. And Appellant has tendered a strong prima facie case. Whether the physician rendering Appellant's medical causation opinion is credible is not before this Court. The standard is whether Appellant has "tender[ed] substantial evidence which, if believed, would entitle [her] to the benefits," and she has.

Victory Insurance Co. Inc. v. Andell, 2022 MTWCC 9

(Order Affirming Order Reinstating Benefits Pending a Hearing (Per 39-71-610, MCA))

Summary: The insurer appeals an order from the DLI awarding interim TTD benefits under § 39-71-610, MCA. The insurer argues that it lawfully terminated the claimant's TTD benefits because he

did not attend an appointment with a physician whom the insurer had recently designated as his treating physician.

Held: The DLI correctly awarded interim TTD benefits. The claimant's treating neurosurgeon has determined that the claimant cannot return to work at this time and has recommended a lumbar fusion, which has been scheduled. Because the claimant is months away from reaching MMI, the DLI soundly reasoned that there was no purpose for the appointment with the physician whom the insurer had recently designated as his treating physician because she could not possibly say what the claimant's return-to-work restrictions will be.

Sentry Insurance Company v. Godat, 2022 MTWCC 10

(Order Affirming Order Reinstating Benefits Pending a Hearing (Per 39-71-610, MCA))

Summary: The insurer appeals an order from the DLI awarding interim TTD benefits under § 39-71-610, MCA. The insurer argues that the DLI erred because the claimant's low back condition is an entirely new condition and that it cannot possibly be liable for TTD benefits for claimant's low back condition under his compensable leg injury claim.

Held: The DLI correctly awarded interim TTD benefits under the claimant's compensable leg injury claim. The claimant's treating physician opined that claimant's low back condition was caused by the sequelae of his leg injury. It is established Montana law that when the sequelae of an industrial injury causes an injury or disease to another body part, the insurer is liable for the injury or disease to the other body part.

SETTLEMENT LANGUAGE

Cases: <http://wcc.dli.mt.gov/tools/Settlements.htm>

Jones v. Albertsons, Inc., 2007 MTWCC 26

(Order Denying Request for Stipulated Settlement, Dismissal, and Judgment).

Summary: The parties have asked this Court to approve a joint Stipulation for Dismissal and Order for Dismissal with Prejudice in settlement of a pending claim.

Held: The parties' request is denied because it contains terms that are unenforceable, as well as contrary to statute and the expressed public policy of this State as set forth in § 39-71-105, MCA. The WCC declined to approve a settlement that sought to settle "any and all claims, filed or unfiled, known or unknown, that she may have had under the Workers' Compensation Act or Occupational Disease Act as a result of her employment with the Respondent, Albertsons, Inc." The parties essentially asked the WCC to allow them to enter into a legally invalid contract. The WCC declined to do so.

Winegardner v. Montana State Fund, 2021 MTWCC 20

(Order Granting Respondent's Motion to Enforce Settlement)

Summary: While litigating Respondent's denial of liability for her concussion claim, Petitioner offered to settle for \$30,000. Respondent accepted her offer and sent her a standard, written settlement agreement. However, Petitioner then had second thoughts. After finding photographs of herself from shortly after her accident, which she thinks are strong evidence supporting her claim that she hit her forehead and suffered a concussion, Petitioner refused to go through with the settlement. Petitioner now opposes Respondent's motion to enforce the settlement, arguing that they did not reach a binding settlement because she did not sign the written settlement agreement.

Held: This Court granted Respondent's Motion to Enforce Settlement because Petitioner did not expressly make signing a written settlement agreement a condition to a binding settlement. Thus, under established Montana law, Petitioner and Respondent entered into a binding settlement agreement the moment Respondent accepted her offer because they agreed to all of the material terms to settle a disputed claim.

STATUTES OF LIMITATIONS

Clemons v. Liberty Northwest Ins. Corp., 2006 MTWCC 16

(Order Denying Respondent's Motions to Dismiss, for Summary Judgment, and for a Protective Order).

Summary: Petitioner alleges he suffers from asbestos-related lung disease as a result of his employment at a Libby, Montana, lumber mill from 1969 to 1995. The mill was owned by St. Regis Paper Company and then Champion International Company until November 1, 1993. It was thereafter owned by Stimson Lumber Company, which is insured by Respondent Liberty Northwest Insurance Corporation. Respondent moves for a protective order until the Court rules on the pending motions to dismiss and for summary judgment. Respondent moves for dismissal and summary judgment based on the following assertions: (1) Petitioner failed to file a petition within two years from the date Respondent denied Petitioner's claim as required under § 39-71-2905(2), MCA; (2) Petitioner is judicially estopped from claiming his work at Stimson is the cause of his asbestos-related disease because of Petitioner's complaint in a separate district court case; and (3) Petitioner's treating physician agreed with an article which put the latency period at fifteen years or more between exposure to asbestos and signs of exposure appearing on x-ray.

Held: Respondent's motions to dismiss and for summary judgment are denied. Likewise, Respondent's motion for a protective order is denied. (1) Section 39-71-2905(2), MCA, is a statute of limitations that reads "[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." However, § 39-71-2905(2), MCA, does not apply to this case because this statute became effective July 1, 1997, and applies "to claims for injuries occurring on or after [the effective date]." Petitioner alleges the exposure to asbestos that caused his asbestos-related disease occurred between 1969 and March 31, 1995, the date on which he ceased working at the mill. (2) Petitioner's district court complaint against other parties who allegedly were responsible for Petitioner's exposure to asbestos is not inconsistent with his claim that asbestos from his employment at Stimson contributed to or caused his asbestos-related lung disease. (3) Respondent's evidence concerning the latency period for asbestos-related lung disease does not establish as an uncontroverted matter that Petitioner was not injuriously exposed to asbestos during his employment with Stimson. Accordingly, this is an issue that should be decided at trial.

Cardwell v. Uninsured Employers' Fund, 2006 MTWCC 20

(Order Denying Respondent's Motion to Dismiss).

Related Topics: [Independent Contractors](#), Occupational Diseases, [Uninsured Employers' Fund](#)

Summary: Respondent Uninsured Employers' Fund filed a motion to dismiss based on Petitioner's failure to file a claim alleging an occupational disease within one year, as required by § 39-72-403, MCA (2003). In Petitioner's original Petition for Trial he stated that he suffered an injury arising out of and in the course of his employment. Petitioner did not allege that he suffered an occupational disease. After the deposition of Petitioner's chiropractor, who opined that Petitioner's injury could be considered a repetitive-use injury which happened over time, Petitioner filed an Amended Petition for Trial and alleged that he suffered an injury or occupational disease.

Held: Respondent's motion to dismiss is denied. Petitioner initially believed his condition was caused by a single incident that occurred while hanging Sheetrock on or about July 20, 2004. All documentary evidence including his first report of injury and his original petition to the Court reflected this belief. After the deposition of Petitioner's chiropractor, however, he became aware that his injury could have been caused by repetitive use over time, after which he filed the Amended Petition for Trial alleging an occupational disease. Since Petitioner neither knew nor reasonably

should have known that his condition may have been the result of an occupational disease before he was alerted to this possibility by the testimony of his chiropractor, the statute of limitations did not begin to run until that time. Accordingly, Petitioner's Amended Petition for Trial was filed within the time prescribed by § 39-72-403, MCA (2003).

Palmer v. Safeco, 2006 MTWCC 44

(Order Granting Respondent's Motion for Summary Judgment).

Summary: Respondent moved for summary judgment regarding Petitioner's request for ongoing medical benefits, arguing that because Petitioner had not used his benefits for more than 60 consecutive months, his benefits terminated pursuant to § 39-71-704(1)(e), MCA (1997). Petitioner responded that the statute should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident at the time of treatment.

Held: Because § 39-71-704(1)(e), MCA (1997), is a statute of repose, it cannot be tolled. Therefore, Respondent's motion for summary judgment is granted.

Evans v. Liberty Northwest Ins. Corp., 2007 MTWCC 23

(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: June 29, 2007; Dismissed: August 14, 2007

Summary: Petitioner filed occupational disease claims for shoulder, arm, and neck conditions and carpal tunnel syndrome which he alleges developed as a result of years of work in the tire industry. Respondent denied liability, arguing that Petitioner knew or should have known about his carpal tunnel syndrome several years ago and that his claim for benefits is therefore untimely. Respondent further argues that Petitioner's arm, shoulder, and neck conditions are not an occupational disease, but rather an industrial injury and that Petitioner's claim is time-barred because he did not file a claim within 30 days of the incident which Respondent alleges caused these conditions.

Held: Petitioner's carpal tunnel syndrome claim is timely because he neither knew nor should have known he was suffering from carpal tunnel syndrome as a result of an occupational disease until he was diagnosed by a doctor. Petitioner's arm and shoulder conditions, as well as the cervical spondylosis and degenerative disk disease in his neck are occupational diseases and therefore his claim for benefits regarding those conditions is timely. Petitioner's syrinx is not work-related and therefore Respondent is not liable for this condition. The medical evidence also indicates that Petitioner's disk herniation was more probably than not caused by an industrial accident during the week of August 14, 2005. Therefore, Petitioner's November 14, 2005, claim for his disk herniation is untimely pursuant to § 39-71-603(1), MCA. Accordingly, Respondent is not liable for medical treatment and wage-loss compensation benefits specifically attributable to the herniated disk.

Shelley v. American Home Assurance Co., 2007 MTWCC 52

(Order Granting Respondent/Insurer's Motion to Dismiss).

Summary: Respondent moves for dismissal of the petition in this case because it alleges that Petitioner failed to file a written claim for benefits within a year of when he knew or should have known that he suffered from an occupational disease and therefore Petitioner's claim is untimely pursuant to § 39-71-601, MCA (2005). Petitioner responds that he did not need treatment for his condition until 2005, and therefore the statute of limitations did not begin to run until that point.

Held: Respondent's motion is granted. Petitioner filed a district court action in 2001 alleging that he suffered from an asbestos-related condition as a result of his employment with Respondent's insured. However, he did not file an occupational disease claim until January 2006. The fact that Petitioner alleged he did not exhibit symptoms or require treatment for his condition until December 2005 does not negate the fact that he knew at least as early as the time when he filed the district court action that he suffered from a work-related occupational disease.

Kilgore v. Transportation Insurance Co., 2008 MTWCC 51
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: January 2, 2009; Dismissed: March 13, 2009

Related Topic: [Penalties](#)

Summary: Petitioner was an employee of the W.R. Grace mine in Libby and was diagnosed with asbestos-related disease. Petitioner petitioned the Court for permanent partial disability benefits in the form of an impairment award in the amount of 45 percent. Petitioner also sought a penalty, costs, and attorney fees. Before trial, the parties stipulated to Petitioner's treating physician's 45 percent impairment rating. Respondent argued, however, that Petitioner's claim was time-barred pursuant to this Court's ruling in *Fleming v. International Paper Co.*

Held: Petitioner is entitled to permanent partial disability benefits in the form of a 45 percent impairment rating. After the trial in this matter concluded, the Montana Supreme Court reversed this Court's decision in *Fleming*. The Supreme Court's ruling is dispositive of Respondent's statute of limitations defense in this matter. Respondent's denial of Petitioner's claim was premised upon this Court's ruling in *Fleming*, which was not reversed until after this matter had gone to trial. Respondent's reliance on this Court's decision was reasonable. Therefore, Petitioner is not entitled to attorney fees or a penalty.

Tinker v. Montana State Fund, 2008 MTWCC 33 (2009 MT 218)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: September 2, 2008; Affirmed: June 24, 2009

Summary: On July 24, 2007, Petitioner sought medical treatment for hip and knee pain. He related the pain to a slip and fall incident at work which had occurred two or three years earlier, but he did not seek treatment because he believed the injury would heal itself. X-rays revealed that Petitioner had severe degenerative hip disease in his left hip. Petitioner filed claims for an industrial injury and occupational disease. Respondent denied his occupational disease claim since his condition could be attributed to a single incident on a specific date, and declined his industrial injury claim as untimely.

Held: Petitioner's claim that he suffered an occupational disease is denied because he never reached MMI from his industrial injury prior to his hip condition allegedly being aggravated by his work. Under § 39-71-601(1), MCA, a claimant must file a claim for benefits within 12 months of the industrial accident. Section 39-71-601(2), MCA, provides that insurers may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of lack of knowledge of disability, latent injury, or equitable estoppel. In the present case, Petitioner did not suffer a disability until he could no longer perform his job duties. Therefore, the time requirement is waived under § 39-71-601(2)(a), MCA, and his claim is not time-barred.

Boyd v. Zurich American Ins. Co., 2009 MTWCC 26 (2010 MT 52)
(Order Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: September 9, 2009; Affirmed: March 16, 2010

Summary: Zurich American Insurance Company moved for summary judgment on the grounds that Petitioner Terry Boyd failed to petition this Court within two years of Zurich's denial of benefits, as required by § 39-71-2905(2), MCA. Boyd argued that Zurich's motion should be denied because the statute of limitations should not have commenced running until June 2008, when Boyd obtained the medical evidence needed to support his claim. Boyd contends that the language of § 39-71-2905(2), MCA, implies a tolling of the time limitation until the "dispute arises and is supported by admissible medical evidence."

Held: Zurich's motion is granted. Section 39-71-2905(2), MCA, unambiguously requires that "[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." Although this Court has recognized a tolling of this time limit while the dispute is in mandatory mediation, it has never recognized an "implied tolling" until the claimant obtains medical evidence in support of his claim, and the Court declines to do so now.

Johnson v. Montana State Fund 2011 MTWCC 22
(Order Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: September 20, 2011; Dismissed: January 25, 2012

Summary: Respondent moved for summary judgment, arguing that Petitioner's petition was untimely pursuant to § 39-71-2905(2), MCA. Petitioner opposed Respondent's motion, arguing that Respondent is equitably estopped from claiming it denied Petitioner's claim and that Respondent could not have effectively denied Petitioner's claim prior to investigation. Alternatively, Petitioner argues that Respondent's subsequent denial letter "reset" the statute of limitations.

Held: Under § 39-71-2905(2), MCA, a claimant must file his petition for hearing within two years after benefits are denied. Petitioner did not do so, and Respondent's motion for summary judgment is granted.

Bell v. Montana State Fund, Montana Contractor Comp Fund, 2011 MTWCC 23
(Order Denying Montana Contractor Compensation Fund's Motions to Strike and for Summary Judgment, and Giving Notice of Intent to Grant Summary Judgment to Non-Moving Party).

Summary: Respondent Montana Contractor Compensation Fund (MCCF) moved for summary judgment, alleging Petitioner's Petition for Trial was untimely under § 39-71-2905(2), MCA. MCCF contends that Petitioner's petition was not filed within two years of MCCF's denial of benefits. Petitioner argues that MCCF had accepted liability for his claim and that MCCF's letter which MCCF argues constitutes a denial of benefits, denied only one specific medical bill. Respondent Montana State Fund (State Fund) also opposed Respondent MCCF's motion for summary judgment. Respondent MCCF moved to strike State Fund's brief, arguing that State Fund lacks the standing to oppose MCCF's motion because State Fund is not an adverse party.

Held: MCCF's motion to strike is denied. State Fund has opposed MCCF's motion for summary judgment. As it pertains to MCCF's motion, therefore, State Fund is adverse. MCCF's motion for summary judgment is denied. Section 39-71-2905(2), MCA, provides: "A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." MCCF

accepted liability for Petitioner's claim, but denied treatment for one specific medical bill. MCCF's denial cannot be construed as a denial of benefits and a dispute over liability as to Bell's claim in general. Regarding the limited issue of whether the statute of limitations has run on Bell's claim exclusive of the treatment for which MCCF specifically denied liability, the Court sees no disputed facts which would preclude summary judgment in Petitioner's favor. Since neither Petitioner nor State Fund have moved for summary judgment on this issue, MCCF will have 10 days to file a supplemental brief as to why summary judgment in favor of Petitioner should not be granted on this issue. Petitioner and State Fund may file reply briefs within 5 days after MCCF's brief.

Schellinger f/k/a Uffalussy v. St. Patrick Hospital and Health Sciences Center, 2012 MTWCC 10

(Order Denying Respondent's Motion for Summary Judgment and Granting Petitioner's Cross-Motion for Summary Judgment).

Summary: Respondent moved for summary judgment regarding Petitioner's request for medical benefits, arguing that because Petitioner had not "used" her benefits for 60 consecutive months, such benefits terminated pursuant to § 39-71-704(1)(e), MCA. Petitioner objected to Respondent's motion and cross-motivated for summary judgment, arguing that Respondent was on notice that medical bills existed for which Petitioner believed Respondent was liable.

Held: The statute of repose has not run in this matter, and Petitioner's claims for unpaid medical bills are not barred by § 39-71-704(1)(e), MCA.

Hardie v. Montana State Fund, 2012 MTWCC 2

(Order Denying Respondent's Motion for Summary Judgment).

Summary: Respondent moved for summary judgment, arguing that Petitioner's claim was untimely. Petitioner opposed Respondent's motion, arguing that she filed her claim within the statute of limitations when the tolling during the pendency of mediation is taken into account.

Held: Under § 39-71-2905(2), MCA, a claimant must file her petition for hearing within two years after benefits are denied. However, the statute of limitations is tolled during the pendency of mediation. In the present case, Petitioner filed her petition within 25 days of the issuance of the mediator's report pursuant to § 39-71-2411, MCA, and it is therefore timely filed. Respondent's motion for summary judgment is denied.

Lanman v. Montana Municipal Insurance Authority, 2011 MTWCC 27

(Order Denying Respondent's Motion for Summary Judgment).

Summary: Respondent moves for summary judgment on the issue of whether Petitioner failed to file his claim within the one-year statute of limitations set forth at § 39-72-403(1), MCA (2003). Respondent argues that Petitioner failed to file his claim within one year from when he knew or reasonably should have known that his condition was related to his employment. Petitioner contends that material facts in dispute preclude summary judgment.

Held: Summary judgment is denied. A genuine issue of material fact remains as to whether Petitioner knew or should have known that his asbestos condition was related to his employment more than one year before he filed his claim.

Dauenhauer v. Montana State Fund, 2012 MTWCC 22

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Within the 60-consecutive month period under the statute of repose, § 39-71-704(1)(e), MCA, Petitioner's wife contacted Respondent for authorization for her husband to see his surgeon for a follow-up visit. Respondent's claims examiner denied authorization, believing the request was based solely on Petitioner's desire to keep his medical benefits open. Without Respondent's authorization to see a physician, Petitioner had difficulty setting a medical appointment. Petitioner's family physician eventually faxed a request to Respondent to have Petitioner seen by a neurosurgeon, two days after the statute of repose had run. Respondent continued to deny further medical care on the basis that Petitioner had failed to use his medical benefits for over 60 consecutive months.

Held: Seeking authorization for legitimate, reasonably necessary medical treatment causally related to an accepted injury claim within 60 consecutive months of the last treatment constitutes "use" under § 39-71-704(1)(e), MCA. Because Respondent's claims examiner believed the sole reason Petitioner was requesting authorization for treatment was to extend the 60-month deadline, Respondent acted reasonably in denying and maintaining the denial of medical benefits.

Peterson v. Liberty NW Ins. Corp., 2013 MTWCC 26

(Findings of Fact, Conclusions of Law and Judgment)

Summary: Petitioner alleges he suffers from asbestos-related disease as a result of his 26-year history working at the Libby lumber mill. Respondent counters that Petitioner filed his claim long after the statute of limitations had run pursuant to § 39-72-403, MCA, and therefore, Petitioner's claim is time-barred.

Held: Given Petitioner's knowledge of asbestos contamination at the Libby mill and the number of occupational disease claims filed over the years by employees at the mill alleging asbestos-related disease due to their employment, Petitioner knew or should have known that his occupation contributed to his asbestos-related disease for years prior to filing a claim for benefits. Petitioner's claim for occupational disease benefits is time-barred under the statute of limitations, § 39-72-403, MCA.

