

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 18,
1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 63, SB 113, SB 123
Executive Action: SB 61, SB 81

{Tape: 1; Side: A; Approx. Counter: 0000, Comments: poor sound}

EXECUTIVE ACTION ON SB 61

Motion/Vote: SENATOR MIKE HALLIGAN MOVED THE ACCEPT THE
AMENDMENTS AS CONTAINED IN EXHIBIT 1. The MOTION CARRIED
UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED SB 61 DO PASS AS AMENDED.
The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON SB 81

Discussion: SENATOR AL BISHOP explained the amendments, as requested by SENATOR LORENTS GROSFIELD that would allow the court to consider all assets in determining indigency and determine financial inability.

Motion: SENATOR HALLIGAN MOVED TO ACCEPT THE AMENDMENTS AS CONTAINED IN EXHIBIT 2.

Discussion: SENATOR RIC HOLDEN expressed concern about the confusion created by the amendments.

SENATOR BISHOP said that as a lawyer, he thought it created loopholes and invited troubles.

SENATOR HALLIGAN said he thought "substantial" ought to be left in the bill, in an attempt for the judge to consider tangible assets in paying the costs.

SENATOR LINDA NELSON inquired of Valencia Lane if the bill was back to the original form.

Valencia Lane replied that it did.

SENATOR STEVE DOHERTY said that we must accept the judgement of the people we elect as judges.

SENATOR BISHOP, in answer to SENATOR LARRY BAER'S inquiry if he had any real objections about the amendments, replied that he did not, other than the bill was right back where they started.

SENATOR SUE BARTLETT thought that the bill conflicted with a different part of the code, the right to counsel. She wondered if the amendments will help eliminate the potential conflict with 46-8-101.

SENATOR HALLIGAN suggested that the committee adopt the amendments or kill the bill.

SENATOR GROSFIELD said he tried through the amendments to match the bill and its intention. First, it requires a financial statement, he said, and secondly it would require a list of assets.

SENATOR BARTLETT asked SENATOR GROSFIELD about the technical note of the fiscal note. She asked if his amendments might eliminate potential conflict with the right to counsel, but he said he didn't know.

Vote: The MOTION TO ACCEPT THE AMENDMENTS PASSED in a show of

hands vote with six members voting aye and five members voting no.

Motion: SENATOR GROSFIELD MOVED THAT SB 81 DO PASS AS AMENDED.

Vote: The MOTION FAILED on a roll call vote with five members voting aye and six members voting no.

Motion: SENATOR GROSFIELD MOVED TO TABLE SB 81.

Vote: The vote CARRIED UNANIMOUSLY by oral vote.

HEARING ON SB 113

Opening Statement by Sponsor:

SENATOR VIVIAN BROOKE, Senate District 33, Missoula, sponsored SB 113, which increased from ten days to six months the maximum jail sentence that may be imposed upon the third or subsequent conviction of driving without liability insurance. The bill would increase the options of the judge in these cases, she said. SENATOR BROOKE offered written testimony for the bill from Vicky Frazier, Deputy County Attorney, Lewis and Clark County, Montana. (EXHIBIT 3). The Senator said that this "get tough on crime" bill would cost some money. She apologized that the fiscal note was not ready, and listed the figures by the Highway Patrol estimated at \$57,300 for FY 1996 and \$76,500 for FY 1997. Assumptions made by the Office of the Budget and Program Planning were different than those made by the Highway Patrol Department.

Proponents' Testimony:

Jeff Sherlock, District Judge, Helena, and representing the Montana District Judges, spoke in support of the bill.

Dean Roberts, Administrator, Motor Vehicle Division of the Department of Justice for the State of Montana, said they had no problem with increasing the third offense penalty. He said they had seen a decrease of people with their licenses suspended, so they thought a tougher third offense rule was proper.

Craig Reap, Colonel, Montana State Highway Patrol, spoke in favor of the bill. His one concern was the increase the prisoner board cost in excess of 300,000 per year approximately.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARTLETT asked Col. Reap about the increased board costs and if the Highway Patrol would be liable for these costs. She asked for a review of the process.