Dvorak v. Montana State Fund, 2014 MTWCC 11

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: In 2006, Petitioner sought medical treatment for neck and shoulder pain which she attributed to her job duties. Her symptoms were managed with the use of a prescription pain reliever until they worsened in late 2010. In 2011, her treating physician referred her to a specialist and she subsequently filed an occupational disease claim. Respondent contends that the claim was untimely filed under § 39-71-601(3), MCA, and that Petitioner should have known in 2006 that she suffered from an occupational disease. Petitioner contends that she did not know she had an occupational disease until her treating physician told her.

Held: The facts of this case indicate that neither Petitioner nor her treating physician gave any consideration to her symptoms beyond refilling her prescription for several years after she first complained of these symptoms. The Court concluded that she knew or should have known that she suffered from an occupational disease on the day that her treating physician first took her off work and referred her to a specialist for further evaluation.

Emanuel v. Montana State Fund, 2015 MTWCC 6
(Order Denying Respondent’s Motion to Dismiss)

Related Topic: [Independent Contractors](#)

Summary: Respondent moves to dismiss the Petition on the grounds that this matter is time-barred under § 39-71-520(1), MCA, which provides that “[a] dispute concerning uninsured employers’ fund benefits must be appealed to mediation within 90 days from the date of the determination.” Petitioner opposes Respondent’s motion, arguing that § 39-71-520, MCA, is inapplicable to his case because he is not seeking benefits from the UEF.

Held: Respondent’s motion is denied because Petitioner is not seeking “uninsured employers’ fund benefits.” Rather, Petitioner seeks benefits under § 39-71-405(1), MCA, which provides, in relevant part:

An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker’s Compensation Act.

The time limitation in § 39-71-520(1), MCA, is inapplicable to this case. Moreover, § 39-71-415(1), MCA, specifically provides that disputes over benefits between an insurer and a claimant involving an issue of whether the claimant was an employee or an independent contractor are governed by § 39-71-2905, MCA, which contains a two-year statute of limitation. Petitioner brought this case well within two years of the date of Respondent’s denial of liability. Therefore, this Court has jurisdiction to decide the merits of Petitioner’s claim.

Smith v. Montana State Fund, 2017 MTWCC 13
(Order Granting Respondent’s Motion for Summary Judgment)

Summary: Respondent moves for summary judgment, arguing: (1) that Petitioner’s claim for TTD or PTD benefits is time-barred; (2) that, in the alternative, she does not have sufficient evidence to prove that she is totally disabled as a result of her claim-related injuries; and (3) that her medical benefits are closed because Petitioner did not use them for 60 consecutive months. Petitioner opposes the motion on the grounds: (1) that she filed her Petition for Hearing within the statute of limitations; (2) that her head and neck problems are a result of claim-related injuries and have deteriorated to the point that she is now unable to work; and (3) that her medical benefits remain open because Petitioner received treatment during the relevant 60-month period.

Held: Respondent’s motion for summary judgment is granted because Petitioner’s claim for TTD or PTD benefits is time-barred under the two-year statute of limitations set forth in § 39-71-2905(2), MCA. Because the issue of Petitioner’s entitlement to TTD or PTD benefits is disposed of on statute of limitations grounds, this Court does not reach whether there is an issue of material fact as to her substantive entitlement to those benefits. Further, because Petitioner has neither asserted a claim for medical benefits in her Petition for Hearing, nor mediated that issue, this Court currently lacks jurisdiction to consider whether her medical benefits are closed.

Morrish v. Amtrust Ins. Co. of Kansas, 2018 MTWCC 8
(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner has had a long history of low-back pain and sciatica, which, as it worsened, caused him to miss work. Starting in 2012, Petitioner and his chiropractor discussed that his work was causing his low-back pain and sciatica. In April 2015, after sending him for x-rays, Petitioner's chiropractor diagnosed him with degenerative disc disease at L5-S1 and L4-5, for which Petitioner continued to treat. In July 2016, Petitioner suffered acute low-back pain when he reached down to pick something up at his home; he has been unable to go back to work since. In August 2016, Petitioner's medical doctor told him the major cause of his low-back and radiating pain was likely his work as a mechanic. Petitioner filed an OD claim several days later, which Respondent denied. Respondent argues Petitioner does not have a compensable OD. Alternatively, Respondent argues Petitioner's claim is untimely because he did not file his claim for more than a year after his chiropractor diagnosed him with degenerative disc disease at L5-S1 and L4-5. Petitioner contends he has a compensable OD because his job duties were the major contributing cause of his degenerative disc disease. He further contends his claim is timely because he could only have known his degenerative disc disease was caused by his work when his medical doctor told him, and he filed his claim several days later.

Held: The issue of whether Petitioner has a compensable OD is moot, because even assuming that he does, Petitioner failed to timely file his claim pursuant to § 39-71-601(3), MCA. Petitioner knew his degenerative disc disease was caused by his work in April 2015 because: Petitioner's chiropractor told him as early as 2012 that Petitioner's work was causing his low-back problems; he treated continuously, and missed or was taken off work, for those problems through 2015 and beyond; and in April 2015, x-rays revealed degenerative disc disease in his lumbar spine. Notwithstanding, Petitioner filed his OD claim in August 2016, outside the one-year statute of limitations.

Mellinger v. Montana State Fund, 2018 MTWCC 13
(Order Granting Respondent's Motion for Summary Judgment)

Summary: Respondent moved for summary judgment, asserting that Petitioner's medical benefits terminated under the 60-month rule at § 39-71-704(1)(f), MCA (2005), and that it is not liable for a surgery to remove a bone spur, because Petitioner put off the surgery for more than 60 months and did not otherwise use his medical benefits during that time. Petitioner argues that Respondent is liable for the surgery because it falls under the prosthesis exception to the 60-month rule. Petitioner also argues he used his medical benefits and satisfied the 60-month rule because Respondent authorized the surgery while his medical benefits were open. Finally, Petitioner argues that Respondent's authorization of his surgery constitutes an enforceable contract.

Held: This Court granted summary judgment for Respondent. First, the prosthesis exception does not apply because regardless of whether Petitioner's special shoes and boots, brace, and orthopedic screws are prostheses, the surgery to remove a bone spur is not a surgery to repair, replace, or monitor a prosthesis. Second, Petitioner's medical benefits terminated because he put off the surgery for more than 60 months and did not otherwise use his medical benefits. Finally, Respondent did not contractually agree that Petitioner could have the surgery beyond the 60-month limitation.

Westre v. Liberty Northwest Ins. Co., 2018 MTWCC 17

(Order Denying Respondent's Motion for Summary Judgment and Granting Petitioner's Motion for Summary Judgment)

Summary: Respondent moved for summary judgment, asserting that Petitioner's medical benefits terminated under the 60-month rule at § 39-71-704(1)(f), MCA (2005). It is undisputed that Petitioner saw his treating physician within the 60-month period, but his physician's office made a mistake and did not bill Respondent for the appointment within the 60-month period. Because Petitioner's physician did not send Respondent the bill, Respondent asserts that the appointment does not constitute use of medical benefits. Petitioner moved for summary judgment, arguing that he used his medical benefits within the 60-month period by obtaining treatment from his physician, and that he cannot suffer a consequence because of his physician's office's mistake in failing to bill Respondent for the appointment.

Held: Respondent's Motion for Summary Judgment is denied, and Petitioner's Motion for Summary Judgment is granted. Petitioner used his medical benefits within the 60-month period when he saw his treating physician for treatment. As a matter of law, the physician's office had the duty to bill Respondent, and Petitioner cannot suffer a consequence because of his physician's office's mistake in failing to bill Respondent.

Bryer v. Accident Fund General Ins. Co., 2021 MTWCC 13

(Order Denying Respondent/Insurer's Motion for Summary Judgment)

Related Topic: [Summary Judgment](#)

Summary: Respondent argues that Petitioner filed her Petition for Hearing beyond the statute of limitations in § 39-71-2905(2), MCA, which states, "A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."

Held: The Court denied Respondent's summary judgment motion. Section 39-71-602, MCA, states that no statute of limitations in the Workers' Compensation Act runs "against any injured worker who is mentally incompetent and without a guardian." Because the statute of limitations in § 39-71-2905(2), MCA, was tolled during the two and a half years that the worker was mentally incompetent and without a guardian, Petitioner timely filed her Petition for Hearing.

STAY AND BOND

Harrison v. Liberty Northwest Ins. Corp., Stillwater Mining Co., 2006 MTWCC 24

(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.

Sturchio v. Wausau Underwriters Ins. Co., 2007 MTWCC 12

(Order Denying Stay of Execution of Judgment And Denying Waiver of Supersedeas Bond).

Summary: Respondent has appealed the Court's decision regarding Petitioner's weekly TTD benefit rate to the Montana Supreme Court. Respondent now moves this Court for a stay of execution of judgment, and to waive posting of a supersedeas bond. Petitioner does not object to the stay of execution of judgment, but requests that the Court require Respondent to post the supersedeas bond or make a cash deposit.

Held: Respondent has provided no evidence to support its argument that the Court should allow it to waive the supersedeas bond requirement. Since a stay of execution of judgment pending appeal may only be had by either presenting a supersedeas bond or by waiver of the bond, Respondent's motion for stay of execution must also be denied.

Michalak v. Liberty Northwest Ins. Corp., 2007 MTWCC 14B

(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.

Evans v. Liberty Northwest Ins. Corp., 2007 MTWCC 32

(Order Granting Stay of Execution of Judgment and Waiver of Supersedeas Bond).

Summary: Respondent has appealed this Court's Findings of Fact, Conclusions of Law and Judgment to the Montana Supreme Court. Respondent now moves this Court for a stay of execution of judgment and to waive posting of a supersedeas bond. Petitioner objects.

Held: Although styled as opposition to both the stay of judgment and waiver of the supersedeas bond, Petitioner concedes in his brief that the posting of a supersedeas bond would allay his concerns and allow the Court to issue a stay. Regarding the requirement that Respondent post a bond, Respondent has shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Therefore, the requirement that Respondent post a supersedeas bond is waived.

Oksendahl v. Liberty Northwest Ins. Corp., 2007 MTWCC 35

(Order Granting Stay of Execution of Judgment and Waiver of Supersedeas Bond).

Summary: Liberty has appealed this Court's Order Granting Petitioner's Motion for Summary Judgment to the Montana Supreme Court. Liberty now moves this Court for a stay of execution of judgment, and to waive posting of a supersedeas bond. Alternatively, Liberty moves for an order requiring Petitioner to repay any monies paid pursuant to this judgment if this Court's Order is reversed on appeal. Petitioner does not oppose the motion to stay but does oppose the motion to waive the posting of a supersedeas bond.

Held: Liberty has shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Therefore, the requirement that Liberty post a supersedeas bond is waived.

Hopkins v. Uninsured Employers' Fund v. Kilpatrick, 2010 MTWCC 29

(Order Denying Stay of Execution of Judgment and Denying Waiver of Supersedeas Bond).

Summary: Third-Party Respondent moves for a stay of execution of judgment and to waive posting of a supersedeas bond. Petitioner opposes the stay. Respondent/Third-Party Petitioner does not oppose the stay. However, both ask the Court to require Third-Party Respondent to post a supersedeas bond.

Held: Third-Party Respondent has provided no evidence to support his request that the Court allow him to waive the supersedeas bond requirement. Since a stay of execution of judgment pending appeal may only be obtained after either presenting a supersedeas bond or by waiver of the bond, Third-Party Respondent's motion for stay of execution is denied.

SUMMARY JUDGMENT

Pinnow v. Halverson, Sheehy & Plath, P.C., 2008 MTWCC 31

(Order Granting Intervenor's Motion for Summary Judgment, Dismissing Intervenor, and Changing Caption).

Summary: Intervenor moved for summary judgment on whether the Stipulation for Settlement is valid and enforceable. Respondent concurred with Intervenor's arguments. Petitioner did not file a response to Intervenor's motion.

Held: Under ARM 24.5.329(3), any party opposing a motion for summary judgment shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. Under ARM 24.5.316(4), failure to file briefs may subject the motion to summary ruling. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Intervenor's motion for summary judgment is therefore well-taken.

Liberty Northwest Ins. Corp. v. Montana State Fund, In re: Mitchell, 2008 MTWCC 10

(Order Declining Consideration of All Pending Summary Judgment Motions, Pursuant to ARM 24.5.329(1)(B)).

Summary: All parties in this matter have filed respective summary judgment motions, with a total of seventeen substantive briefs presented for the Court's consideration in resolving the motions.

Held: The Court declines to consider these motions pursuant to ARM 24.5.329(1)(b).

Emmons v. MHA Workers Compensation Reciprocal, 2008 MTWCC 10

(Order Denying Petitioner's Motion for Summary Judgment, and Respondent's Cross-Motion for Summary Judgment, Granting Respondent's Motion to Strike Petitioner's Addendum to Her Summary Judgment Brief, and Granting Respondent's Motion to Strike Petitioner's Reply Brief).

Summary: Petitioner moved for summary judgment. Respondent cross-motivated for summary judgment, alleging Petitioner failed to provide notice of her injury within thirty days, as required by § 39-71-603(1), MCA. Respondent further moved the Court to strike two of Petitioner's pleadings related to the motions for summary judgment on the grounds that Petitioner's pleadings contained inadmissible information regarding confidential mediation proceedings.

Held: Petitioner's motion for summary judgment is denied because Petitioner failed to comply with the requirements of ARM 24.5.329(3). Irrespective of Petitioner's failure to comply with this rule, it is readily apparent from the briefs that Petitioner's claim is not appropriate for summary judgment because there are facts in dispute. Respondent's cross-motion for summary judgment is denied because Petitioner timely provided notice to her employer of her alleged injury in compliance with § 39-71-603(1), MCA. Respondent's motions to strike two of Petitioner's pleadings are granted on the grounds that the substance of Petitioner's pleadings attempted to place confidential mediation information before the Court which is specifically prohibited under § 39-71-2410, MCA. Petitioner has made multiple attempts to introduce information from the confidential mediation proceedings in contravention of § 39-71-2410, MCA. Petitioner is cautioned that any further attempts will result in an order to show cause why sanctions should not be imposed.

Wombold v. Montana State Fund, 2009 MTWCC 40

(Order Denying Petitioner’s Motion for Summary Judgment and Granting Petitioner the Opportunity to be Heard as to Why Summary Judgment Should Not be Granted in Favor of Respondent).

Related Topic: [Wages](#)

Summary: Petitioner moved the Court for summary judgment, arguing that Respondent incorrectly calculated the average weekly wages of the decedent by including overtime wages at the rate of pay the decedent was paid for non-overtime work. Respondent responds that § 39-71-123(1), MCA, is clear on its face regarding the inclusion of overtime in average weekly wage calculations and that the statute provides that overtime hours are included, not at the overtime rate, but at the worker’s “regular hourly rate” – which Montana State Fund interprets to be the rate at which the employee is paid for non-overtime work.

Held: While Petitioner has argued that the statute in question unambiguously supports her interpretation, she urges the Court to interpret the applicable statute differently than it has previously been interpreted by this Court and others. The statute is, at best, ambiguous. Following the rules of statutory construction, the Court has examined the legislative history of the statute. The legislative history makes it clear that Respondent’s interpretation of the statute is consistent with the legislature’s intent. Therefore, Petitioner’s motion for summary judgment is denied. Although Respondent did not file a cross-motion for summary judgment, since this issue is purely an issue of law and no issues of material fact remain, it may be appropriate to grant summary judgment in favor of Respondent. Before entering judgment in favor of the nonmoving party, however, Petitioner must be afforded notice and an opportunity to be heard. Therefore, the Court reserves entering judgment in this matter until such time as Petitioner has had the opportunity to be heard.

Wombold v. Montana State Fund, 2009 MTWCC 40A

(Order Granting Summary Judgment in Favor of Respondent).

Summary: The Court denied Petitioner’s motion for summary judgment in this matter. Although no material facts remained in dispute and the issue before the Court was purely an issue of law, the Court did not grant summary judgment in favor of Respondent because Respondent had not cross-motivated for summary judgment. The Court noted that while generally no formal cross-motion is necessary for a court to enter summary judgment in favor of a nonmoving party, Petitioner must be afforded an opportunity to be heard.

Held: Petitioner has informed the Court that she does not object to the Court’s entry of summary judgment in favor of Respondent. For the reasons set forth in *Wombold v. Montana State Fund, 2009 MTWCC 40*, the Court concludes that summary judgment in favor of Respondent is appropriate and is therefore granted.

Hartford Ins. Co. of the Midwest v. Montana State Fund, In re: McKirdy, 2012 MTWCC 28

(Order Denying Respondent’s Motion for Summary Judgment, and Granting Petitioner’s Motion for Summary Judgment in Part).

Summary: Respondent moved for summary judgment, arguing that the claimant either suffered an occupational disease while his employer was insured by Petitioner, or alternatively, that he failed to notify Respondent of his industrial injury within 30 days. Petitioner cross-motivated, arguing that the claimant suffered an industrial injury while Respondent insured the claimant’s employer, and demanding Respondent reimburse it for benefits paid to the claimant.

Held: The undisputed facts demonstrate that the claimant suffered an industrial injury while Respondent was the insurer at risk. However, Respondent's defense to the claimant's claim cannot be raised in this case because the claimant is not a party. Petitioner is not liable for the claimant's claim. However, Petitioner has not proven that it is entitled to indemnification from Respondent. Respondent's motion for summary judgment is denied. Petitioner's cross-motion for summary judgment is granted in part and denied in part.

Keller v. Montana University System Self-Funded Workers' Comp. Program, 2012 MTWCC 30
(Order Denying Respondent's Motion for Judgment on the Pleadings).

Related Topic: [Causation](#)

Summary: Respondent moved for judgment on the pleadings, arguing that the Petition alleges Petitioner suffered an injury during treatment, precluding Respondent's liability for her injury pursuant to § 39-71-704(1)(d)(iii), MCA.

Held: Respondent's motion is denied. The party moving for judgment on the pleadings must establish that no material issue of fact remains and that the movant is entitled to judgment as a matter of law. Construing the facts alleged in the Petition in a light most favorable to the Petitioner, the Respondent has failed to show that the Petition alleges that an "accident" occurred while Petitioner was being treated for her occupational disease, precluding Respondent's entitlement to judgment as a matter of law.

Liberty Insurance Corp. v. Travelers Indemnity Co. of America, In re: Kuran, 2012 MTWCC 32
(Order Denying Respondent's Motion for Summary Judgment).

Related Topic: [Causation](#)

Summary: Respondent moves for summary judgment, arguing that, as between two insurers with the same employer, Petitioner is liable for the claimant's occupational disease since Petitioner provided coverage either at the time of diagnosis of claimant's neck condition or at the time claimant knew or should have known that her neck complaints were an occupational disease. Petitioner counters that the claim filed with Petitioner was a natural progression of the claim filed with and accepted by Respondent.

Held: The cause of Petitioner's neck complaints remains a disputed issue of fact, precluding summary judgment

Romine v. Northwestern Energy, 2012 MTWCC 35
(Order Granting in Part and Denying in Part Respondent's Motion for Summary Judgment).

Related Topic: [Notice of Injury or OD](#)

Summary: Respondent moved for summary judgment, arguing that Petitioner's occupational disease claim is untimely under § 39-71-601(3), MCA, because he knew or should have known that he was suffering from an occupational disease more than one year prior to the filing of his workers' compensation claim.

Held: The undisputed facts demonstrate that Petitioner received a diagnosis and treated for shoulder and back complaints in August 2009 and therefore he should have known he was suffering from an occupational disease at that time. His December 2010 claim was untimely filed for these conditions.

However, Petitioner did not receive a diagnosis or treatment for his cervical condition until July 2010; therefore, his occupational disease claim for his cervical condition was timely` filed. The Court granted Respondent's motion for summary judgment regarding Petitioner's occupational disease claim for his shoulder and low back, and denied the motion regarding Petitioner's cervical condition.