Col. Reap said that when they make an arrest, they are responsible for costs to maintain that prisoner in the county detention facility until the case is adjudicated and sentenced.

SENATOR BARTLETT further asked him if a person was sentenced to three or six months, would the Highway Patrol be responsible.

Col. Reap answered in the affirmative.

SENATOR BARTLETT asked him if he would be interested in submitting information to the committee to reflect his financial assumptions so they might compare it to the fiscal note, and he agreed.

Closing by Sponsor:

SENATOR BROOKE reiterated that the bill would provide the judges with more options as they see fit. She urged a favorable consideration of the bill but only after a careful examination of the fiscal note.

HEARING ON SB 123

Opening Statement by Sponsor:

SENATOR DARYL TOEWS, Senate District 48, Lustre, said that the reasons prohibiting new business from locating in our state prompted this action. Workers' Compensation was a suggested deterrent, he said, as well as personal property taxes, liability insurance and tort reform. This bill dealt with the two basic questions he listed: 1) what would happen if the incentive was taken from punitive damage suits, and 2) if punitive damages are defined as punishment or exemplary damages, then is it the duty of one individual to punish another or is it the duty of the state? The first question would be hard to prove, he said, but he thought it would be a deterrent if the incentive was taken away. He said he thought that damage suits should be based more on conviction than dollar amounts received. Punitive damage awards would be made payable to the state treasurer according to language on page 2. Items on page 3 would allow for the division and distribution of the punitive damages, 10 per cent to the plaintiff; 15 per cent to the plaintiff's attorney; the remainder to the state General Fund. Also, it stated that the state can't engage in fund-raising through this bill. Section (e) dealt with the payment to the state treasurer in the event of a settlement agreement. Section (f) allowed for the court costs and compensatory damages to be paid before the state could collect punitive damages, he said. The Senator passed out a study of state punitive damage-sharing laws. (EXHIBIT 4). He also gave the committee a paper concerning the constitutionality of the proposed damage-sharing laws, (EXHIBIT 5) which he said is probably affirmative. A third handout is entitled, "Montana Punitive Damage Awards." (EXHIBIT 6).

Proponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, testified to conditional support for the bill. They agreed to the difference between the fundamental motives behind compensatory damages and punitive damages. The state has an interest in punitive damages in a way it does not in compensatory damages. He thought that opposition to the bill would have to rely heavily on the fact that giving a portion of the punitive damages to the state would create an unseemly self-interest in jurors and would spawn them to try to lower their taxes by awarding more punitive damages. The MTLA believes that jurors are already subjected to an endless barrage of messages that might liken their own self-interest with the amount of damage they award. Jurors have been told over and over that big awards will raise their insurance premiums, for instance, or may increase the cost of goods. The MTLA had two problems with the bill. One has to do with the percentages. They had no problem with the awarding of punitive damages to the state, but he contended that if incentives were removed for an injured party to seek damages, it would put many private attorney generals in the state who are risking their own time and money to enforce the public purpose. The percentages of 25 and 75 do that, he said. They need to be adjusted.

Their second problem had to do with Subsection (g), which prevents a jury from being informed of the consequences of what they're awarding. The MTLA contended that juries were the grassroots of government and they need full information to make those decisions and did not think it was good idea to shield jurors from full disclosure.

{Tape: 1; Side: B; Approx. Counter: 49.2; Comments: poor quality sound.}

Opponents' Testimony:

John Alke, a lawyer from Helena, appearing on behalf of the Montana Defense Trial Bar, said that they were the lawyers who defend defendants against punitive damage actions. One of the reasons they opposed this measure was their belief that jurors dispassionately decide facts and that verdicts are rendered on these dispassionately-decided facts. This does happen, he said, but mostly it does not. Jurors take to the box their own personal likes and personal dislikes and personal prejudices and their own belief systems. In punitive damage cases, he maintained, the jury has already compensated the plaintiff for actual damages and then has to decide whether to punish the defendant; whether or not they were mad at the defendant. The only counterbalance to that anger is that they have already fully compensated the plaintiff. Any money after that would be merely bestowing a windfall on the plaintiff, he said. This bill, though, would give the jury a second reason to award punitive damages: to benefit the State of Montana. This bill will encourage the awarding of punitive damages by: 1) punishing the defendant, and 2) to help the state. In Georgia, which has the

statute, he related, there is currently an award damage appeal for 105 million dollars against the Ford Motor Co.. The state will receive 52 ½ million dollars for education out of that award. The jury gave itself and its state that much money on a 50/50 statutory split. On this bill the bill drafter recognized that problem and put a provision in there that the jury will not be instructed of the statute. However, that does not mean that the jury won't know about it, he contended. Their organization felt that this bill would encourage punitive damage awards, which is contrary to the bill sponsor's intent. They urged a Do Not Pass recommendation.

Jacqueline Lenmark, representing The American Insurance Association, opposed the bill and asked for a Do Not Pass recommendation from the committee. Mr. Alke had fairly stated their opposition, she said, and also stated that AIA had a philosophical opposition to any measure that would introduce another party into a lawsuit other than the plaintiff and the defendant. AIA supports damages being awarded to the plaintiff in appropriate cases. It supports taxing insurance companies under appropriate taxing authorities and the distribution of those revenues through the proper appropriations process. This bill would seem to shortcut the revenue-generating capacity of the state through a different process, and for that reason, could not recommend the bill.

Questions From Committee Members and Responses:

SENATOR REINY JABS asked **Mr. Alke** about punitive damages. {Tape here is muted, garbled.}

Mr. Alke agreed and told him that if he had problems with punitive damages awards, he should be encouraged to address the substantive law of punitive damages and not do something like this bill. Other states have abolished the awarding of punitive damages, he said, and there are arguments for that. You would not be dealing procedurally, but would deal with the real question.

SENATOR DOHERTY asked **Mr. Alke** if the Georgia jury was instructed as to the distribution of the awards in the Ford Motor case. But **Mr. Alke** did not know.

SENATOR DOHERTY then asked him about a blank tablet jury and if he did not believe there were adequate safeguards in having 12 jury members with the challenges for cause to protect against dangerously-prejudiced jurors?

Mr. Alke said, "no." If he asked one juror before the entire panel, "do you know that if you award punitive damages in this case, the state gets half of it," he had just told the whole panel, for sure. If one juror knew ahead of time, he felt that he would communicate that information to the entire jury.

SENATOR BARTLETT asked **Mr. Alke** about a handout received showing punitive damage awards in Montana. She asked about the Blackfeet Tribe and if they would be affected by this bill?

Mr. Alke responded that it definitely would not apply in tribal court, and that it may or may not, depending on the nature of the case, apply in the federal court. If it was diversity jurisdiction, he thought it would apply; if it was federal questioning jurisdiction, he thought it would not.

SENATOR DOHERTY asked the sponsor about his handout **EXHIBIT 6**, and asked if he knew of any court or plaintiffs bar that kept an up-to-date accurate list of all instances in which punitive damages were awarded.

Mr. Alke said he could not answer that.

SENATOR NELSON asked **SENATOR TOEWS** asked him if his intent was to discourage excessive punitive damages rather than provide a windfall to the state; also if the bill went down, would he consider coming back and just addressing the punitive damages?

SENATOR TOEWS said he wasn't opposed to that. His whole intention was to slow everything down. The judge can still override the jury awards, too, he said.

SENATOR NELSON further inquired if his intent was a balance between punitive damages and to get money for the state.

SENATOR TOEWS answered no, he did not think it was to generate money. The problem is where to put punitive damages in a neutral position, so it does not substantially affect a jury's emotion. He did not want to drive juries to give large awards, as he felt perhaps, an education beneficiary would.

CHAIRMAN CRIPPEN asked **Mr. Hill** if he meant that half a loaf was better than no loaf in his 50/50 or 75/25 allocation. **SENATOR JABS**, he said, had raised a interesting idea that maybe we should just eliminate punitive damages. He asked **Mr. Hill's** thoughts.

Mr. Hill responded that they would strongly oppose that, but a bill to openly eliminate punitive damages would at least clarify the issue rather than various procedural ways to discourage it.