Dvorak v. Montana State Fund, 2012 MTWCC 36
(Order Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: October 31, 2012; Reversed and Remanded: July 30, 2013

Related Topic: [Notice of Injury or OD](#)

Summary: Respondent moved for summary judgment, arguing that Petitioner's occupational disease claim is untimely under § 39-71-601(3), MCA, because she knew or should have known that she was suffering from an occupational disease more than one year prior to the filing of her workers' compensation claim.

Held: The undisputed facts demonstrate that although she may not have had a formal diagnosis, Petitioner understood that her condition was caused by "repetitive motion" in her job duties and she received medical treatment, including prescription medication, for approximately five years before she filed her first report of injury or occupational disease. By the time Petitioner began taking prescription medication to alleviate her symptoms, she knew or should have known that she was suffering from an occupational disease. Her claim is therefore untimely under § 39-71-601(3), MCA, and Respondent is entitled to summary judgment.

Goble v. Montana State Fund, 2013 MTWCC 8 (2014 MT 99)
(Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: April 26, 2013; Affirmed: April 15, 2014

Summary: Petitioner moves for summary judgment, alleging that since Respondent accepted liability for his injury, he was entitled to additional benefits under § 39-71-703, MCA, notwithstanding his incarceration for more than 30 days. Petitioner further alleges that Respondent's interpretation of § 39-71-744, MCA, in denying him additional permanent partial disability benefits is in error and if not, then the statute is unconstitutional for violating his equal protection and due process rights. Respondent's Cross-Motion for Summary Judgment counters that § 39-71-744, MCA, is plain and unambiguous and is intended to deny disability benefits to an injured worker who is incarcerated for more than 30 days, and that the statute has been previously found to be rationally related to a legitimate governmental purpose.

Held: Section 39-71-744, MCA, is plain and unambiguous and is clearly intended to deny disability benefits, including permanent partial disability benefits, to an injured worker during the period of the worker's incarceration of more than 30 days. The Court found previously in *Wimberley* and *McCuin* that § 39-71-744, MCA, was constitutional, and the statute is also rationally related to the legislated objectives of the Workers' Compensation Act. Petitioner fails to make a compelling argument that the Court's earlier decisions were wrong and should be revisited.

Gerber v. Montana State Fund, 2013 MTWCC 9 (2014 MT 99)

(Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment)

Appealed to Montana Supreme Court: April 26, 2013; Affirmed: April 15, 2014

Summary: Petitioner moves for summary judgment, alleging that since Respondent accepted liability for his injury, he was entitled to additional benefits under § 39-71-703, MCA, notwithstanding his incarceration for more than 30 days. Petitioner further alleges that Respondent's interpretation of § 39-71-744, MCA, in denying him additional permanent partial disability benefits is in error and if not, then the statute is unconstitutional for violating his equal protection and due process rights. Respondent's Cross-Motion for Summary Judgment counters that § 39-71-744, MCA, is plain and unambiguous and is intended to deny disability benefits to any injured worker who is incarcerated for more than 30 days, and that the statute has been previously found to be rationally related to a legitimate governmental purpose.

Held: Section 39-71-744, MCA, is plain and unambiguous and is clearly intended to deny disability benefits, including permanent partial disability benefits, to an injured worker during the period of the worker's incarceration of more than 30 days. This Court found previously in *Wimberley and McCuin* that § 39-71-744, MCA, was constitutional, and the statute is also rationally related to the legislated objectives of the Workers' Compensation Act. Petitioner fails to make a compelling argument that this Court's earlier decisions were wrong and should be revisited.

Johnson v. Liberty NW Ins. Corp., 2013 MTWCC 18

(Order Granting Summary Judgment in Favor of Petitioner).

Related Topic: [Benefits](#)

Summary: Upon order of the Court, the parties simultaneously moved for summary judgment on the issue of whether the 5th or 6th Edition of the AMA Guides applies for purposes of calculating Petitioner's impairment rating.

Held: The 1999 version of the Workers' Compensation Act applies to Petitioner's OD claim because, under *Grenz*, 278 Mont. 268, 924 P.2d 264 (1996), an OD claimant's last day of work determines which version of the act applies. Under the 1999 statutes, the correct edition of the AMA Guides to apply is that which was "current" on the date the injured worker reached MMI. Since Petitioner reached MMI on April 16, 2001, the 5th Edition applies for his impairment rating. The Court rejected LNW's argument that the 6th Edition should be used because § 39-71-711(1)(b), MCA (2011) is retroactive. Where the 1999 version of the Act, rather than the 2011 version applied to Petitioner's claim, 5th Edition was to be used pursuant to *Drake and Hilbert v. Montana State Fund, 2011 MTWCC 2*. Summary judgment granted in favor of Petitioner.

Montana Ins. Guaranty Assoc. v. Montana SIF, 2013 MTWCC 19

(Order Denying Petitioner's Appeal and Affirming Department Decision).

Summary: Petitioner appealed from a Department decision denying it summary judgment on the issue of whether it was entitled to reimbursement from Respondent in a case where an employee who was certified as vocationally handicapped suffered a subsequent injury. The Department held that the employer had failed to fulfill its affirmative duty to comply with § 39-71-906, MCA.

Held: Although Petitioner urges this Court to conclude that Respondent had an affirmative duty to contact the employer and request that the employer comply with § 39-71-906, MCA, the language of the statute does not support such a reading. The decision of the Department's hearing officer is affirmed.

Gray v. Montana State Fund, 2014 MTWCC 2A
(Order Amended Summary Judgment Order *Nunc Pro Tunc*)

Paragraph 12 is amended to read as follows:

This case is governed by the 2011 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect at the time of Gray's industrial accident. For summary judgment to be granted, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Although the parties in this case agree that there are no material facts in dispute, for the reasons set forth below, Petitioner's Motion for Summary Judgment is denied.

Nelson v. Montana Schools Group Insurance Authority, 2014 MTWCC 1
(Order Granting in Part & Denying in Part Respondent's Motion for Summary Judgment)

Related Topics: [Statute of Limitations](#), [Benefits](#)

Summary: Respondent moves for summary judgment on two issues: (1) With respect to Respondent's denial of medical bills and travel expenses associated with treatment Petitioner received in 2011, Respondent contends that Petitioner failed to timely file her petition pursuant to § 39-71-2905, MCA. (2) With respect to Petitioner's claim for TPD benefits, Respondent contends that Petitioner is not entitled to these benefits because she has not suffered a wage loss.

Held: With respect to Respondent's denial of medical bills and travel expenses associated with the treatment Petitioner received in 2011, Respondent's motion is denied. The statute of limitations for Petitioner's claim commenced when Respondent denied her claim for benefits and Petitioner filed her petition within two years of Respondent's denial in accordance with § 39-71-2905, MCA. With respect to Petitioner's claim for TPD benefits, Respondent's motion is granted. Petitioner has not suffered a wage loss as a result of her injury and is therefore not entitled to TPD benefits pursuant to § 39-71-712, MCA.

Cole v. Montana State Fund, 2015 MTWCC 4
(Order Denying Petitioner's Motion for Summary Judgment)

Related Topic: [Burden of Proof](#)

Summary: Relying upon the opinions of her treating physician and his PA, and her medical records, Petitioner moves for summary judgment on the grounds that she indisputably suffered a compensable shoulder injury when she fell at work on February 19, 2014. Respondent argues that there are issues of material fact as to whether Petitioner either injured her shoulder or aggravated a pre-existing shoulder injury when she fell at work.

Held: There are issues of material fact that preclude summary judgment. While Petitioner's treating physician and his PA have opined that Petitioner tore her rotator cuff when she fell at work, their opinions appear to be based mostly, if not entirely, on what Petitioner told them. Respondent has presented admissible evidence from which it can be reasonably inferred that Petitioner's statements to her treating physician and his PA were not entirely truthful and/or that they did not know all the

facts when they gave their opinions. This Court will have to evaluate Petitioner's credibility and her providers' testimony at trial to determine whether she suffered a compensable injury or aggravation.

Davidson v. Benefis, 2014 MTWCC 17

(Order Denying Petitioner's Motion for Summary Judgment and Respondent's Cross-Motion for Summary Judgment)

Related Topic: [Benefits](#)

Summary: Petitioner moved for summary judgment and Respondent filed a cross motion for summary judgment on the issue of whether Petitioner is entitled to payment of a 3% impairment rating which was rendered for the condition of her ankle after an industrial injury. However, the parties agree that the post-MMI condition of Petitioner's ankle is due to a preexisting condition and not to the industrial injury.

Held: The Court denied the motion and cross-motion for summary judgment. Petitioner would be entitled to payment of the impairment award under § 39-71-703(1), MCA, if she suffered an actual wage loss as a result of her industrial injury. Petitioner would not be entitled to payment of the impairment award if she did not suffer an actual wage loss as a result of her industrial injury since her claim would then fall under § 39-71-703(2), MCA, which provides that a worker is eligible for an impairment award only if the impairment rating is the result of a compensable injury. Since the question of whether Petitioner suffered an actual wage loss in the present case is a fact in dispute, the Court cannot render summary judgment for either party as this disputed fact is material to the resolution of this issue.

Wommack v. National Farmers Union Property & Casualty Co., et al, 2015 MTWCC 5

(Order Granting Respondent CHS Inc.'s Motion for Summary Judgment)

Related Topic: [Last Injurious Exposure](#)

Summary: Respondent CHS Inc. moves for summary judgment on the grounds that it is not liable for Petitioner's OD under the last injurious exposure rule, as codified in § 39-72-303(1), MCA (1997). Petitioner worked at the Cenex refinery in Laurel when he was exposed to asbestos. After Petitioner left employment with Cenex, Cenex was part of the merger that formed CHS Inc., which is a self-insured employer. CHS Inc. argues that it is not liable because it was never Petitioner's employer's insurer and, therefore, not the insurer at risk when Petitioner was exposed to the hazards of his alleged OD.

Held: Since Petitioner left employment before his employer merged with another company and became CHS Inc., a self-insured employer, he was never injuriously exposed to the hazard of his alleged OD while CHS Inc. was the insurer at risk. In a recent case involving asbestos exposure at the Cenex refinery, the Montana Supreme Court explained, "liability for and administration of [an OD] claim should correspond with the period in which the injurious exposure occurred." There is no genuine issue of material fact as to CHS Inc.'s liability and, therefore, CHS Inc. is entitled to judgment as a matter of law.

Wommack v. National Farmers Union Property & Casualty Co., et al, 2015 MTWCC 7

(Order Granting Respondent National Farmers Union Property & Casualty Co.'s Motion for Summary Judgment)

Related Topic: [Last Injurious Exposure](#)

Summary: Respondent National Farmers Union Property & Casualty Co. moves for summary judgment, arguing that it is not liable for Petitioner's OD. Inter alia, National Farmers Union Property & Casualty Co. argues that it is not liable under the last injurious exposure rule because Petitioner was exposed to asbestos at work for years after its coverage ended. Petitioner opposes the motion but does not specifically argue that National Farmers Union Property & Casualty Co. is or could be liable. Neither Respondent Nationwide Mutual Fire Ins. Co. nor Respondent Montana State Fund opposes the motion. Respondent Liberty Mutual Fire Ins. Co. opposes the motion to argue that the 1997 WCA is applicable and that it is not liable under the last injurious exposure rule; however, it does not argue that National Farmers Union Property & Casualty Co. is or could be liable.

Held: National Farmers Union Property & Casualty Co. is entitled to summary judgment under the last injurious exposure rule. The undisputed facts show that Petitioner was exposed to asbestos "on a daily basis" for years after National Farmers Union Property & Casualty Co.'s coverage of Petitioner's employer ended, while other insurers were insuring his employer.

Spencer v. Zurich American Ins. Co., 2014 MTWCC 20

(Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment)

Related Topic: [Termination for Cause](#)

Summary: Petitioner and Respondent moved for summary judgment on stipulated facts on the issue of whether Petitioner became entitled to TTD benefits after his employer terminated him while he was working in a modified position. The employer terminated Petitioner for "performance issues because he was not a 'fit for culture, property, department.'"

Held: Petitioner is entitled to TTD benefits from the date of his termination to the date of his surgery under § 39-71-701(4), MCA, the statute that specifically deals with the issue of whether a worker is entitled to TTD benefits after the worker is terminated while working in a modified position. The loophole that Respondent claims to have found if a worker begins modified duty before he receives TTD benefits does not exist. The stipulated facts do not show that Petitioner's termination was for "disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment." Since Petitioner's physical restrictions precluded him from returning to his time-of-injury job and employment with similar physical requirements, and since he was not at MMI, Petitioner is entitled to TTD benefits for the time period at issue.

Robinson v. Montana State Fund, 2018 MTWCC 7

(Order and Judgment Granting Respondent's Motion for Summary Judgment as to Petitioner's Offset Claim, Denying Petitioner's Cross Motion for Summary Judgment as to Petitioner's Offset Claim, and Dismissing Petitioner's Due Process Claim for Lack of Subject Matter Jurisdiction)

Appealed to Montana Supreme Court: September 5, 2018; Affirmed: October 23, 2018

Summary: Respondent moved for summary judgment on Petitioner's two causes of action. First, Respondent argues it can take the Social Security offset from Petitioner's PTD benefits under § 39-

71-702(4), MCA, because Petitioner is receiving PTD benefits and SSDI benefits because of her two industrial injuries. Second, Respondent argues it did not violate Petitioner's due process rights when it took the offset and began recouping an alleged overpayment before she had the opportunity for a hearing. Petitioner cross-moved for summary judgment. First, she argues that Respondent cannot take the offset because the statute states that the insurer can take the offset only when SSDI benefits are awarded "because of the injury," which Petitioner interprets as applying only when the claimant has one industrial injury. Second, Petitioner argues that Respondent violated her right to due process by taking the offset and recouping an overpayment before she had the opportunity for a hearing and that she is entitled to "such damages as are just for the violation of her right to due process."

Held: Respondent is entitled to summary judgment on Petitioner's offset claim. Section 39-71-702(4), MCA, covers situations in which a claimant is receiving PTD benefits and SSDI benefits because of two industrial injuries under the rule of statutory construction providing that the "singular includes the plural." This interpretation also upholds the legislative intent of the offset statute. Petitioner's due process claim, in which the only remedy she seeks is damages, is dismissed because this Court does not have subject matter jurisdiction over tort claims.

Simpson v. MMIA, 2018 MTWCC 12

(Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment)

Summary: Respondent moved for summary judgment, arguing that Petitioner's claim for medical benefits is time-barred under the two-year statute of limitations at § 39-71-2905(2), MCA. In the alternative, Respondent asserts that Petitioner's medical benefits terminated under § 39-71-704(1)(f), MCA (2005), because he did not use them for 60 consecutive months. Petitioner moved for summary judgment, arguing that his claim is timely, and that there was not a 60-month period of time in which he did not use his medical benefits.

Held: This Court granted summary judgment for Respondent. Petitioner's claim is time-barred under the two-year statute of limitations in § 39-71-2905(2), MCA. Respondent denied liability for all further medical treatment on Petitioner's right knee in 2009, but Petitioner did not petition this Court to decide the dispute until 2017, approximately six years after the statute of limitations ran.

Richardson v. Indemnity Ins. Co. of N. America, 2018 MTWCC 10; 2018 MTWCC 16 (2019 MT 160)

(Order Denying Petitioner's Motion for Partial Summary Judgment as to Notice; Order Denying Petitioner's Motion for Partial Summary Judgment as to Claim Filing and Granting Respondent's Cross-motion for Summary Judgment)

Appealed to Montana Supreme Court: October 18, 2018; Affirmed: July 16, 2019

Summary: Petitioner, a security guard at a hospital, asserts that he suffered an injury to his nose after helping his supervisor detain a patient in 2006. Respondent has denied liability, asserting, inter alia, that Petitioner did not timely submit a claim under § 39-71-601, MCA, which requires a claimant to submit a written claim within 12 months of the date of his accident, although in cases involving lack of knowledge of disability, latent injury, or equitable estoppel, the time limitation can be extended up to 36 months from the date of the accident. Petitioner moves for partial summary judgment, arguing that his employer's Daily Activity Report from the day of the incident constitutes his written claim. In the alternative, Petitioner argues that the First Report of Injury or Occupational Disease he filed nearly four years after the incident constitutes a timely claim because he lacked knowledge of his disability and because Respondent is equitably estopped from maintaining a statute of limitations defense. Respondent cross-moves for summary judgment, contending that the employer's Daily

Activity Report does not constitute a claim because Petitioner's entry did not indicate that he sustained an injury. Respondent also argues that even if Petitioner were entitled to the waiver for cases involving lack of knowledge of disability or equitable estoppel, Petitioner filed his First Report of Injury or Occupational Disease beyond the 36-month absolute deadline, which Respondent asserts is a statute of repose.

WCC Held: Petitioner's Motion for Partial Summary Judgment as to Claim Filing is denied. Respondent's Cross-Motion for Summary Judgment is granted. Petitioner's entry in his employer's Daily Activity Report did not indicate that he was injured; thus, it did not contain sufficient information to inform his employer or Respondent of the nature and basis of a potential workers' compensation claim and does not constitute a claim under § 39-71-601, MCA. And, even if Petitioner were entitled to the statutory waiver of the 12-month limitations period, he submitted his First Report of Injury or Occupational Disease beyond the 36-month absolute deadline for submitting a claim. Petitioner's claim is time-barred.

Heath v. Montana State Fund, 2019 MTWCC 4

(Order Granting Respondent Summary Judgment on Petitioner's Request for Relief From This Court's Order and Judgment Dismissing With Prejudice Dated March 10, 2014)

Summary: During litigation in 2014, Petitioner and Respondent settled Petitioner's bilateral shoulder injury claim via a Stipulation for Entry of Judgment, which expressly states that this Court would enter a judgment and dismiss the case with prejudice. Petitioner now asserts that he and Respondent were operating under a mutual mistake of fact and asks this Court to set aside their settlement agreement. Respondent moves for summary judgment, asserting that Petitioner's request for relief from this Court's Order and Judgment Dismissing with Prejudice is time-barred under M. R. Civ. P. 60(b)(1) and (c)(1), which provide that a party seeking relief from a judgment or order on the ground of mistake must file for relief "no more than a year after the entry of the judgment or order." Petitioner asserts that Rule 60 does not apply because this Court did not enter an actual judgment; rather, Petitioner asserts that this Court merely approved a settlement agreement. Petitioner thus argues that contract law applies, under which he asserts his Petition for Hearing is timely. In the alternative, Petitioner argues that if Rule 60 applies, his 2018 Petition for Hearing is timely under Rule 60(b)(4), which applies when a judgment is void, and under Rule 60(b)(6), which provides that a party can obtain relief for any other reason that justifies relief. Petitioner also asserts that he may proceed under Rule 60(d)(1), which provides that Rule 60 "does not limit a court's power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding . . ."

Held: Respondent is granted summary judgment on Petitioner's request for relief from this Court's Order and Judgment Dismissing with Prejudice. The Workers' Compensation Act grants this Court the power to enter judgments. The Montana Supreme Court has held that Rule 60 applies when a party seeks relief from a judgment of this Court. Rule 60(b)(1) and (c)(1) state that a party seeking relief from a judgment based on mistake must file for relief "no more than a year after the entry of the judgment or order." Because Petitioner did not file for relief within one year after this Court entered its Order and Judgment Dismissing with Prejudice, which is an actual judgment, and because Rule 60(b)(4) and (6), and (d)(1) do not provide him with avenues for relief under Montana law, Petitioner's request for relief is time-barred.

Brower v. Valor Ins. Co., Inc., in liquidation, MIGA, 2019 MTWCC 16
(Order Denying Petitioner’s Motion for Summary Judgment)

Summary: Petitioner moves for summary judgment, asserting that Respondent remains liable for her cervical problems because the insurer accepted liability for her “cervical condition” in the early 2000s and there is no evidence that she suffered a permanent aggravation. Petitioner also asserts that Respondent is estopped from denying liability and has waived its right to contest coverage through representations, which Petitioner understood to mean that the insurer had accepted liability for all of her cervical problems and that she would have coverage for all problems with her cervical spine.

Held: Petitioner is not entitled to summary judgment because there are issues of fact as to whether her current cervical problems — which are degenerative disk disease with radiculopathy and spondylosis — are the same condition for which the insurer accepted liability or a natural progression of that specific condition, which was arguably limited to a herniated disk at C5-6. Respondent is not estopped from contesting liability because neither it nor the insurer represented that the insurer had accepted liability for every problem in Petitioner’s cervical spine or that Petitioner had coverage for every problem she would develop in her cervical spine.

Dargin v. XL Insurance of America, 2020 MTWCC 9
(Order Denying Respondent’s Motion for Summary Judgment)

Summary: Respondent moves for summary judgment, asserting that Petitioner’s alleged injury did not arise out of her employment. Although there is no direct evidence as to what occurred during the work shift in which Petitioner alleges that she suffered an industrial injury, Respondent asserts that Petitioner must have had an idiopathic fall onto a level surface, which does not arise out of employment under Montana law. Petitioner asserts that there is an issue of fact as to whether she suffered an idiopathic fall or an unexplained fall.

Held: Respondent is not entitled to summary judgment because it did not meet its burden of establishing that there are no issues of material fact. There is an issue of fact as to whether Petitioner suffered an idiopathic fall onto a level surface.

Walters v. Employers Insurance Company of Wausau, 2020 MTWCC 14
(Order Granting Respondent’s Motion for Summary Judgment and Denying Petitioner’s Cross-Motion for Summary Judgment)

Related Topic: [Benefits](#)

Summary: After Petitioner was injured in the course of her employment, her employer discharged her for being a “no call, no show” for two shifts. The day after her discharge, Petitioner’s employer found a Medical Status Form on which her physician stated that she was not released to work on the days on which she was a “no call, no show.” Realizing that it had made a mistake, Petitioner’s employer contacted her to discuss her returning to work and, the day after that, to notify her that it did not consider her discharged. Petitioner did not respond. Once Petitioner was released to return to modified work, the employer offered her a position within her restrictions, but she refused to return to work on the grounds that she was not an employee. The parties filed cross-motions for summary judgment on the issue of Petitioner’s entitlement to TTD benefits under § 39-71-701, MCA. Respondent argues that Petitioner is not entitled to TTD benefits because the employer timely fixed

its mistake and thereafter offered her a job that was within her restrictions. Thus, Respondent maintains that the job was available to Petitioner and that her wage loss has been entirely due to her voluntary refusal to return to work. Petitioner argues that she is entitled to TTD benefits because her employment contract was irreparably severed and thus, there has been no work to which she could return.

Held: Petitioner is not entitled to TTD benefits. Because Petitioner's employer timely fixed its mistake and was thereafter willing to employ her in a modified position, the job was available to her. Petitioner offers no good reason for refusing the employer's offer of modified employment. Thus, Petitioner's wage loss has been entirely due to her voluntary refusal to return to work. Neither § 39-71-701(4), MCA, nor the express policies of the Workers' Compensation Act, allow an injured worker to refuse an employer's offer of modified employment without good reason and collect TTD benefits from the insurer.

Monroe v. MACO Workers' Compensation Trust, 2020 MTWCC 11
(Order Denying Petitioners' Motion for Summary Judgment)

Summary: Petitioners move for summary judgment, asserting that Respondent is obligated to pay \$55,457.83 in medical benefits. Petitioners assert that W.R. Grace's Libby Medical Program had the right to be reimbursed for medical bills it paid for those whose asbestos-related disease was thereafter determined to be a compensable occupational disease. Petitioners also assert that W.R. Grace transferred that right to the Libby Medical Plan Trust (LMP Trust) in the settlement of the tort claims against W.R. Grace. Because the LMP Trust now seeks to recover payment of the amounts that the Libby Medical Program paid for medical bills, Petitioners argue that Respondent is liable for the medical benefits as a matter of law.

Held: Petitioners' summary judgment motion is denied because they did not meet their burden of establishing the absence of issues of material fact and entitlement to judgment as a matter of law. They have not established that W.R. Grace had the right to be reimbursed for medical bills the Libby Medical Program paid for treatment of those with an asbestos-related disease caused by an exposure to Libby asbestos who were thereafter determined to have a compensable occupational disease nor that, if it did, it transferred that right to the LMP Trust in the settlement of the tort claims against it.

Monroe v. MACO Workers' Compensation Trust, 2020 MTWCC 12
(Order Denying Respondent's Motion for Summary Judgment)

Summary: Petitioners together assert that they are entitled to \$55,457.83 in medical benefits. Respondent moves for summary judgment, asserting that: (1) Petitioners are not proper parties and that this Court does not have jurisdiction over their claims; (2) Petitioners' claims are barred by statutes of limitations; (3) Petitioners' claims are barred by collateral estoppel; (4) Petitioners' claims are barred by the "law of gifts"; and that (5) Petitioners are not entitled to recover because they have engaged in unlawful collusion.

Held: Respondent is not entitled to summary judgment. Petitioners are proper parties and this Court has jurisdiction over their claims for medical benefits, and their claims are not barred by collateral estoppel. Moreover, Respondent has not established that Petitioners' claims are barred by an applicable statute of limitations. Finally, Respondent has not established the absence of issues of material fact over its "law of gifts" and collusion defenses.

Walund v. Montana State Fund, 2021 MTWCC 2
(Order Denying Petitioner’s Motion for Summary Judgment and Granting Respondent’s Cross-Motion for Summary Judgment)

Appealed to Montana Supreme Court: March 15, 2021; Affirmed: September 28, 2021

Summary: During his work shifts on September 26, 2019, and January 30, 2020, Petitioner experienced a sharp increase in pain in his lower extremities, which is a symptom of his preexisting neuropathy. Thereafter, Petitioner reported to his treating physician that he had a different feeling on touch. His symptoms have improved but have not returned to the level he had before his first work shift in which he experienced an increase in pain. He moved for summary judgment, asserting that Respondent has ongoing liability for his neuropathy because his work caused a permanent aggravation. Petitioner also argues that Respondent has admitted liability because its agreement to “treat” his increased symptoms while working as temporary aggravations is a judicial admission that he suffered compensable injuries. Respondent cross-moved for summary judgment, asserting that it is not liable for Petitioner’s neuropathy because Petitioner’s subjective reports of increased pain while working and his report of a different feeling on touch are not, by themselves, sufficient to prove compensable injuries under the 1995-present WCA, which requires that an injury be established with objective medical findings. Alternatively, Respondent argues that it is not liable for Petitioner’s neuropathy because Petitioner does not have a medical causation opinion that his alleged injuries permanently aggravated his neuropathy.

Held: Respondent is entitled to summary judgment because Petitioner has the burden of proof but does not have sufficient evidence to prove his case. Under the 1995-present WCA, a claimant must prove that he suffered an injury with objective medical evidence and prove causation with medical expertise or opinion. Petitioner has not introduced objective medical findings in support of his claim that he suffered injuries; he introduced only subjective complaints of increased and different symptoms. Moreover, Petitioner does not have a medical causation opinion supporting his position that his alleged injuries permanently aggravated his neuropathy. Petitioner’s treating physician testified that the increase of Petitioner’s symptoms while working did not cause any progression of his neuropathy. Finally, even if Respondent’s agreement was deemed a judicial admission that Petitioner suffered injuries that aggravated his neuropathy, Respondent does not have ongoing liability because, at most, Respondent admitted liability only for temporary aggravations.

Bryer v. Accident Fund General Ins. Co., 2022 MTWCC 8
(Findings of Fact, Conclusions of Law, and Judgment and Order)

Appealed to Montana Supreme Court: October 18, 2022; Affirmed June 6, 2023

Related Topics: [Benefits](#), [Penalties](#), [Attorneys’ Fees](#), [Claim Files](#)

Summary: Respondent denied liability for the employee’s claim on the grounds that the cause of his cardiopulmonary arrest was unknown.

Held: The employee suffered compensable injuries. Petitioner carried her burden of proving that the employee was knocked over backwards when the safety valve on a gas cylinder burst and that he was knocked unconscious when the back of his head hit the concrete floor. Petitioner also carried her burden of proving that the employee then inhaled argon gas and that the resulting lack of oxygen in his lungs caused him to go into cardiopulmonary arrest, which caused several injuries, including a

brain injury. The insurer's denial of liability was unreasonable because it did not conduct an adequate investigation before it denied liability.

SUBSTANCE ABUSE

Heth v. Montana State Fund, 2008 MTWCC 19 (2009 MT 149)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: June 13, 2008; Affirmed: May 5, 2009

Related Topic: [Burden of Proof](#)

Summary: Petitioner was in a single-vehicle accident involving the septic pumper truck he drove for his employer. Petitioner's blood-alcohol content (BAC) tested at .0874 shortly after the accident and beer cans were found in and around the truck. Respondent argued that it is not liable for Petitioner's workers' compensation claim because alcohol was the major contributing cause of the accident. Petitioner argued that alcohol was not the major contributing cause of the accident, and in any event, his employer knew that he drank alcohol on the job and therefore he is not barred from recovery under § 39-71-407(4), MCA.

Held: Although Respondent proved that alcohol was the major contributing cause of the accident, Petitioner proved that his employer knew he used alcohol while performing his job duties. Therefore, Petitioner is eligible for workers' compensation benefits.

Devers v. Montana State Fund, 2017 MTWCC 12
(Findings of Fact, Conclusions of Law and Judgment)

Related Topics: [Burden of Proof](#), [Credibility](#), [Major Contributing Cause](#)

Summary: Petitioner contends that he suffered a compensable injury because, although he drank before his accident, alcohol was not the major contributing cause of his accident, and his employers knew about his drinking and did not make a genuine attempt to stop it. Petitioner further claims his injury arose out of and in the course of his employment under the premises rule and the bunkhouse rule because he was a residential employee and on-call at all times. Respondent argues that given his lack of credibility and extent of intoxication, Petitioner's use of alcohol was the major contributing cause of his accident. Respondent further argues that although Petitioner's employers knew about his use of alcohol, their efforts to stop it were sufficient. Finally, Respondent contends that credible evidence shows that Petitioner's injury did not arise out of and in the course of his employment.

Held: Respondent met its burden of proving that Petitioner's use of alcohol was the major contributing cause of his accident. Moreover, Petitioner's employer knew about and attempted to stop it. Therefore, Petitioner's claim for benefits is barred under § 39-71-407(5), MCA, and this Court declines to address whether Petitioner's injury arose out of and in the course of his employment.

TERMINATION FOR CAUSE

Stancil v. MHA Workers' Comp. Trust, 2007 MTWCC 51

(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Benefits](#)

Summary: Petitioner petitioned the Court for permanent partial disability and rehabilitation benefits. Petitioner was precluded from returning to his time-of-injury job as an ICU nurse and performed transitional work until a nurse recruiter position was developed and subsequently offered to Petitioner. Petitioner was employed in that position for several weeks before he was terminated.

Held: Petitioner is not entitled to permanent partial disability and rehabilitation benefits because he did not suffer a wage loss as a result of his injury. The employer properly placed Petitioner in a transitional job. The nurse recruiter position was not specifically created for Petitioner. He was qualified to perform the nurse recruiter responsibilities because of his education, work experience, and personal and professional skills. Petitioner reviewed the job description and applied for the position. Petitioner was discharged from his employment because of behavioral issues, not as a result of his injury. Therefore, the Court concludes that Petitioner did not suffer an actual wage loss as a result of his injury and is not entitled to permanent partial disability or rehabilitation benefits.

Bagley v. Montana State Fund, 2009 MTWCC 29

(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Benefits](#), [Credibility](#)

Summary: After Petitioner David Bagley suffered an industrial injury to his right arm, his employer assigned him to alternate job duties which consisted of completing coursework for an electrician's apprenticeship. Bagley asserted that he was unable to complete the hours to which his treating physician released him to return to work due to severe pain. Bagley's employer terminated his employment for failing to complete his work hours and for not reporting to work. Bagley argues he is entitled to temporary total disability benefits and that Respondent Montana State Fund has unreasonably refused to pay his benefits.

Held: The facts of this case unambiguously demonstrate that Bagley was terminated from his employment for disciplinary reasons. He refused to work the hours to which he had been released, and he then failed to report to work at all. Although Bagley's treating physicians disagree as to whether Bagley is restricted from using his right hand for writing as part of his job duties, they both agree that he is able to work in a sedentary position. Bagley's former employer made such a position available to him, and had Bagley not been fired for cause, he would have been able to continue in that position. Bagley's request for reinstatement of TTD benefits is denied. Since Bagley is not the prevailing party, he is not entitled to his costs, attorney fees, or a penalty.

Griffin v. Associated Loggers Exchange, 2018 MTWCC 11

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: After returning to work after an industrial injury, Petitioner, who had previously been warned about arguing with coworkers, was in a fight with a coworker. Petitioner's employer terminated him from his employment pursuant to a clause in its Employee Handbook providing that fighting could result in discipline up to immediate termination. Petitioner disputes that he instigated the fight, and argues he is entitled to TTD benefits retroactive to the date of his termination. Petitioner

also challenges Respondent's calculated TTD benefit rate and its denial of liability for a September 29, 2015, medical bill.

Held: This court ruled in Respondent's favor. Petitioner is not entitled to TTD retroactive to the date of his termination because he was terminated for disciplinary reasons as he could not get along with his coworkers and instigated a fight, for which the Employee Handbook authorized immediate dismissal. Petitioner is not entitled to additional TTD for the time he was unable to work because Respondent correctly calculated his TTD rate. Petitioner is not entitled to reimbursement for the September 29, 2015, medical bill, because Petitioner scheduled the appointment on his own and did not receive any primary or secondary medical services; rather, it was a consultation with the physician to discuss his concerns about the appropriateness of his medical care and Respondent's adjusting of his claim.

UNINSURED EMPLOYERS' FUND

Benton v. Uninsured Employers' Fund, 2009 MTWCC 37

(Order Granting Uninsured Employers' Fund's Motion to Dismiss).

Related Topic: [Statutes of Limitation](#)

Summary: The Uninsured Employers' Fund moved to dismiss Petitioner's petition because it was filed more than 60 days after the date the mediator's report was mailed to the parties and was therefore untimely pursuant to § 39-71-520(2), MCA. Petitioner argued that § 39-71-520(2), MCA, is unconstitutional in that it violates her right to equal protection and is unconstitutionally void for vagueness.

Held: The Uninsured Employers' Fund's motion to dismiss is granted. A prerequisite to any equal protection challenge is demonstrating that a classification has been adopted that affects two or more similarly situated classes in an unequal way. The Court identified the two classes involved in this case as (I) injured workers employed by uninsured employers seeking benefits from the UEF, and (II) injured workers employed by insured employers seeking benefits from the employer's insurer. The process for seeking redress for an uninsured worker is distinct in myriad ways from that which an insured worker follows. The distinct process legislatively mandated for insured workers versus uninsured workers leads the Court to conclude that the classes of injured employees at issue in this case are not similarly situated. In *Weidow v. Uninsured Employers' Fund*, this Court determined that §39-71-520(2), MCA, was unconstitutional by its vagueness. Unlike the claimant in *Weidow*, however, it was not necessary for Petitioner to guess at the meaning of the "determination by the department" referenced in the statute since she had rejected both the mediator's recommendation and the UEF's determination. Therefore, her required conduct – i.e., petitioning the Workers' Compensation Court within 60 days – was sufficiently defined. Section 39-71-520(2), MCA, is not unconstitutionally vague as applied to this case.

Hilbig v. Uninsured Employers' Fund, 2008 MTWCC 43

(Order Denying The Uninsured Employers' Fund's Motion to Find Summary Judgment Inappropriate and Granting the UEF's Motion for an Extension of Time to Respond).

Related Topic: [Evidence](#)

Summary: Respondent UEF moved the Court to find summary judgment inappropriate pursuant to ARM 24.5.329(1)(c), or in the alternative to grant the UEF an extension of time to file a response brief. The UEF asserted that it had recently learned of medical evidence which would place a material fact in dispute and would thereby render summary judgment inappropriate in the case.

Held: Two days before trial, the parties agreed in a conference call with the Court that the only issue in dispute was whether the UEF could withhold payment of benefits until Petitioner's third-party action was resolved. The UEF conceded during this conference that it had no medical evidence to support its contention that Petitioner was not injured to the extent claimed in the subject accident. Based upon these representations, the Court vacated the trial and directed Petitioner to file a motion for summary judgment to resolve the one legal issue that was in dispute. In light of the procedural history of this case and the representations of counsel which have contributed to this procedural history, it would be manifestly unjust if the Court were to now allow the UEF to interject medical evidence through the back door which would have not been admitted had this matter proceeded to trial as scheduled. The UEF's motion to find summary judgment inappropriate is denied. The UEF has 10 days from the date of this Order in which to respond to Petitioner's summary judgment motion,

and must confine its brief only to the evidence which was admitted by stipulation and which would have been relied upon had this matter proceeded to trial as scheduled.

Raymond v. Uninsured Employers' Fund, 2009 MTWCC 7

(Order Denying Uninsured Employers' Fund's Motion for Leave to File a Third-Party Petition).

Summary: In previous Orders, this Court dismissed the alleged uninsured employers as parties to this litigation because the Uninsured Employers' Fund had not fulfilled the due process requirements of § 39-71-2401, MCA, and the departmental procedure set forth in § 39-71-506, MCA. The Court then denied the UEF's motion for reconsideration. The UEF now moves the Court for leave to file a third-party petition against the alleged uninsured employers.

Held: Since the UEF has not demonstrated that it has fulfilled the requirements of §§ 39-71-506, -2401, MCA, its motion for leave to file a third-party petition against the alleged uninsured employers is denied.

Hopkins v. Uninsured Employers' Fund, 2009 MTWCC 12

(Order Denying Uninsured Employers' Fund's Motion for Reconsideration and Dismissing Uninsured Employers' Fund's Third-Party Petition for Statutory Indemnity).

Summary: The Uninsured Employers' Fund (UEF) moved this Court to reconsider its decision dismissing the alleged uninsured employer from this case *sua sponte*. The UEF argues that the Court misinterpreted the law when it concluded that the alleged uninsured employer was not a proper party to the action. The UEF also filed a third-party petition for statutory indemnity simultaneously with its response to the petition in this matter.

Held: The UEF's arguments have not persuaded the Court that the statutory procedures can be circumvented without impinging upon the due process rights of alleged uninsured employers, and its motion for reconsideration is therefore denied. The UEF's third-party petition is dismissed because the UEF has not provided any indication that it complied with the due process requirements of § 39-71-506, MCA.

Wilson v. Uninsured Employers' Fund, 2009 MTWCC 22

(Order Denying Uninsured Employers' Fund's Motion for Reconsideration and Granting Leave to File a Third-Party Petition).

Related Topic: [Jurisdiction](#)

Summary: The Uninsured Employers' Fund moved this Court to reconsider its decision dismissing the alleged uninsured employer as a respondent in this case, arguing that the Court misinterpreted the law when it concluded that the alleged uninsured employer was not a proper party to the action. Alternatively, the UEF asked the Court to grant it leave to file a third-party petition against Elk Mountain Motor Sports, Inc. After the Legislature enacted new legislation, the UEF supplemented its briefing and argued that under the new statutory language, the putative uninsured employer is properly joined as a party. Elk Mountain objected to the UEF's motion, arguing that it could not be joined without denial of due process because it had not participated in the mandatory department mediation. The Court ordered the parties to participate in a department mediation prior to the Court's reaching a decision on the UEF's motion. The UEF subsequently informed the Court that the mediation had been completed and requested that the Court consider its motion.

Held: The UEF’s motion for reconsideration is denied. Elk Mountain cannot simply be reinstated as a respondent that is ostensibly liable to the claimant because § 39-71-516, MCA, makes it clear that claims by injured employees against uninsured employers are exclusively within the jurisdiction of the district court. Although the newly enacted legislation does not specify in what capacity an uninsured employer is joined, it appears to the Court that the only capacity in which the UEF could join Elk Mountain would be as a third-party respondent. Therefore, the UEF’s request for leave to file a third-party petition against Elk Mountain is granted.