CHAIRMAN CRIPPEN said that punitive damages are awarded in cases where actual damages are not that great. Punitive damages were allowed when the act was so heinous or reprehensible that the jury had the ability to assess damages in order to discourage the defendant from doing the same thing again. This is like a jury trial by the state, he said, and he could not understand why the state should have a right to any damages. He maintained that the state wasn't part of the action to begin with and asked where it came in, other than getting extra cash in a windfall situation.

Mr. Hill contended that his understanding of punitive damages was different than the chairman's, that is, that punitive damages were not only awarded because of the heinousness of the conduct, but because the punitive damages get people's economic attention. This bill could create a conflict of interest between an attorney and his client, he said. There are strong public sentiments that somehow punitive damages are improper because it's a windfall to the plaintiff. To address that concern, his organization thought it was important to stand up in support.

Sponsor's Closing:

SENATOR TOEWS said that it was not the responsibility of individuals to punish individuals. He also doubted if one person should be compensated for what happened to a much larger group. If the larger group is damaged, the larger group should be paid, he said.

{Tape: 1; Side: B; Approx. Counter: 30.5 approx.; Comments: tape re-started.}

HEARING ON SB 63

SENATOR HALLIGAN ASSUMED THE CHAIR.

Opening Statement by Sponsor:

SENATOR BRUCE D. CRIPPEN, Senate District 10, Billings, sponsored SB 63. He said that this bill is an act that would revise the place of trial for a tort action when the defendant is an out-of-state corporation. For an example, SENATOR CRIPPEN used a hypothetical situation wherein a railroad worker was injured in the State of Nebraska and a case filed. Under current law, he said, the plaintiff would have the option to come to another state to file the action and go anywhere in that state. There is a lot of forum shopping going on, he said. The courts are starting to bog down, and he thought Montana courts ought to be for Montana citizens. They ought to be able to try cases of law where the accident occurred in the state and where the parties are in the state. We should not load our courts up with cases where the accident occurred elsewhere and where the other parties live. Just because a company happens to do business in the state, they should not be able to use our court system to handle those situations. This bill rectifies that and provides an exception to the current law that if the defendant is an out-of-state corporation, the proper place of a trial for a tort action would be: a) the county where the tort was committed, b) county where the plaintiff resides, or c) the county in which the county in which the corporation has its principal place of business. There will be an amendment clarifying the principal place of business, he said.

Proponent's Testimony:

Mark Petersmeyer, Libby, represented Noranda Minerals Corporation

as their engineer and spoke in favor of the bill. The existing law defines the proper place of venue for defendants in tort cases, he said, and it clarifies the place of venue for corporations but does not distinguish between corporations from out of the state and those organized in the State of Montana. A corporation formed in Montana is deemed to be a resident of the county in which it has its principal place of business. However, in 1924, the Montana Supreme Court ruled that out-of-state companies can't have a legal place of residence. Noranda, for example, he said, is chartered in the State of Delaware, but they have invested tens of millions of dollars in Lincoln County, Montana as well as operations elsewhere. The Supreme Court, by saying that these corporations have no place of residence, opened the door to the present situation, that is, the only proper place for tort action is wherever the plaintiff's attorney says it is. The venue law says that the action should take place in some place where there is a connection, to the parties or the subject matter in dispute. The present situation is discriminatory, in that it makes corporations like Noranda second-class citizens. They are practically precluded from arguing in favor of change of venue. He related the extensive investment his company is making in the state. He also told the committee of a case in which his company is involved: the company is in Lincoln County, the alleged tort occurred in Lincoln County, the plaintiff lives in Lincoln County, but the case will be tried in Cascade County. The ends of justice will not be served by treating us differently, he said. The issue, **Mr. Petersmeyer** contended, is that corporations like theirs are effectively denied the ability to argue the change of venue, while Montana Corporations are able to argue for a change. Not only unfair, he said, this situation is bad for business in Montana and harms overall investment opportunities.