Hilbig v. Uninsured Employers’ Fund, 2009 MTWCC 6
(Order Granting Petitioner’s Motion for Summary Judgment).

Summary: Petitioner was injured in an automobile accident while within the course and scope of her employment. Her employer was uninsured, and Petitioner filed a claim against the Uninsured Employers’ Fund and pursued a third-party action against the driver of the other vehicle. The UEF has refused to pay Petitioner’s benefits until her third-party claim is resolved. Petitioner has moved for summary judgment, arguing that she is entitled to benefits from the UEF because she is statutorily permitted to pursue her remedies concurrently.

Held: Petitioner’s motion for summary judgment is granted. The Workers’ Compensation Act explicitly permits Petitioner to pursue her remedies concurrently, while the UEF has no legal authority for refusing to pay benefits for which it has admitted liability.

H&D Investments, LLC v. Uninsured Employers’ Fund, 2009 MTWCC 1
(Order Granting Petitioner’s Motion for Summary Judgment).

Summary: Petitioner contracted with Enzo Construction, Inc. to perform and oversee construction and remodel work on a condominium. During the performance of this work, one of Enzo’s employees was injured. Enzo was not carrying workers’ compensation insurance at the time and the UEF accepted liability and paid benefits. The UEF then sought reimbursement from Petitioner for the benefits paid. The UEF contends Petitioner is liable for reimbursement either pursuant to § 39-71-405(1), MCA, or § 39-71-405(3), MCA, or under a theory of “equitable reimbursement.” Petitioner moves for summary judgment regarding the UEF’s claim for reimbursement.

Held: Petitioner’s motion for summary judgment is granted. Section 39-71-405(1), MCA, provides any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses “from the contractor primarily liable.” In its response brief, the UEF concedes that Petitioner is *not* the contractor primarily liable. Therefore, the UEF cannot pursue reimbursement from Petitioner under this subsection. The UEF’s construction of § 39-71-405(3), MCA, is wholly unsupported by the plain language of the statute itself and does not support a claim for reimbursement against Petitioner. As for the UEF’s claim for “equitable reimbursement,” while the authority upon which the UEF relies may support a claim for reimbursement against Enzo as the injured worker’s employer, it does not support a reimbursement claim against Petitioner.

Hopkins v. Uninsured Employers’ Fund v. Kilpatrick, 2010 MTWCC 9A
(Order Amending Findings of Fact, Conclusions of Law and Judgment).

Summary: The Uninsured Employers’ Fund moved for amendment to the Findings of Fact, Conclusions of Law and Judgment to resolve Issue 5, which the Court concluded was moot in light of the resolution of Issues 1 through 4. The final pretrial order listed Issue 5 as “Whether Kilpatrick owed a duty of coverage to Hopkins.” The UEF requests the Court amend its Findings of Fact, Conclusions of Law and Judgment “to determine that under Issue 5, Kilpatrick owed a duty of

coverage to Hopkins, and to point out that Kilpatrick must indemnify the UEF for all benefits it pays to Hopkins.”

Held: There is no legal authority for a judicial “point out” as the UEF requests. However, the UEF’s motion has merit even if its argument does not. In *Hand v. Uninsured Employers’ Fund* – a case the UEF inexplicably failed to cite in its motion or brief – this Court held that since the UEF’s defense had been raised in the pretrial order contentions, the petitioner could not claim surprise that the Court considered it in reaching its decision. In the present case, the UEF failed to list its claim for indemnification in the disputed issues section of the final pretrial order. However, the UEF set forth its position regarding indemnification in its contentions. Therefore, it is proper to consider the indemnification issue. The uninsured employer’s obligation to indemnify the UEF arises under § 39-71-504(1)(b), MCA. Based on the Court’s previous findings and conclusions, Kilpatrick must indemnify the UEF for any benefits paid or payable by the UEF to Hopkins.

Wilson v. Uninsured Employers’ Fund v. Elk Mountain Motor Sports, Inc., 2010 MTWCC 5
(Order Granting Uninsured Employers’ Fund’s Motion for Partial Summary Judgment).

Related Topic: [Procedure](#)

Summary: The Third-Party Respondent contends that it should not be liable to the UEF for Petitioner’s industrial injury. Although the UEF accepted liability, the Third-Party Respondent contends that the injury did not occur and that the employer was not uninsured. The UEF moved for partial summary judgment against the Third-Party Respondent, arguing that the Third-Party Respondent failed to appeal the UEF’s determination within 90 days, as required by § 39-71-520(1), MCA. The Third-Party Respondent responds that the UEF cannot use facts which occurred prior to the date it was named in this lawsuit against it in a motion for partial summary judgment.

Held: The Third-Party Respondent did not appeal the UEF’s determination to mediation within 90 days, as required by § 39-71-520(1), MCA. Therefore, its contentions that it was not uninsured on the date of Petitioner’s industrial injury and that Petitioner’s industrial accident did not occur are time-barred. The UEF is entitled to partial summary judgment on these issues.

Cleek v. Uninsured Employers’ Fund, 2012 MTWCC 31
(Order Granting Petitioner’s Motion to Amend Petition for Hearing).

Related Topic: [Procedure](#)

Summary: Petitioner moved to file an amended Petition for Hearing in order to: 1) add Montana State Fund as an additional named party; and 2) add the issue of Respondent’s claim for reimbursement of benefits. Respondent Uninsured Employers’ Fund opposed Petitioner’s motion on the grounds that the amendments Petitioner seeks to make are time-barred and do not relate back to the original pleading.

Held: Motion to amend is granted. Leave to amend a pleading shall be freely given as justice so requires. In this case, the amendments which Petitioner seeks to make to his petition relate back to his original injury. Whether the issues that are the subject of his proposed amendments are time-barred are more properly addressed by way of a dispositive motion rather than denial of a motion to amend.

Jacobsen Ranch Co. v. Dix, et al., 2012 MTWCC 33
(Order Granting Montana State Fund's Motion to Dismiss).

Related Topic: [Procedure](#)

Summary: Respondent Montana State Fund moved for dismissal or in the alternative, summary judgment, arguing that Petitioner was not entitled to contribution or indemnification from Montana State Fund, which was the insurer on a prior claim brought by the claimant. Montana State Fund argues that because Petitioner is an uninsured employer, it is not entitled to such relief.

Held: Petitioner, an uninsured employer, lacks standing to seek indemnification or contribution from a third-party insurer. Montana State Fund's motion to dismiss is granted

Chippewa v. Uninsured Employer's Fund v. Montana State Fund, 2012 MTWCC 39
(Order Granting Petitioner's Motion to Dismiss Counter-Claim and Request for Indemnity and Denying Petitioner's Motion for Sanctions).

Summary: Petitioner moved to dismiss Third-Party Respondent's counter-claim and request for indemnity. Petitioner also moved for sanctions, arguing that the counterclaim was clearly outside this Court's jurisdiction. Third-Party Respondent responds that this Court has the jurisdiction to consider his counter-claim and it should therefore not be dismissed nor should the Court order sanctions against him.

Held: Petitioner's motion to dismiss the counter-claim and request for indemnity is granted. The WCC does not have the subject matter jurisdiction to hear the tort claims Third-Party Respondent set forth. Petitioner's motion for sanctions is denied. While Third-Party Respondent's counsel could have better familiarized herself with the jurisdictional bounds of this Court, filing the counter-claim and request for indemnity did not rise to a sanctionable level under § 39-71-2914, MCA.

Dostal v. Uninsured Employers' Fund, 2012 MTWCC 40
(Order Granting Respondent's Motion for Reconsideration and Finding Respondent's Refusal to pay Petitioner's Impairment Awards Unreasonable).

Related Topic: [Penalties](#)

Summary: Respondent moved for reconsideration of the Court's Findings of Fact, Conclusions of Law and Judgment, contending that the Court erred in failing to make findings and conclusions consistent with its previous oral ruling regarding Petitioner's entitlement to payment of her impairment awards. Petitioner concurred in Respondent's request and further asked the Court to make findings regarding whether Respondent unreasonably refused to pay her impairment awards.

Held: Respondent's motion for reconsideration is well-taken. The Court overlooked its previous ruling regarding Petitioner's impairment awards when it published its Findings of Fact, Conclusions of Law and Judgment, and the parties are entitled to a written order setting forth the Court's rationale. The Court's findings and conclusions regarding its oral ruling are set forth. Furthermore, the Court found Respondent's refusal to pay Petitioner's impairment awards to be unreasonable.

Dostal v. Uninsured Employers' Fund, 2012 MTWCC 41

(Order Granting Petitioner's Motion for Reconsideration and Granting Respondent's Motion to Strike).

Summary: Petitioner moved for reconsideration of the Court's Findings of Fact, Conclusions of Law and Judgment, contending that the Court erred in refusing to grant her relief on an issue presented for determination where the Court had previously orally ruled and indicated that it would set forth the ruling in its written findings of fact, conclusions of law, and judgment. Respondent, while disagreeing with the Court's oral ruling, agreed with Petitioner that the Court should grant reconsideration and set forth its rationale for the oral ruling. Respondent moved to strike Petitioner's reply brief on the grounds that a reply brief is not permitted under ARM 24.5.337.

Held: Petitioner's motion for reconsideration is well-taken. The Court overlooked its previous ruling on the issue when it published its Findings of Fact, Conclusions of Law and Judgment, and the parties are entitled to a written order setting forth the Court's rationale. Respondent's motion to strike Petitioner's reply brief is also well taken and is consistent with this Court's previous rulings.

Dostal v. Uninsured Employers' Fund, 2012 MTWCC 42

(Order Granting Petitioner's Request for Penalty and Attorney Fees).

Related Topic: Penalties

Summary: After a trial of the issues, the Court determined that the UEF was unreasonable in adjusting Petitioner's claim. The Court bifurcated the issue of whether the UEF could be held liable for attorney fees and a penalty, pursuant to §§ 39-71-611 and -2907, MCA, respectively.

Held: Under the statutes applicable in the present case, the UEF may be found liable for attorney fees and a penalty. Since the Court adjudged the UEF's adjusting to be unreasonable in the present case, the Court concludes Petitioner is entitled to her attorney fees and a penalty against the UEF.

Dostal v. Uninsured Employers' Fund, 2012 MTWCC 45

(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Benefits](#), [Penalties](#)

Summary: Petitioner and Respondent disagree regarding what amount constitutes a reasonable fee to charge for photocopying certain documents. Respondent has also refused to authorize certain medical treatment, including referral to a specific orthopedist who performed previous surgeries on Petitioner's back; referral to a pain management specialist; and a lumbar spine MRI. Petitioner contends that Respondent has acted unreasonably in the adjustment of her claim, and argues that she should receive her attorney fees and a penalty.

Held: Based on the evidence presented, the Court concluded that the parties may reasonably charge each other 10 cents per page plus \$25 per hour of labor for photocopying these documents. Petitioner is entitled to referral to the orthopedist she requested and is also entitled to referral to a pain management specialist. Petitioner is not entitled to a lumbar MRI. Respondent was unreasonable in refusing the referrals and Petitioner is entitled to her attorney fees and a penalty relative to those two issues.

Jensen v. Uninsured Employers' Fund, et al., 2013 MTWCC 3

(Order Denying Third-Party Respondent's Motion for Leave to Re-file Motion for Summary Judgment and Requiring Parties to Stipulate to Agreed Facts or Agreed Record to Facilitate Submission of Matter on Briefs).

Summary: Third-Party Respondent Daniel Christianson moved for leave to re-file his motion for summary judgment, after his initial summary judgment motion was denied on grounds that further discovery was warranted. The parties now wish to submit this matter on briefs and stipulated facts regardless of whether Christianson's motion for leave is granted.

Held: The parties having contacted the Court and indicated their desire to submit this matter on briefs and stipulated facts, judicial economy dictates that Christianson's motion be denied and this matter now be submitted on briefs for full resolution of all issues, based upon a stipulated record or stipulated facts agreed to by all parties.

Jensen v. Uninsured Employers' Fund, et al., 2014 MTWCC 5

(Order on Cross-Motions for Summary Judgment)

Summary: The parties agreed to submit this matter to the Court upon agreed facts and briefs, and the Court treated the parties' submissions as cross-motions for summary judgment pursuant to ARM 24.5.329. Petitioner made a claim for benefits for injuries sustained in a fall from a roof while a resident of the Butte Prerelease Center under contract with the Montana Department of Corrections. The partnership that hired Petitioner to replace the roof on a rental house was uninsured, as was the owner of the house. The Uninsured Employers' Fund maintained that Petitioner was an employee of the partnership which was in turn a subcontractor of either the owner of the house or the Butte Prerelease Center under § 39-71-405, MCA.

Held: Petitioner was at most only a casual employee of the owner of the house where Petitioner was injured. Although the Butte Prerelease Center was required to assist its residents in attaining employment, there was no contractual relationship between the Butte Prerelease Center and the partnership that employed Petitioner. Since there was no statutory employer pursuant to § 39-71-405, MCA, the Uninsured Employers' Fund is liable for Petitioner's workers' compensation benefits, with a right to indemnification from the partners of the partnership who hired and employed Petitioner.

Emanuel v. Montana State Fund, 2015 MTWCC 8

(Order Dismissing Third Party Respondent Uninsured Employers' Fund)

Summary: The UEF and Petitioner object to State Fund's third party petition. Although State Fund concedes that the UEF will not be liable to any party to this case if Petitioner prevails, State Fund maintains that the UEF is a necessary party under M. R. Civ. P. 19, for this Court to have a "full understanding of the UEF's actions concerning Emanuel's ICEC."

Held: The UEF is dismissed because it does not have any stake in the outcome of this case. If Petitioner prevails on his claim against State Fund, the UEF will not be liable to any party for benefits. Moreover, the UEF does not need to be a party to this case for this Court to have a full understanding of the positions the UEF took in denying liability for Emanuel's claim. If State Fund believes the documents from the UEF are relevant to this case, it can offer them as exhibits, as it has already done. If State Fund believes that the UEF's agents have personal knowledge of facts relevant to this case, it can call them as witnesses.

Reule v. Brock, et al., 2017 MTWCC 3

(Order Granting the Uninsured Employers' Fund's Motion for Partial Summary Judgment and Denying Petitioner's Cross Motion for Partial Summary Judgment)

Appealed to Montana Supreme Court: May 23, 2017; Dismissed: October 3, 2017

Related Topic: [Independent Contractors](#)

Summary: The UEF moves for partial summary judgment on the grounds that there are no disputes of material fact and, as a matter of law, Petitioner is liable to reimburse the UEF for all the workers' compensation benefits it has paid or will pay on Petitioner's behalf. The UEF maintains Petitioner is liable as a statutory employer under § 39-71-405, MCA, which is Montana's "contractor-under" statute. Petitioner opposes the UEF's motion, and cross moves for partial summary judgment, arguing § 39-71-405(2), MCA, does not apply because Respondent Brock was an independent contractor, or if Petitioner is made liable by § 39-71-405(2), MCA, that statute is unconstitutional.

Held: There are no disputes of material fact; as a matter of law, Petitioner is liable as a statutory employer under §§ 39-71-405(2), and -504(1)(b), MCA, to reimburse the UEF for all the workers' compensation benefits it has paid or will pay on Petitioner's behalf; and Petitioner's constitutional challenge fails. Therefore, the UEF is entitled to judgment as a matter of law on the issue of Petitioner's liability.

Crabtree v. DLI and UEF, 2017 MTWCC 19

(Order Affirming Penalty Under § 39-71-504(1)(a), MCA)

Summary: Employer Appellant appeals from a decision of agency Appellee ordering him to pay to the Uninsured Employers' Fund a penalty under § 39-71-504(1)(a), MCA, in the amount of \$28,259.82. Appellant argues the penalty is not supported by sufficient evidence in the record.

Held: There is sufficient evidence in the record to support Appellee's imposition of a \$28,259.82 penalty under § 39-71-504(1)(a), MCA. Appellee's final agency order imposing the penalty is affirmed.

Hideaway Builders, LLC v. Rasmussen, UEF, 2019 MTWCC 9

(Order Granting Summary Judgment to Respondents)

Summary: The UEF determined that Claimant was an employee of Petitioner. Petitioner filed this case to appeal the UEF's determination. Claimant moved to dismiss, asserting that Petitioner filed this case after the 60-day statute of limitations in § 39-71-520(2)(b) and (c), MCA, ran. The UEF joined Claimant's motion. Petitioner initially conceded that it filed its Petition for Hearing a day late but argued that this Court should invoke the doctrine of equitable tolling and rule that it was timely. Intervenor argued that the Petition for Hearing was timely, asserting that under this Court's procedural rules, 3 days are added to the statute of limitations because the mediator mailed her Report and Recommendation. For the first time at the hearing, Petitioner argued that its Petition for Hearing was timely under this Court's procedural rules.

Held: The Court converted the motion and granted summary judgment in favor of Respondents because the Petitioner's Petition for Hearing is time barred and the UEF's determination is final. This Court's rules of procedure state that filing occurs "upon receipt by the court." This Court did not receive the Petition for Hearing until after the limitations period had run. The Montana Supreme Court and this Court have ruled that, as a matter of law, 3 days for mailing are not to be added to the statutes

of limitations in § 39-71-520, MCA. The doctrine of equitable tolling does not apply because the current version of § 39-71-520, MCA, is not ambiguous, and this is simply a case of neglect.

McKinley v. Pressure Washing Systems, LLC, and UEF, 2019 MTWCC 17

(Order Granting Respondent Uninsured Employers' Fund's Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment)

Related Topic: [Summary Judgment](#)

Summary: Petitioner, a resident of West Virginia, asserts that he is entitled to Montana workers' compensation benefits from Respondent Uninsured Employers' Fund (UEF) for injuries he suffered in a motor vehicle accident near Billings. Petitioner was driving a pickup truck he rented from a West Virginia company to haul an RV from a transport company located in Indiana. Petitioner asserts that the agreement under which he rented the truck created an employment relationship with the West Virginia company. The UEF asserts that Petitioner is not entitled to Montana workers' compensation benefits because the West Virginia company was not his employer under Montana law.

Held: This Court grants summary judgment to Respondents. Petitioner did not have an employment relationship with the West Virginia company under Montana law. The only agreement Petitioner had with the West Virginia company was an agreement with its co-owner under which Petitioner rented one of the company's pickup trucks which, as a matter of Montana law, does not constitute a contract of hire. Because the West Virginia company was not Petitioner's employer, it was not required to furnish workers' compensation coverage under Montana law and Petitioner is not entitled to benefits. Because the UEF is not liable for benefits, the putative employer is not obligated to indemnify the UEF and, therefore, the putative employer is also entitled to summary judgment.

Rice v. Mary Jo Johnston and Uninsured Employers' Fund, 2021 MTWCC 4

(Order Granting Respondent Uninsured Employers' Fund's Motion in Limine)

Related Topic: [Procedure](#)

Summary: Respondent UEF moves in limine to exclude evidence in support of Petitioner's fraud claims. Respondent UEF asserts that Petitioner's fraud claims are not properly before this Court under established Montana law because he did not plead the nine elements of fraud with particularity. Thus, Respondent UEF claims that evidence supporting Petitioner's fraud claims is irrelevant and inadmissible under M.R.Evid. 401 and 402.

Held: This Court granted Respondent UEF's Motion in Limine. Petitioner did not file a response brief to Respondent UEF's Motion in Limine, which this Court deems to be an admission that the motion is well-taken. Moreover, on the merits, Petitioner's fraud claims are not properly before this Court. Petitioner was notified at an early stage of this case that his fraud claims were not properly before this Court because he did not plead fraud with particularity. This Court gave him a chance to move for leave to amend his Petition for Trial. However, he did not do so. Thus, his fraud claims are not properly before this Court and evidence supporting those claims is irrelevant and inadmissible under M.R.Evid. 401 and 402.

Rickert and Edwards d/b/a CSE Construction v. UEF, 2021 MTWCC 12

(Order Granting the UEF's Motion for Protective Order Subject to This Court's in Camera Review of Claimant's Medical Records)

Related Topic: [Constitutional Law](#)

Summary: The UEF moves for a protective order, asserting that one of the alleged employer's request for the claimant's medical records is not reasonably calculated to lead to the discovery of admissible evidence because the only issue in this case is which of the Petitioners was the claimant's employer on his date of injury. The UEF also argues that it cannot produce the claimant's medical records without violating his right of privacy under Mont. Const. art. II, § 10, or its duty to keep the claimant's information confidential. The alleged employer asserts that it is entitled to the claimant's medical records because they might contain statements attributed to him that are relevant to the issue of who his employer was on the date of his injury or statements attributed to him which are inconsistent with his other statements, which would support the alleged employer's position that the claimant is not a credible witness. The alleged employer also asserts that the claimant has completely waived his right of privacy to his medical records by filing a workers' compensation claim.

Held: The Court granted the UEF's motion subject to its in camera review of the claimant's medical records. The claimant -- who is not a party to this case -- has a constitutional right of privacy to his medical information. Because medical records are to be given "the utmost constitutional protection," this Court cannot order the UEF to produce the claimant's medical records to an alleged employer when the only issue in the case is who was the claimant's employer on the date of his industrial injury. Under established Montana law, the claimant does not completely waive his right of privacy to his medical information by filing a workers' compensation claim. However, to ensure that the parties have access to all discoverable evidence, the Court will review the claimant's medical records in camera to determine whether they contain any discoverable evidence. If any of the claimant's medical records contain discoverable evidence, this Court will order the UEF to redact the private medical information on the record and to produce the discoverable evidence.

Laemmle/Riverside Drywall, Inc. v. Pettit and Uninsured Employers' Fund, 2021 MTWCC 15

(Order Denying Respondent Uninsured Employers' Fund's Summary Judgment Motion)

Related Topic: [Summary Judgment](#)

Summary: Respondent UEF asserts that Petitioner, an alleged uninsured employer, did not timely appeal its determination to accept liability for a claim under § 39-71-520(1), MCA, which states, "A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final." Petitioner did not request mediation within 90 days of the date of the UEF's determination but contends that the UEF did not give him notice of its determination.

Held: This Court denied the UEF's motion. The UEF did not establish that there are no issues of material fact on the factual issue of whether it gave Petitioner notice of its determination. Although the UEF argues that it sent its determination letter to the address Petitioner identified as his "current address" in his recorded interview, Petitioner's answer to the question of his "current address" indicated that he was no longer living at that address.

VOCATIONAL REHABILITATION – RETURN TO WORK

Caldwell v. MACo Workers' Compensation Trust, 2010 MTWCC 24 (2011 MT 162)
(Order Holding § 39-71-710, MCA, Unconstitutional as it Relates to Rehabilitations Benefits)

Appealed to Montana Supreme Court: September 3, 2010; Affirmed: July 11, 2011

Related Topics: [Benefits](#), [Constitutional Law](#)

Issue: Does the categorical denial of rehabilitation benefits violate equal protection when the basis for denial turns solely on the claimant's age-based eligibility for Social Security benefits.

Summary: Pursuant to § 39-71-710, MCA, the insurer's liability for payment of permanent partial disability benefits, permanent total disability benefits, and rehabilitation benefits terminates when a claimant is considered retired. Petitioner argues that, as it relates to vocational rehabilitation benefits, § 39-71-710, MCA (2005), violates his right to equal protection as guaranteed by Article II, Section 4, of the Montana Constitution.

Held: Section 39-71-105(3), MCA, sets forth the public policy for rehabilitation benefits.

It provides that an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Before an injured worker can qualify for rehabilitation benefits, § 39-71-1006, MCA, requires that a rehabilitation provider certify that the worker has reasonable vocational goals and reasonable reemployment opportunity. The rehabilitation plan must take into consideration a worker's age, education, training, work history, residual physical capacities, and vocational interests. Since the statute already considers the worker's age, the Court sees no rational basis for automatically terminating rehabilitation benefits upon an injured worker's eligibility for retirement. Therefore, the Court concludes that as it relates to rehabilitation benefits, § 39-71-710, MCA, violates Petitioner's right to equal protection.

Markovich v. Liberty Northwest, 2007 MTWCC 21
(Findings of Fact, Conclusions of Law and Judgment).

Related Topic: [Benefits](#)

Summary: When Petitioner neared the completion of an 84-week vocational rehabilitation plan which allowed him to get a master's degree, he asked Respondent to pay for additional schooling so he could complete a thesis which would make him eligible for a Ph.D. program. Respondent refused. Petitioner petitioned this Court for additional vocational rehabilitation benefits, additional benefits under § 39-71-703, MCA, additional auxiliary benefits, and attorney fees and a penalty for Respondent's actions from the day of Petitioner's injury until the present.

Held: Petitioner has not suffered a wage loss that would entitle him to PPD benefits under § 39-71-703, MCA, because he is now qualified to earn more than he earned at his time of injury employment. Petitioner is not entitled to an additional vocational rehabilitation plan, nor is he entitled to auxiliary benefits for travel in excess of the \$4,000 which Respondent has paid. Petitioner is not entitled to attorney fees or a penalty.

Burns v. Flathead County, Montana, 2008 MTWCC 37
(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner worked as a heavy equipment mechanic for the Flathead County Road and Bridge Department until he was injured in the course and scope of his employment. Before he returned to work, Petitioner's position as a mechanic was eliminated by the department. When the department posted the position of bridge equipment operator, Petitioner requested a hiring preference; however, Respondent did not hire Petitioner for this position. Petitioner petitioned the Court for a determination that he was entitled to a hiring preference pursuant to § 39-71-317, MCA, for the position of bridge equipment operator.

Held: Petitioner was not entitled to a hiring preference for the position of bridge equipment operator because the position is not consistent with his vocational abilities.

Sizemore v. Copper King Hotel and Convention Center, 2008 MTWCC 8
(Order Granting Respondent's Motion to Dismiss)

Appealed to Montana Supreme Court: February 20, 2008; Dismissed: June 17, 2008

Summary: Respondent moved to dismiss Petitioner's petition in which she requested that the Court enforce the reemployment preference of § 39-71-317, MCA, against The Cimarron Group, Inc., which now owns the Copper King Hotel and Convention Center. Petitioner was employed at the Copper King Hotel and Convention Center when it was owned by Allegra Partnership, and Allegra Partnership owned the business on the date of Petitioner's industrial injury.

Held: Under § 39-71-317(3), MCA, a claimant's reemployment preference lies with her date-of-injury employer. Since Petitioner's place of employment was owned by Allegra Partnership and not The Cimarron Group, Inc., on the date of her injury, her entitlement to a reemployment preference lies with Allegra Partnership and not The Cimarron Group, Inc. Respondent's motion to dismiss is therefore granted.

Short v. J.H. Kelly Holdings, LLC, 2009 MTWCC 33
(Finding of Fact, Conclusions of Law and Judgment).

Summary: Petitioner William Short petitioned the Court for a determination of the appropriate labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA. Petitioner was a permanent resident of Shoreline, Washington, at the time he was injured. Petitioner's injury occurred at a temporary work assignment as a millwright in Missoula, Montana. Shortly after Petitioner's injury, he moved to Clark Fork, Idaho. A vocational rehabilitation provider developed several job analyses utilizing the Montana and Shoreline, Washington, labor markets. Petitioner's treating physician approved six of these alternative job analyses, and Respondent J.H. Kelly Holdings, LLC, terminated Petitioner's TTD benefits based on the treating physician's approvals. Petitioner argues that Clark Fork, Idaho, is his labor market because he currently resides and has sought employment there. Petitioner also petitioned the Court for a determination of whether he is permanently totally disabled.

Held: In determining the appropriate labor market for purposes of terminating TTD benefits pursuant to § 39-71-609, MCA, the Court employs a fact-driven analysis. In this case, Petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury. Petitioner accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury. At the time of his injury, Petitioner worked in Montana only

on a temporary basis. After his injury, Petitioner returned to Shoreline, and testified that he would have stayed there for his recovery had he been able to locate a treating physician in that region. Although Petitioner testified that he could not locate a treating physician in Shoreline willing to accept Montana workers' compensation insurance, he also testified that he moved from Shoreline to Clark Fork was because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury. Based on these factors, Shoreline, Washington is the appropriate labor market for purposes of terminating Petitioner's TTD benefits. Regarding Petitioner's PTD status, Petitioner's treating physician restricted him to medium duty work and a fifty-pound lifting restriction. The treating physician approved six job analyses that complied with the approved restrictions. A vocational rehabilitation provider testified that Petitioner had a reasonable prospect of performing all of these approved jobs. Therefore, Petitioner failed to prove that he is permanently and totally disabled.

Schieber v. Liberty Northwest Ins. Corp., 2019 MT 14
(Findings of Fact, Conclusions of Law, and Judgment)

Related Topics: [Burden of Proof](#), [Maximum Medical Improvement](#)

Summary: Petitioner suffered compensable left-shoulder and low-back injuries in 2012. A year-and-a-half later, his treating physician declared him at MMI, set restrictions, and approved a less-demanding JA. Although Petitioner eventually returned to work elsewhere, he left after a few months due to pain. Respondent reinstated TTD benefits until January 22, 2015, after a consulting orthopedic surgeon determined Petitioner needed no further surgery and his treating physician determined there was nothing more he could do for him. Thereafter, Petitioner saw additional surgeons, several of whom offered conditional recommendations for surgery. Petitioner argues he is entitled to past due and ongoing TTD benefits or past due and ongoing PTD benefits, and ongoing medical benefits, including surgery.

Held: Petitioner is not entitled to TTD benefits because he was at MMI when Respondent terminated TTD benefits on January 22, 2015 and has remained at MMI ever since. Petitioner is not currently a candidate for further surgery because the conditions set by the surgeons recommending it have not been met. Petitioner is, however, entitled to PTD and medical benefits from January 22, 2015, on. After Respondent met its initial burden of producing evidence that Petitioner was and is not permanently totally disabled with an approved JA, Petitioner met the ultimate burden of proving that he neither had nor has a reasonable prospect of performing regular employment given his older age, modest education, narrow work history, limited transferable skills, and multiple physical conditions. Because he is permanently totally disabled, Petitioner is entitled to ongoing medical benefits. His entitlement to further surgery will depend on whether the specific procedure he seeks is considered a primary medical service at some point in the future.

Conn v. AmTrust Ins. Co. of Kansas, 2020 MTWCC 3
(Order Granting Petitioner's Motion to Compel)

Summary: Petitioner asserts that Respondent's attorney waived the work-product privilege by disclosing his work product to the vocational rehabilitation provider that Respondent hired to prepare a JA in the regular course of Petitioner's claim. Respondent asserts that its attorney did not waive the work-product privilege on the grounds that the rehabilitation provider is Respondent's retained expert.

Held: Respondent's attorney waived the work-product privilege by voluntarily disclosing his work product to the rehabilitation provider. A rehabilitation provider hired by Respondent to prepare a JA in the regular course of a claim is not Respondent's retained expert under Montana law; rather, the rehabilitation provider is a non-retained, hybrid witness. Because Respondent could not have had a reasonable expectation that its attorney's communications to the rehabilitation provider would be kept confidential, Respondent's attorney waived the work-product privilege.

WAGES

Negethon v. Montana State Fund, 2006 MTWCC 40

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner was receiving unemployment benefits when he accepted a job as a day laborer. Approximately four hours into his first shift, he suffered an industrial injury. Respondent calculated Petitioner's TTD benefits by basing his average weekly wage on one day's employment. Petitioner disputes this calculation method.

Held: Petitioner was hired for a single day's work, and his unemployment benefits are not "wages" for the purposes of calculating his average weekly wage pursuant to § 39-71-123, MCA.

Sturchio v. Wausau Underwriters Ins. Co., 2007 MTWCC 4 (2007 MT 311)

(Decision and Judgment)

Appealed to Montana Supreme Court: February 12, 2007; Affirmed: December 6, 2007

Summary: Petitioner suffered a work-related injury on June 11, 2005. At the time of her injury, Petitioner held five concurrent employments. Petitioner and Respondent disagree as to whether § 39-71-123, MCA, requires the same calculation method to be used in determining the average weekly wage for every concurrent employment, and disagree about the weekly rate of Petitioner's TTD benefits.

Held: Petitioner correctly interprets § 39-71-123, MCA, to allow for different calculation methods to be used for each concurrent employment, according to the specific facts of each employment. Using Petitioner's average weekly wage calculations for four of her five employments, and the Court's own calculations for a fifth employment, the Court concludes Petitioner is entitled to a weekly rate of \$318.48 in TTD benefits.

Hand v. Uninsured Employers' Fund, 2007 MTWCC 33

(Order Concerning Compensation Rate Issue).

Summary: Petitioner has been totally disabled due to an occupational disease since January 15, 1993. In the late 1980s, Petitioner's employer gave him twenty-five head of breeding cattle in lieu of future wage increases. Petitioner's employer also provided pasture year round, provided hay in the winter, medical supplies, veterinary services, and breeding bulls for the cattle. Petitioner contends that the offspring of these cattle should be included as wages in determining his total disability rate.

Held: The value of the calves born from the twenty-five head of cattle given to Petitioner by his employer in the late 1980s are not wages for the purpose of determining Petitioner's total disability rate. However, the value of the year-round pasture, winter hay, medical supplies, veterinary services, and breeding bulls for the twenty-five head of cattle provided to Petitioner by his employer are wages for the purpose of determining Petitioner's total disability rate. The parties shall calculate the actual value of these services and supplies for the year preceding Petitioner's last day of work and factor that amount into the calculation for determining Petitioner's total disability rate.

Montana Municipal Ins. Auth. v. Roche, 2007 MTWCC 47 (2009 MT 205N)
(Findings of Fact, Conclusions of Law and Judgment)

Appealed to Montana Supreme Court: January 15, 2008; Affirmed: June 10, 2009

Summary: Petitioner alleges that Respondent received a “wage” from a business which he ran as a sole proprietor during the time that Respondent received TTD benefits from Petitioner, and that Respondent did not have Petitioner’s consent to do so as required by § 39-71-701, MCA. Respondent denies that he received a “wage” from his business because he asserts that the business is not profitable and does not generate an income.

Held: Respondent received a wage from his business because he used business assets for personal use and wrote checks from his business account to pay personal loans. The fact that the business is not profitable according to Respondent’s income tax returns has no bearing on whether Respondent himself received a “wage” from the business as that term is defined in § 39-71-123, MCA. Therefore, Respondent was not entitled to the TTD benefits he received and must repay those benefits to Petitioner.

Cardwell v. Uninsured Employers’ Fund, 2008 MTWCC 24
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Attorneys’ Fees](#), [Uninsured Employer’s Fund](#)

Summary: Petitioner petitioned the Court for benefits as a result of this Court’s determination that he suffered an occupational disease while employed by Terry Rackley. At trial, the UEF conceded that Petitioner was entitled to TTD benefits at a rate of \$183.15 per week beginning September 20, 2004, up until at least the date of trial. Petitioner argued that the UEF utilized the incorrect method in calculating his wages because the UEF failed to show good cause why the four pay periods preceding Petitioner’s occupational disease were not an adequate representation of Petitioner’s average weekly wage. The UEF argued that the preceding year more adequately represented the fluctuation in Petitioner’s pay and periods of time that he spent being idle. Additionally, Petitioner requested costs and attorney fees.

Held: Petitioner is entitled to TTD benefits at a rate of \$183.15 per week. The UEF demonstrated good cause for utilizing one year’s worth of wages to determine Petitioner’s average weekly wage. Because Petitioner did not prevail on the issue before the Court, he is not entitled to costs or attorney fees.

Kramer v. Montana Contractor Comp. Fund, 2008 MTWCC 48
(Findings of Fact, Conclusions of Law and Judgment).

Related Topics: [Benefits](#), [Penalties](#)

Summary: Petitioner suffered an industrial injury to his left shoulder, which was ultimately diagnosed as a rotator cuff tear. Although Respondent initially refused to pay indemnity benefits and for surgical repair of the shoulder, it did so after obtaining a second medical opinion which supported the treating physician’s diagnosis. Petitioner maintains that Respondent was unreasonable in its initial denial of indemnity and medical benefits and that it further has incorrectly calculated the rate for Petitioner’s temporary total disability benefits.

Held: Since the evidence demonstrates that Petitioner’s job is not seasonal, his average weekly wage should be calculated using the statutorily-preferred method found in § 39-71-123(3)(a), MCA. Petitioner is entitled to his costs. Respondent’s actions in adjusting the claims, while imperfect, were not so unreasonable as to entitle Petitioner to a penalty award or attorney fees.

Leigh v. Montana State Fund, 2010 MTWCC 37

(Order Denying Petitioner’s Motion for Summary Judgment and Granting Respondent’s Cross-Motion for Summary Judgment)

Appealed to Montana Supreme Court: January 1, 2011; Dismissed: March 24, 2011

Summary: Petitioner moved for summary judgment, alleging that the insurer incorrectly calculated his average weekly wage by using a twelve-month period under § 39-71-123(3)(b), MCA, which included weeks during which he was laid off from his job as part of the period used for calculating his average weekly wage. Respondent cross-motivated for summary judgment, arguing that it properly calculated Petitioner’s average weekly wage under the Workers’ Compensation Act and in accordance with applicable case law regarding seasonal employment.

Held: Given the seasonal nature of Petitioner’s work and his employment history with his employer and the reasonable relationship requirement of § 39-71-105(1), MCA, Respondent correctly calculated Petitioner’s average weekly wage by using a one-year period as permitted under § 39-71-123(3)(b), MCA.

Gunderman v. Montana State Fund, 2012 MTWCC 18

(Findings of Fact, Conclusions of Law and Judgment).

Summary: Petitioner suffered an injury as a seasonal farm worker. He contends that, since he did not work for four pay periods, his average weekly wage should be based on his hourly rate of pay times the number of hours in a week for which he was hired to work under § 39-71-123(3)(a), MCA. Respondent calculated Petitioner’s average weekly wage based on Petitioner’s four prior pay periods going back more than one year from the date of injury, given Petitioner’s long history of seasonal employment with the same employer. The parties request the Court identify the proper method of calculating Petitioner’s average weekly wage.

Held: As a seasonal farm worker with a long history working for the same employer and the reasonable relationship requirement of § 39-71-105(1), MCA, Petitioner’s average weekly wage should be calculated pursuant to § 39-71-123(3)(b), MCA, by compiling his wages earned while working for his time-of-injury employer for a period of one year prior to the date of injury. For purposes of this calculation, Petitioner’s wages would include the value of his room and board as well as the value of a truck that his employer gave him as compensation for his labor. Petitioner’s wages should then be divided by the number of weeks in the year prior to his injury that Petitioner worked for his time-of-injury employer and periods of idleness during that year. Excluded from the calculation are periods during which Petitioner worked for another employer since those periods do not constitute “periods of idleness.”

Marjamaa v. Liberty Northwest Ins. Corp., 2012 MTWCC 23

(Decision and Judgment).

Summary: Petitioner and Respondent disagree regarding the appropriate time period to use for determining Petitioner’s average weekly wage. Respondent argues that Petitioner’s average weekly wage is appropriately calculated using his previous year of employment, including approximately

four months in which he was off work due to a previous industrial injury. Petitioner admits that his employment typically included some periods of idleness, but argues that the time in which he was off work due to his previous injury should be excluded from the average weekly wage calculation.

Held: Under § 39-71-105(1), MCA, an injured worker's wage-loss benefits must bear a reasonable relationship to his actual wages lost. Being off work for four months due to an industrial injury is an extraordinary event and does not reflect Petitioner's typical work history with his employer. Petitioner's average weekly wage shall be calculated using the time period he suggests, which Respondent does not dispute includes work hours and periods of idleness which is typical of Petitioner's work history with his employer.

Peters v. American Zurich Ins. Co., 2013 MTWCC 16

(Order Granting in Part and Denying in Part Petitioner's Motion for Partial Summary Judgment on AWW and Order Denying Petitioner's Motion to Amend Petition as Moot).