Leo Barry, representing Burlington Northern Railroad, spoke in favor of the bill, saying that Montana and out-of-state corporations do not have a place of residence by Montana state law. The railroad is particularly unique because of its Workers' Compensation system in which, by federal law, the railroad and its employees are prohibited from participation. They have a fault-based system, he said, which results in tort litigation. **Mr. Barry** introduced a handout (**EXHIBIT 7**) entitled "Lawsuits filed in Montana 1993 and 1994. Of the 37 cases listed on the first page, none of the individuals were residents of Montana, he said, and 31 of the cases had no connection by either plaintiff's residence or location of the tort. On the second page, he told the committee that of 91 cases filed on behalf of Montana residents, 64 of them were filed in Cascade County. 89 per cent of those had no connection with Cascade County. This costs the counties money, he said, because the average case takes about seven days for each case tried, and there are still costs associated with those which are not tried. He guessed the cost at \$7,000 per case. An in-state corporation, he said, could only be sued in two places: where the tort occurs, and its place of residence, so if Montana Power is sued, they must take place where the tort occurred or in Butte. What this bill would do is

give the plaintiff three options: 1) he can sue where the tort was committed, 2) he can sue where the plaintiff resides, or 3) **Mr. Barry** set forth an amendment which says: he can sue in the commune where the company has a registered agent. **(EXHIBIT 8)** He said that when he ran this by the opposition, they still could not agree, so he added the second provision, "in the first judicial district." This would give plaintiffs four choices depending on facts and circumstances. Another issue the opposition had expressed is that of the location of doctors. He said that 1) most of the time doctors don't testify in court anyway, they videotape their testimony and 2) this bill does nothing to restrict their access to federal court for BN cases. He urged passage of the bill.

John Alke, representing the Montana Defense Trial Lawyers, spoke in support of SB 63.

John Fitzpatrick, representing Pegasus Gold Corporation, in support of the bill.

Jim Tutwiler, representing the Montana Chamber of Commerce, said that they believe SB 63 to be a fair bill and could restore some predictability, and would move toward the center in treating out-of-state corporations, which are a vital part of our economy, the same as in-state corporations. He urged passage of the bill.

Russ Ritter, representing Kasler Holding Company of California, a corporation involved with the Washington Corporation of Missoula, spoke in favor of the bill and urged passage.

Jerome Anderson, attorney, representing Shell Western Exploration Production, Inc., said that they are the largest crude oil producer in the state. They are an out-of-state corporation and they support this legislation for the reasons and purposes previously stated.

Don Allen, on behalf of the Montana Wood Products Association, told the committee that their membership lists both in- and out-of-state companies, and they thought it was a fair bill because it would treat both entities equally.

Opponents' Testimony:

Zander Blewett, attorney, Great Falls, representing himself, spoke against the bill. He told the committee not to think for one moment that this bill wasn't brought to them by the Burlington Northern Railroad. It is important, he said, to realize a major distinction between what **Mr. Petersmeyer** is talking about and what **Burlington Northern** is talking about. He said the bill was unjust and unfair as it would pertain to the railroad workers in the state and the rest of the citizenry. He said he had worked for several years to end the out-of-state injured workers cases in this state, as had others, which he claimed was a serious problem. He offered an amendment

(EXHIBIT 9) which would cure the problem that **SENATOR CRIPPEN** put before them. The out-of-state lawyers had no business taking an injured worker working for BN in other states, and bringing them to our state, he said, and this amendment would stop that. The BN, he contended, had asked the committee to decimate the right of BN workers under what's called the FELA (Federal Employers Liability Act). They wanted to force a Havre employee, for instance, who was injured in Havre, to sue the BN in Havre, where the BN has such massive presence and power. BN knows, he maintained, that the workers will not get their fair shake. There is no Workers' Compensation for these workers, he said, and the plaintiff is required, by federal law, to prove the railroad is negligent or he gets zero. The railroad, then, tries to prove the worker negligent, cutting down the damages, he said. Under the federal act, he explained, Congress has said that you can bring this action in any district in which the defendant shall be doing business at the time of the action. A second handout was received from him (EXHIBIT 10).