Summary: Petitioner argued that Respondent incorrectly calculated his average weekly wage by not including his annual bonus or vacation pay which he had accrued at the time of his industrial injury. Respondent objected, arguing that Petitioner's bonus had not fallen within four pay periods of his industrial injury and that Petitioner had not shown good cause to have his average weekly wage calculated under § 39-71-123(3)(b), MCA. Respondent further argued that Petitioner's vacation pay was correctly excluded from his average weekly wage under § 39-71-123(2)(c), MCA, and that Petitioner had either waived his right to have his bonus included in his average weekly wage calculation, or he was barred by either estoppel or laches. Petitioner further argued that if § 39-71-123(2)(c), MCA, precludes the inclusion of his vacation pay, then the statute is unconstitutional. Petitioner further contended that Respondent unreasonably refused to include his annual bonus in its calculation of his average weekly wage and that he should therefore be entitled to a penalty.

Held: Petitioner has shown good cause to have his average weekly wage calculated under § 39-71-123(3)(b), MCA, and his annual bonus is properly included. Petitioner's vacation pay is excluded from his average weekly wage calculation pursuant to § 39-71-123(2)(c), MCA. Petitioner has not proven that § 39-71-123, MCA, is unconstitutional, nor has Petitioner proven that he is entitled to a penalty under § 39-71-2907, MCA.

Peters v. American Zurich Ins. Co., 2013 MTWCC 17

(Order Granting Respondent's Motion for Partial Summary Judgment and Denying Petitioner's Cross-Motion for Partial Summary Judgment Regarding Retirement Account Contributions, SSDI Offsets and Recoupment, and Recoupment of Overpayment).

Related Topic: [Benefits](#)

Summary: Respondent moved for summary judgment on the issues of Petitioner's entitlement to have his employer's 401(k) contributions included in his average weekly wage calculation, an offset and recoupment of past overpayment for Petitioner's son's receipt of auxiliary SSDI benefits, and recoupment of a \$6,048.60 overpayment which Respondent erroneously made to Petitioner. Petitioner cross-motivated for summary judgment on the issues of the offset and recoupment of past overpayment for his son's auxiliary SSDI benefits and the \$6,048.60 overpayment, arguing that Respondent is equitably estopped from claiming an offset of the auxiliary SSDI benefits and from recouping the overpayments.

Held: Respondent is entitled to summary judgment in its favor on these issues. Section 39-71-123(2)(b)(i), MCA, clearly bars the inclusion of employer contributions to 401(k) plans in average

weekly wage calculations. On the remaining issues, Petitioner did not establish the sixth element of equitable estoppel in that he has not proven that allowing Respondent to recoup the overpayment would change Petitioner's position for the worse.

Hegg v. Montana State Fund, 2016 MTWCC 14

(Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Cross-Motion for Summary Judgment)

Related Topic: [Benefits](#)

Summary: Petitioner became a beneficiary when her husband died from an occupational disease. Her husband worked sporadically and, during the year prior to his death, his average weekly wage was \$79.71. Thus, Respondent moved for summary judgment on the grounds that it correctly calculated Petitioner's benefit rate to be \$79.71 under § 39-71-721(2), MCA, which states, in relevant part, "The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death." Petitioner argues that this statute is ambiguous and that her benefit rate is \$354, which was 50% of the state's average weekly wage for her husband's date of death. Alternatively, Petitioner argues that if her rate is \$79.71, then § 39-71-721(2), MCA, violates her right to substantive due process under Article II, § 17 of the Montana Constitution, and is therefore insufficient to uphold the quid pro quo on which the Workers' Compensation Act is based. She argues that the remedy for this alleged constitutional violation is for this Court to increase her benefit rate to \$354, an amount she argues is sufficient to uphold the quid pro quo.

Held: This Court granted Respondent's motion, and denied in part Petitioner's cross-motion for summary judgment because Respondent correctly calculated Petitioner's rate under the plain language of § 39-71-721(2), MCA. This Court declined to rule on Petitioner's constitutional challenge, and denied that part of Petitioner's cross-motion for summary judgment, because this Court cannot grant her the relief she seeks.

Marjamaa v. Montana State Fund, 2021 MTWCC 11

(Findings of Fact, Conclusions of Law, and Judgment)

Summary: Petitioner contends that Respondent did not correctly calculate her wages and her TTD benefit rate because it did not consider the hours that she worked but did not get paid. Alternatively, Petitioner argues that she actually received wages because she considers half of the amount that she accepted to settle her wage claim and her sexual harassment claim against her former employer to be for backpay.

Held: Petitioner did not present sufficient evidence for this Court to recalculate her wages under § 39-71-123(3)(a), MCA, and her TTD benefit rate under § 39-71-701(3), MCA. Because a claimant's wage is to be calculated based on "actual earnings," this Court cannot increase her wages and TTD benefit rate on the basis of hours she worked but did not get paid. Moreover, Petitioner presented only an approximation of the wages she earned in the first three of the four pay periods preceding her injury, which is insufficient evidence because § 39-71-123(3)(a), MCA, states that a claimant's wage is to be calculated based on "actual earnings." Finally, the amount of backpay awarded to a claimant in a wage claim is "wages" under the definition in § 39-71-123(1)(b), MCA, and this Court would use the amount of backpay a claimant received in a wage claim to calculate wages under § 39-71-123(3)(a), MCA, under established law. However, Petitioner did not receive backpay from her

settlement with her former employer because the settlement agreement expressly provides that the settlement amount was for her “alleged emotional distress damages.”

Barnhart v. Montana State Fund, 2022 MTWCC 1

(Order Granting in Part and Denying in Part Petitioner’s Motion for Summary Judgment)

Appealed To Montana Supreme Court: March 4, 2022; Reversed December 27, 2022

Summary: As calculated under § 39-71-123(3) and (4), MCA, Petitioner’s weekly wages at the time of her injury — which were calculated with the average aggregate wages from her concurrent employments — are \$869.31. Based on this calculation of Petitioner’s wages, Petitioner’s rate for PPD benefits is \$384. Upon reaching MMI, Petitioner’s physician released her to work in the job in which she was injured but not to her other employment. Respondent then determined that her rate for PPD benefits, other than for her impairment award, is \$187.94, based solely upon her wages from the job at which she could no longer work. Respondent argues that, for a claimant with concurrent employments, § 39-71-123(4)(c), MCA, provides that her PPD benefits are to be based on the wages from the employment from which she is disabled at MMI. Petitioner moved for summary judgment, asserting that, under § 39-71-123(3) and (4), MCA, her wages are to be calculated based upon the aggregate average wages from her concurrent employments at the time of her injury and that, under § 39-71-703(6), MCA, her PPD rate is to be calculated on “the wages received at the time of injury;” i.e., her wages as calculated under § 39-71-123, MCA. Thus, Petitioner argues that, as a matter of law, the rate for all of her PPD benefits is \$384.

Held: This Court granted Petitioner’s motion for summary judgment because, when the Workers’ Compensation Act is read as a whole and when each provision is given effect, Petitioner’s rate for all of her PPD benefits is \$384. The sole purpose of § 39-71-123, MCA, is to calculate a claimant’s wages at the time of her injury. For a claimant with concurrent employments, § 39-71-123(4)(c), MCA, states that her wages are to be “based on the aggregate of average actual wages of all employments . . . from which the employee is disabled by the injury incurred.” Petitioner is correct that the phrase “from which the employee is disabled by the injury incurred” in § 39-71-123(4)(c), MCA, is assessed at the time of injury, and not when the claimant reaches MMI, and means that, for a claimant with concurrent employment, the earnings from the employments from which she is disabled at the time of injury are to be included in the calculation of her wages. A claimant’s wages are then used throughout her claim to calculate the rates for each benefit to which she is entitled, the formula for which is set forth in the statute governing each benefit. For PPD benefits, § 39-71-703(6), MCA, states that the rate is to be calculated on “the wages received at the time of injury,” i.e., the wages as calculated under § 39-71-123, MCA. Respondent’s argument that it may recalculate the wages for a claimant with concurrent employment when she reaches MMI under § 39-71-123(4)(c), MCA, is without merit because it takes this subsection out of context, reads it in isolation, and fails to give effect to § 39-71-703(6), MCA.

Fite v. Montana State Fund, 2022 MTWCC 2

(Order Granting Respondent’s Motion for Summary Judgment and Denying Petitioner’s Motion for Summary Judgment)

Summary: In 2019 and 2020, Petitioner was employed by a transportation company as a school bus driver and as a groundskeeper. In the 2019-2020 school year, she was contractually employed by a school district as a paraprofessional and aide. She suffered an industrial injury in the summer of 2020, at which time she was working only for the transportation company. Petitioner contends that she had

concurrent employment with the school district at the time of her injury under the definition in § 39-71-123(4)(a), MCA, because she had already signed the contract under which she was to work for the school district during the 2020-2021 school year, thereby making her future employment guaranteed. Thus, she argues that Respondent must include her earnings from the school district when calculating her wages and, in turn, her TTD rate.

Held: Petitioner did not have concurrent employment under the definition in § 39-71-123(4)(a), MCA, because her employment with the school district was not “employment in which [she] was actually employed at the time of the injury.” Under the express language of her employment contracts, Petitioner was between her terms of employments with the school district. Thus, Respondent correctly calculated Petitioner’s wages and, in turn, her TTD rate, solely on her earnings from the transportation company.

Barnhart v. Montana State Fund, 2022 MTWCC 4

(Order Denying Respondent’s Motion for Reconsideration)

Summary: Respondent moves this Court to reconsider its grant of summary judgment to Petitioner. For the first time in this case, Respondent cites § 39-71-739, MCA, and argues that it supports its position that it lawfully recalculated Petitioner’s wages under § 39-71-123(4)(c), MCA, when she reached MMI because she was released to return to work at one of her concurrent employments and was therefore no longer disabled from that employment. Based on its recalculation of Petitioner’s wages when she reached MMI, Respondent asserts that it lawfully reduced her PPD rate for some parts of her PPD award.

Held: This Court denied Respondent’s motion because this Court has long held that, unless there is a compelling reason, a party cannot raise a legal argument or theory for the first time in a motion for reconsideration. Respondent has not presented a compelling reason for its failure to cite § 39-71-739, MCA, in its summary judgment brief or at the hearing. Its argument that it “did not have the opportunity to brief the applicability of § 39-71-739, MCA” is baseless.

Thomas v. Montana State Fund, 2022 MTWCC 5

(Findings Of Fact, Conclusions of Law, And Judgment)

Summary: Petitioner argues that there is good cause to use additional earnings, from before the last four pay periods before her injury, to calculate her wages. Petitioner contends that her wages during the last four pay periods before her injury were lower than they should have been because her employer created intolerable working conditions that drove her to transfer positions and start working a part-time schedule and then retaliated against her decision to transfer by giving her fewer hours than she was supposed to work. Respondent argues that the last four pay periods accurately reflect Petitioner’s employment history because they are the only pay periods during which Petitioner was working in the time-of-injury position. Respondent contends that looking back further would distort that history because Petitioner’s previous position had different hours and a different rate of pay.

Held: There is good cause to use additional earnings, from before the last four pay periods before Petitioner’s injury, to calculate her wages. Petitioner’s wages during the last four pay periods before her injury were lower than they should have been because her employer created intolerable working conditions that drove her to transfer positions and start working a part-time schedule and then retaliated against her decision to transfer by giving her fewer hours than she was supposed to work.

As a result, Petitioner's wages during those pay periods do not accurately reflect her employment history, which, under the facts of this case, is comprised of her earnings from her prior position.

Andrews v. Montana State Fund, 2022 MTWCC 12

(Order Denying Petitioner's Motion for Summary Judgment and Order Denying Respondent's Cross-Motion for Summary Judgment)

Related Topic: [Benefits](#)

Summary: Petitioner moved for summary judgment, asserting that Respondent did not correctly calculate her average weekly wage for purposes of TPD benefits under § 39-71-712(2), MCA. Respondent cross-moved for summary judgment, asserting that it correctly calculated Petitioner's average weekly wage for purposes of TPD benefits.

Held: The Court denied both motions because neither party correctly calculated Petitioner's average weekly wage for purposes of TPD benefits.

APPENDIX A

APPEALS TO MONTANA SUPREME COURT, STATUS, AND DISPOSITION OF APPEALS

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Noonkester, Tucker</i>	2002-0493 2004 MTWCC 61	Decision and Order Regarding Jurisdiction - 8/27/04	AFFIRMED 2006 MT 169	07/25/06
<i>Peterson vs. MSGIA</i>	2005-1295 2006 MTWCC 14	Findings of Fact, Conclusions of Law and Judgment - 04/07/06	DISMISSED by Stipulation of the Parties	07/26/06
<i>Stavenjord v. Montana State Fund</i>	2000-0207 2004 MTWCC 62A 2004 MTWCC 62	Orders on Retroactivity 9/16/04 & 8/27/04	REVERSED AND REMANDED 2006 MT 257	10/06/06
<i>Hedrick v. MACO Workers' Compensation Trust</i>	2004-1213 2006 MTWCC 3	Findings of Fact, Conclusions of Law, and Order - 01/18/06	DISMISSED by Stipulation of the Parties	10/26/06
<i>Popenoe v. Liberty Northwest Ins. Corp.</i>	2005-1490 2006 MTWCC 37	Order Granting Petitioner's Motion for Summary Judgment - 12/01/06	DISMISSED with Prejudice by Stipulation of the Parties	04/26/07
<i>Johnson v. Liberty Mutual Fire Ins. Co.</i>	2004-1054 2007 MTWCC 1	Findings of Fact, Conclusions of Law and Judgment - 01/05/07	DISMISSED with Prejudice by Stipulation of the Parties	05/14/07
<i>Harter v. Liberty Northwest</i>	2006-1722 2006 MTWCC 39	Findings of Fact, Conclusions of Law and Judgment - 12/11/06	DISMISSED	05/23/07
<i>Gamble, Mary Ann v. Sears</i>	2005-1337 2006 MTWCC 5	Findings of Fact, Conclusions of Law and Order - 01/30/06	AFFIRMED 2007 MT 131	06/05/07
<i>Evans v. Liberty Northwest Ins. Corp.</i>	2006-1580 2007 MTWCC 23	Findings of Fact, Conclusions of Law and Judgment - 06/20/07	Appeal DISMISSED by WCC following successful mediation	08/14/07
<i>Thompson, Lee N.; Sharp, Darin; Bailey, Scott</i>	2004-1089 2005 MTWCC 53 2005 MTWCC 53A 2006 MTWCC 19	Order Granting Motions for Summary Judgment - 10/18/05 and Order Amending Order - 10/19/05 and Order Denying Intervenor's Motion for Recon - 04/28/06	Interim Order suspending mandatory mediation-06/07/06 REVERSED 2007 MT 185	08/17/07
<i>Johnson v. MHA Workers Comp Trust</i>	2006-1662 2007 MTWCC 17	Findings of Fact, Conclusions of Law and Judgment - 05/22/07	DISMISSED by Motion	10/19/07
<i>Hinman v. Montana State Fund</i>	2006-1562 2007 MTWCC 2	Findings of Fact, Conclusions of Law and Judgment - 01/05/07	AFFIRMED 2007 MT 278N	10/30/07

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Kessel v. Liberty Northwest</i>	2004-1189 2005 MTWCC 45 2006 MTWCC 28	Order Denying Motion for Summary Judgment - 08/04/05; Order for Certification - 07/10/06	AFFIRMED 2007 MT 305	11/27/07
<i>Sturchio v. Wausau Underwriters Ins. Co.</i>	2006-1583 2007 MTWCC 4 2007 MTWCC 4A	Decision and Judgment - 1/30/07 Order Amending Decision and Judgment - 2/7/07	AFFIRMED 2007 MT 311	12/04/07
<i>Lanes v. Montana State Fund</i>	2006-1638 2007 MTWCC 39	Findings of Fact, Conclusions of Law and Judgment - 9/10/07	Interim Order No. DA 07-0651 AFFIRMED 2008 MT 306	12/05/07 09/06/08
<i>Pinnow v. Montana State Fund and Halverson, Sheehy & Plath, P.C.</i>	2004-1190 2006 MTWCC 9	Order On Cross-Motions For Summary Judgment (Judge Sherlock) - 02/24/06	REVERSED AND REMANDED 2007 MT 332	12/11/07
<i>Satterlee, et al. v. Lumberman's Mut. Cas., et al.</i>	2003-0840 2006 MTWCC 36	Order Denying Petitioner's Motion to Allow Discovery and Granting Respondents' Cross-Motion for Partial Summary Judgment - 11/15/06	DISMISSED Without Prejudice re Rule 54(b) Certification 2007 MT 325	12/11/07
<i>VanBouchaute v. Montana State Fund</i>	2006-1622 2007 MTWCC 37	Findings of Fact, Conclusions of Law and Judgment - 8/23/07	DISMISSED with Prejudice pursuant to Stipulation for Dismissal	12/12/07
<i>BeVan v. Liberty Northwest Ins. Corp.</i>	2006-1665 2006 MTWCC 38	Findings of Fact, Conclusions of Law and Judgment 12/06/06	AFFIRMED 2007 MT 357	12/21/07
<i>Michalak v. Liberty Northwest</i>	2006-1641 2007 MTWCC 14	Findings of Fact, Conclusions of Law and Judgment - 03/22/07	AFFIRMED 2008 MT 3	01/03/08
<i>Wilkes v. Montana State Fund</i>	2006-1526 2007 MTWCC 9	Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment - 02/22/07	AFFIRMED 2008 MT 29	02/05/08
<i>Driggers v. Liberty Northwest Ins. Corp.</i>	2006-1651 2007 MTWCC 60	Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment - 12/31/07	DISMISSED by Stipulation of Counsel	03/14/08
<i>Harrison v. Liberty Northwest Ins. Co.</i>	2004-1222 2006 MTWCC 22	Findings of Fact, Conclusions of Law and Judgment - 05/26/06	AFFIRMED 2008 MT 102	04/01/08
<i>Oksendahl v. Liberty Northwest Ins. Corp.</i>	2006-1679 2007 MTWCC 24	Order Granting Petitioner's Motion for Summary Judgment - 06/21/07	AFFIRMED 2008 MT 132N	04/22/08
<i>Kruzich v. Old Republic Ins. Co.</i>	2005-1247 2006 MTWCC 23	Findings of Fact, Conclusions of Law and Judgment - 06/01/06	REVERSED 2008 MT 205	06/10/08

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Sizemore v. Copper King Hotel and Convention Center</i>	2007-2003 2008 MTWCC 8	Order Granting Respondent's Motion to Dismiss - 02/01/08	DISMISSED	06/17/08
<i>Barnard v. Liberty Northwest Ins. Corp.</i>	2005-1505 2006 MTWCC 35	Findings of Fact, Conclusions of Law, and Judgment - 10/20/06	AFFIRMED 2008 MT 254	07/22/08
<i>Woodards v. MIGA</i>	2006-1610 2007 MTWCC 55	Order Granting Respondent's Motion for Summary Judgment, Denying Petitioner's Motion for Summary Judgment, and Granting Respondent's Cross-Motion for Summary Judgment - 12/18/07	DISMISSED by Stipulation of Counsel	07/23/08
<i>Stavenjord v. Montana State Fund</i>	2000-0207 2008 MTWCC 17 2008 MTWCC 4	Order Denying Respondent's Motion for Reconsideration - 04/24/08 and Order Regarding Identification and Notification of Potential Beneficiaries - 01/15/08	REMANDED Pending Approval of Settlement; DISMISSED by Montana Supreme Court Order With Prejudice	08/20/08 11/05/08
<i>Hanson v. Cedar Valley Construction & UEF</i>	2007-1945 2008 MTWCC 32	Findings of Fact, Conclusions of Law and Judgment - 06/25/08	DISMISSED by Stipulation of Counsel	09/17/08
<i>Fleming v. International Paper Company and Liberty Northwest Ins. Co.</i>	2005-1292 2005 MTWCC 57	Order Denying The Filing of a Reply Brief and Reconsideration of Order Dismissing International Paper Company - 12/20/05	REVERSED AND REMANDED 2008 MT 327	09/23/08
<i>Hagemann v. Montana Contractor Compensation Fund</i>	2007-1983 2008 MTWCC 35	Findings of Fact, Conclusions of Law and Judgment - 07/10/08	DISMISSED by Motion	09/26/08
<i>Reesor v. Montana State Fund</i>	2002-0676 2003 MTWCC 51	Order Adopting Order of Special Master - 06/04/08 - Findings and Conclusions by Special Master on Common Fund Issues - 06/02/08	REMANDED Pending Approval of Settlement; DISMISSED by Montana Supreme Court Order With Prejudice	10/01/08 11/05/08
<i>Rau v. Montana State Fund</i>	2006-1633 2008 MTWCC 26	Findings of Fact, Conclusions of Law and Judgment - 06/04/08	REMANDED for consideration of entry of judgment resulting from settlement; Stipulated Settlement and Entry of Judgment.	10/15/08 11/10/08
<i>Siebken v. Liberty Northwest Ins. Co.</i>	2007-1855 2007 MTWCC 48	Decision and Judgment - 11/27/07	AFFIRMED 2008 MT 353	10/21/08
<i>Flynn, Robert/ Miller, Carl</i>	2000-0222 2006 MTWCC 31	Order Determining Status of Final, Settled, Closed, and Inactive Claims - 09/29/06	AFFIRMED in Part & REVERSED in Part 2008 MT 394	11/25/08

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Fabbi v. Montana Insurance Guaranty Association</i>	2006-1623 2008 MTWCC 16	Findings of Facts, Conclusion of Law and Judgment - 04/16/08	Montana Supreme Court Order Dismissing Appeal With Prejudice	11/26/08
<i>Kratovil v. Liberty Northwest Ins. Corp.</i>	2006-1551 2007 MTWCC 30 2007 MTWCC 38	Findings of Fact, Conclusions of Law and Judgment - 7/17/07 and Order Denying Respondent's Motion for Reconsideration - 9/7/07	AFFIRMED and REMANDED for Further Proceedings 2008 MT 443	12/29/08
<i>Aldrich v. Montana State Fund</i>	2006-1536 2007 MTWCC 57	Decision and Judgment - 12/20/07	AFFIRMED 2009 MT 40	02/18/09
<i>Kilgore v. Transportation Insurance Co.</i>	2008-2056 2008 MTWCC 51	Findings of Fact, Conclusions of Law and Judgment - 12/04/08	DISMISSED by Motion	03/13/09
<i>Dildine v. Liberty Northwest Insurance Corporation</i>	2005-1389 2008 MTWCC 14	Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Cross Motion for Summary Judgment - 03/27/08	AFFIRMED 2009 MT 87	03/24/09
<i>Narum v. Liberty Northwest Insurance Corp.</i>	2007-1987 2008 MTWCC 30	Findings of Fact, Conclusions of Law and Judgment- 06/04/08	AFFIRMED 2009 MT 127	04/14/09
<i>Heth v. Montana State Fund</i>	2006-1758 2008 MTWCC 19	Findings of Fact, Conclusions of Law and Judgment - 04/25/08	AFFIRMED 2009 MT 149	05/05/09
<i>Quick v. Montana State Fund</i>	2006-1788 2008 MTWCC 27	Findings of Fact, Conclusions of Law and Judgment - 06/04/08	AFFIRMED 2009 MT 162	05/13/09
<i>Montana Municipal Ins. Authority v. Roche</i>	2006-1587 2007 MTWCC 47	Findings of Fact, Conclusions of Law and Judgment - 11/14/07	AFFIRMED 2009 MT 205N	06/10/09
<i>Russell v. Watkins & Shepard Trucking</i>	2006-1531 2008 MTWCC 36	Findings of Fact, Conclusions of Law and Judgment - 07/11/08	AFFIRMED and REMANDED for Further Proceedings 2009 MT 217	06/24/09
<i>Tinker v. Montana State Fund</i>	2007-2018 2008 MTWCC 33	Findings of Fact, Conclusions of Law and Judgment - 07/07/08	AFFIRMED 2009 MT 218	06/24/09
<i>Distad v. Montana State Fund</i>	2008-2076 2009 MTWCC 11	Findings of Fact, Conclusions of Law and Judgment-03/20/09	DISMISSED with Prejudice	06/25/09
<i>Skiff v. Montana State Fund</i>	2008-2099 2009 MTWCC 8	Findings of Fact, Conclusions of Law and Judgment - 03/06/09	Appeal and Cross-Appeal DISMISSED with Prejudice by Stipulation of Counsel	07/20/09
<i>Briese v. MACo Workers' Compensation Trust & J. Briese</i>	2007-1794 2008 MTWCC 50	Order Denying Richard H. Renn's Motion to Award Attorney Fees - 11/24/08	AFFIRMED 2009 MT 259N	08/04/09

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Casiano v. Montana Contractor Compensation Fund</i>	2008-2042	Order Granting Respondent Montana Contractor Compensation Fund's Motion for Summary Judgment 03/10/09	DISMISSED with Prejudice	08/25/09
<i>Satterlee, et al. v. Lumberman's Mutual Casualty Co., et al.</i>	2003-0840 2006 MTWCC 36 2008 MTWCC 29	Order Denying Petitioners' Motion to Allow Discovery and Granting Respondents' Cross-Motion for Partial Summary Judgment - 11/15/06 and Order Granting Respondent Montana State Fund's Motion for Partial Summary Judgment - 06/04/08	AFFIRMED 2009 MT 368	11/03/09
<i>Liberty NW Ins. Corp. v. Montana State Fund In Re: G. Mitchell</i>	2007-1827 2008 MTWCC 54	Findings of Fact, Conclusions of Law and Judgment - 12/23/08	AFFIRMED 2009 MT 386	11/12/09
<i>Schmill v. Liberty Northwest & Montana State Fund</i>	2001-0300 2008 MTWCC 38	Order Adopting Order of Special Master - 07/29/08 and Findings and Conclusions of Special Master Denying Responding Insurers' Motion to Dismiss on "Gateway Legal Issues" - 07/25/08	AFFIRMED 2009 MT 430	12/22/09
<i>Emergency Preparedness Systems, LLC v. Scobie</i>	2007-1984 2009 MTWCC 28	Findings of Fact, Conclusions of Law and Judgment - 8/17/09	APPEAL VOLUNTARILY DISMISSED BY PETITIONER	12/28/09
<i>Boyd v. Zurich American Ins. Co.</i>	2009-2279 2009 MTWCC 26	Order Granting Respondent's Motion for Summary Judgment - 08/12/09	AFFIRMED 2010 MT 52	03/16/10
<i>Vandervalk v. Montana State Fund</i>	2008-2092 2009 MTWCC 35	Findings of Fact, Conclusions of Law and Judgment - 11/5/09	Joint Motion for Dismissal and REMAND for further proceedings	05/11/10
<i>Hart v. Hartford Insurance Company of the Midwest</i>	2009-2275 2010 MTWCC 8	Findings of Fact, Conclusions of Law and Judgment - 04/07/10	Stipulation for Dismissal and REMAND for further proceedings	08/24/10
<i>Keller v. Liberty Northwest, Inc.</i>	2009-2309 2010 MTWCC 4	Findings of Fact, Conclusions of Law and Judgment - 2/16/10	REVERSED AND REMANDED for further proceedings 2010 MT 279	12/28/10
<i>Weidow v. UEF v. Howard/Howard Family 1995 Trust</i>	2007-1863 2010 MTWCC 2	Findings of Fact, Conclusions of Law and Judgment - 1/22/10	AFFIRMED 2010 MT 292	12/30/10
<i>Chapman v. Twin City Fire Ins. Co.</i>	2009-2346 2010 MTWCC 30	Findings of Fact, Conclusions of Law and Judgment and Order Resolving Pending Motions -11/05/10	SETTLED & DISMISSED with Prejudice	02/15/11

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Chapman v. Twin City Fire Ins. Co.</i>	2010-2531 2010 MTWCC 36	Findings of Fact, Conclusions of Law and Judgment and Order Denying Motion for Sanctions-12/20/10	SETTLED & DISMISSED with Prejudice	02/15/11
<i>Wright v. Ace American Insurance Company</i>	2009-2210 2010 MTWCC 11	Findings of Fact, Conclusions of Law and Judgment - 05/24/10	AFFIRMED 2011 MT 43	03/15/11
<i>Hopkins v. UEF/UEF v. Hopkins</i>	2008-2152 2010 MTWCC 9	Findings of Fact, Conclusions of Law and Judgment - 05/04/10	AFFIRMED 2011 MT 49	03/22/11
<i>Leigh v. Montana State Fund</i>	2010-2447 2010 MTWCC 37	Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Cross-Motion for Summary Judgment - 12/21/10	DISMISSED AND REMANDED	03/24/11
<i>Bailey v. UEF and Longhorn Apartment Complex/UEF v. Longhorn Apartment Complex LLC</i>	2010-2582 2010 MTWCC 34	Order Granting Third-Party Respondent's Motion to Dismiss - 12/14/10	Appeal and Cross-Appeal DISMISSED with Prejudice by Stipulation	04/11/11
<i>Ingle v. Montana State Fund</i>	2009-2398 2011 MTWCC 3	Findings of Fact, Conclusions of Law and Judgment - 02/03/11	DISMISSED AND REMANDED	05/26/11
<i>Caldwell v. MACo Workers' Compensation Trust</i>	2008-2114 2010 MTWCC 24	Order Holding § 39-71-710, MCA, Unconstitutional as it Relates to Rehabilitation Benefits - 07/07/10	AFFIRMED 2011 MT 162	07/11/11
<i>Flynn v. Montana State Fund</i>	2000-0222 2010 MTWCC 20	Order Re: Paid In Full - 07/01/10	AFFIRMED 2011 MT 300	11/29/11
<i>Banco v. Liberty Northwest Ins. Corp.</i>	2006-1544 2011 MTWCC 13	Order and Judgment on Stipulated Record - 06/02/11	AFFIRMED 2012 MT 3	01/10/12
<i>Johnson v. Montana State Fund</i>	2010-2545 2011 MTWCC 22	Order Granting Respondent's Motion for Summary Judgment	DISMISSED with Prejudice by Stipulation	01/25/12
<i>Montana State Fund v. Grande</i>	2010-2474 2011 MTWCC 15	Findings of Fact, Conclusions of Law, and Judgment	AFFIRMED 2012 MT 67	03/20/12
<i>O'Mahoney v. Liberty Insurance Corp.</i>	2011-2852 2013 MTWCC 6	Findings of Fact, Conclusions of Law and Judgment	DISMISSED with Prejudice by Stipulation	06/12/12
<i>Ford v. Sentry Casualty Company</i>	2010-2503 2011 MTWCC 19	Findings of Fact, Conclusions of Law, and Judgment and Order Resolving Respondent's Motion in Limine	AFFIRMED 2012 MT 156	07/24/12
<i>Tuttle v. First Liberty Insurance Corp.</i>	2011-2727 2012 MTWCC 37	Findings of Fact, Conclusions of Law and Judgment	Judgment Vacated and Withdrawn Pursuant to Stipulation of Parties	11/19/12

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Stewart v. Liberty Insurance Corp.</i>	2008-2066 2012 MTWCC 11	Findings of Fact, Conclusions of Law, and Judgment	AFFIRMED 2013 MT 107	04/23/13
<i>Dvorak v. Montana State Fund</i>	2011-2793 2012 MTWCC 36	Order Granting Respondent's Motion for Summary Judgment	REVERSED AND REMANDED 2013 MT 210	07/30/13
<i>Gerber v. Montana State Fund</i>	2012-2904 2013 MTWCC 9	Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment	AFFIRMED 2014 MT 99	04/15/14
<i>Goble v. Montana State Fund</i>	2010-2615 2013 MTWCC 8	Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment	AFFIRMED 2014 MT 99	04/15/14
<i>Engle v. Hartford Underwriters Ins. Co.</i>	2013-3198 2013 MTWCC 27	Findings of Fact, Conclusions of Law, and Judgment - 12/31/13	DISMISSED AND REMANDED (Dismissed per stipulation at WCC)	05/14/14
<i>Koch v. Employers Insurance Group</i>	2014-3293 2014 MTWCC 14	Findings of Fact, Conclusions of Law, and Judgment - 05/19/14	DISMISSED AND REMANDED (Dismissed per stipulation at WCC)	08/28/14
<i>Malcomson v. Liberty Northwest</i>	2008-2103 2013 MTWCC 21	Findings of Fact, Conclusions of Law and Judgment	AFFIRMED 2014 MT 242	09/10/14
<i>Moreau v. Transportation Ins. Co.</i>	2013-3216 2014 MTWCC 9	Order on Standing and Jurisdiction - 04/08/14	REVERSED AND REMANDED 2015 MT 5	01/06/15
<i>Newlon v. Teck American, Inc. (Formerly Cominco)</i>	2012-2947 2014 MTWCC 12	Findings of Fact, Conclusions of Law, and Judgment - 05/08/14	AFFIRMED 2015 MT 317	11/10/15
<i>Brickman v. Air Tech Heating & Cooling Inc, Employer and Montana State Fund</i>	2016-3804 2016 MTWCC 11	Order Denying Petitioner's Request for Benefits under § 39-71-610, MCA	DISMISSED AND REMANDED (Dismissed per stipulation at WCC)	08/11/16
<i>Stephens v. MACO</i>	2015-3587 2016 MTWCC 16	Findings of Fact, Conclusions of Law and Judgment - 11/02/16	DISMISSED by ORDER (Dismissed pursuant to stipulation)	03/16/17
<i>Hegg v. Montana State Fund</i>	2016-3730 2016 MTWCC 14	Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Cross-Motion for Summary Judgment	DISMISSED by ORDER (Dismissed pursuant to stipulation)	03/24/17
<i>Silkitwa "Scout" Ferrel v. Montana State Fund</i>	2014-3352 2017 MTWCC 6	Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment. 05/03/17	DISMISSED AND REMANDED	09/18/17

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Tim Reule v. Andrew N. Brock and Chris M. Albrecht and Uninsured Employers Fund</i>	2015-3585	Order Dismissing the Uninsured Employers' Fund's Alternative Crossclaim Against Respondent Andrew N. Brock and Order Certifying Final Judgment Under ARM 24.5.348(2) 05/26/17	DISMISSED	10/03/17
<i>Smith v. Montana State Fund</i>	2017-4009 2017 MTWCC 13	Order Granting Respondent's Motion for Summary Judgment - 09/19/17	DISMISSED	12/01/17
<i>Cristita Moreau, Individually and as Personal Representative of the Estate of Edwin Moreau v. Transportation Ins. Co.</i>	2013-3216R1 2017 MTWCC 7	Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Cross-Motion for Summary Judgment 5/12/17	AFFIRMED 2018 MT 1	01/02/18
<i>Karen Monroe, as Personal Representative of the Estate of Dwane Monroe v. MACO Workers' Comp Trust</i>	2015-3560	Order Denying Petitioner's Motion for Summary Judgment and Granting Summary Judgment in Favor of Respondent 05/15/17	DISMISSED	03/05/18
<i>Murphy v. Westrock Co.</i>	2017-3787 2017 MTWCC 2	Order Granting Respondent's Motion for Summary Judgment and Denying Respondent's Motion for Protective Order; Respondent's Motion in Limine, and Petitioner's Motion to Compel as Moot - 02-22-17	REVERSED AND REMANDED For Further Proceedings 2018 MT 54	03/20/18
<i>McCrary v. Liberty Mutual Fire Insurance Co.</i>	2009-2376 2018 MTWCC 5	Decision on Stipulated Facts and Judgment - 03/02/18	DISMISSED	07/16/18
<i>Montana State Fund v. Liberty Northwest Ins. Corp. RE: Wiard</i>	2015-3519 2017 MTWCC 9	Order Denying Montana State Fund's Motion for Summary Judgment and Granting Liberty Northwest Ins. Corp.'s Motion for Summary Judgment 07/03/17	REVERSED 2018 MT 188	07/31/18
<i>Morrish v. Amtrust Ins. Co. of Kansas</i>	2017-3955 2018 MTWCC 8	Findings of Fact, Conclusions of Law, and Judgment - 05/23/18	SETTLED & DISMISSED With Prejudice	08/30/18
<i>Kunz v. Electric Insurance Company</i>	2016-3719 2018 MTWCC 2	Findings of Fact, Conclusions of Law, and Judgment - 02/09/18	SETTLED & DISMISSED With Prejudice	01/14/19
<i>Leys v. Liberty Mutual Ins.</i>	2015-3652 2019 MTWCC 10	Findings of Fact, Conclusions of Law, and Judgment - 08/07/19	SETTLED & DISMISSED With Prejudice	01/26/19

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Richardson v. Indemnity Ins. Co. of North America</i>	2013-3191 2018 MTWCC 10 2018 MTWCC 16	Order Denying Petitioner's Motion for Partial Summary Judgment as to Notice - 6/19/18; Order Denying Petitioner's Motion for Partial Summary Judgment as to Claim Filing and Granting Respondent's Cross-Motion for Summary Judgment - 09/21/18	AFFIRMED 2019 MT 160	07/16/19
<i>Neisinger v. New Hampshire Ins. Co.</i>	2017-4143 2018 MTWCC 9	Order Reversing in Part and Affirming in Part Order Directing Medical Examination - 06/13/18	AFFIRMED in Part REVERSED in Part 2019 MT 275	11/19/19
<i>Allum v. Montana State Fund</i>	2019-4705 2020 MTWCC 1	Findings of Fact, Conclusions of Law, and Judgment – 01/28/20	AFFIRMED 2020 MT 159N	06/16/20
<i>Hensley v. Montana State Fund</i>	2013-3235 2019 MTWCC 12	Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment - 08/22/19	AFFIRMED 2020 MT 317	12/16/20
<i>Walund v. Montana State Fund</i>	2020-5105 2021 MTWCC 2	Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Cross-Motion for Summary Judgment – 02/24/21	AFFIRMED 2021 MT 248N	09/28/21
<i>Miller v. Montana State Fund</i>	2020-5145 2020 MTWCC 21	Order Granting Partial Summary Judgment to Respondent and Dismissing Petitioner's Tort Claim – 11/25/20	AFFIRMED 2021 MT 187N	07/27/21
<i>Miller v. Montana State Fund</i>	2020-5145 2021 MTWCC 3	Order: (1) Denying Petitioner's Motion Requesting the Court to Alter or Amend Judgment [in] WCC No. 2000-0059; (2) Granting Respondent's Motion for Summary Judgment; (3) Certifying Judgments as Final; and (4) Giving Notice of Entry of Final Judgment - 02/24/21	AFFIRMED 2021 MT 187N	07/27/21
<i>Barnhart v. Montana State Fund</i>	2019-4816 2022 MTWCC 1	Order Granting in Part and Denying in Part Petitioner's Motion for Summary Judgment	REVERSED 2022 MT 250	12/27/22
<i>Bryer, as PR of Estate of Sheldon v. Accident Fund Gen. Ins. Co.</i>	2021-5445 2022 MTWCC 8	Findings of Fact, Conclusions of Law, and Judgment and Order – 06/08/22	AFFIRMED 2023 MT 104	06/06/23

Case Name	WCC No.	WCC Decision and Date	SC Decision	Date
<i>Allum v. Montana State Fund</i>	2022-5873	Judgment and Orders Approving Settlement Dismissal Claim for Benefits with Prejudice, Vacating Trial, Certifying Judgment as Final, and Notice of Entry of Judgment – 10/20/22	AFFIRMED 2023 MT 121	06/20/23

APPENDIX B

STATUS AND DISPOSITION OF WCC CASES APPEALED TO THE MONTANA SUPREME COURT

SHEA ERA

Affirmed:	38
Reversed:	7
Affirmed in Part – Reversed in Part:	1
Dismissed:	35
Pending:	2
Others:	2

SANDLER ERA

Affirmed:	6
Reversed:	3
Affirmed in Part – Reversed in Part:	1
Dismissed:	13
Pending:	0
Affirmed in Non-Cite Opinions:	2

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