{Tape: 2; Side: A; Approx. Counter: 25.8}

He said he took exception with **Mr. Petersmeyer's** statement that he was stuck with where the case was filed. He could remove it anywhere, he said, and there is a specific statutory provision that says they have a convenience of the witnesses (say, in Libby) and the court can move the action to Libby. This bill is a furor created by the railroad, he again contended. He introduced **Kelly Erickson**, a railroad worker from Havre, who was exposed to creosote and suffers from brain cancer. A portion of his brain had been removed, he stated, and he is going to die. He asked **Mr. Erickson** to tell the committee the effect it would have if he had to sue in Havre where his friends and everyone he knows is connected to the railroad. His problem started in Butte, and he said, that's why the legislature said out-of-state corporations can be sued where the plaintiff desires.

Kelly Erickson, Havre, represented himself in this hearing. He was hired in 1978 for the railroad and had worked all over the division, he said. He was working in Great Falls, lived in Great Falls, and was exposed in Great Falls. He has children, ages 6 and 9, in his care, he said, in addition to his wife. He said he did not want to take the suit to Havre, believing that he could not get a "fair shake," because of the influence of the town. He preferred to go to Great Falls. He opposed the bill on these grounds.

John Holmes, Havre, representing himself spoke in opposition to the bill. He had lived in Havre most of his life, working for BN for 28 years, he said. He had suffered injuries in 1992 under their employ and did not think that anyone should dictate to him where the case should be filed, he said. Havre is a BN railroad town, he maintained, and the bias exists because the BN puts money into the coffers of the town, whether it is car dealers, construction companies, subcontractors, many are affected by BN.

These businessmen would be obligated to BN in court action if they were chosen for jury duty in the case, he averred. He felt that both sides should be afforded an opportunity for a neutral playing field.

Steve Sapp, Havre, representing himself, also spoke in opposition to HB 63. He said he also was an injured railroad worker, born and raised in Havre, and said all his relatives lived and worked for BN in Havre. In a 1992 downsizing, 150 families had to leave BN in Havre, moving all across the U.S. He reiterated that there was a bias in Havre, as well as across the Hi-Line in regard to BN. He said he needed a fair chance as a taxpayer and Montana resident for 40 years and he believed he had to have the action heard in a community not controlled by BN.

Erik Thusen, attorney, said in opposing the bill that he spoke for Montana people. He said the reason for such distinguished sponsors for the bill was the fear of out-of-staters coming in to put unnecessary burdens on the court system and the coffers. To address Noranda's concerns, he said, an amendment could be added to indicate that it applies anywhere where the non-resident corporation in doing business in the state, rather than the principle place of business. He maintained that BN had the home-field advantage and could intimidate the opponent. He termed the legislation, to pit injured workers against BN on their home field as grievous legislation. He begged the committee to adopt amendments so that the bill did not hurt Montanans.

Russell Hill, Montana Trial Lawyers Association (MTLA), strongly opposed SB 63. He submitted written testimony (**EXHIBIT 11**) but added some remarks. He said the **Mr. Blewett and Mr. Thusen** were also members of MTLA, submitting amendments, but that they represented themselves, and the MTLA does not stand behind them in support, but rather proposed a separate amendment. This bill is only for out-of-state corporations, he said, and in doing so, prejudices more than 800,000 Montanan citizens.

Gary Spaeth, State Auditors' Office, representing Mark O'Keefe, opposed SB 63. The insurance industry in Montana receives 1.4 billion dollars in premiums each year from out-of-state insurance corporations, he said. He felt that this limits the rights and options of insurance consumers in the state.

Fran Marceau, representing the United Transportation Union, spoke in opposition to SB 63. He submitted written testimony. (**EXHIBIT 12**).

Don Judge, representing the Montana AFL-CIO, and speaking for Jerry Driscoll of the Montana State Building Construction Trades Council, asked the committee to register their opposition to SB 63. He further stated that he had asked the Department of Labor to investigate this bill in conjunction with their ability and their locations of filing wage claims and unemployment compensation claims, which are now filed in Helena. He was

concerned about a fiscal note attached to them and if they would have to file the claims in other courts around the state.

Melissa Case, representing the Montana Hotel Employees and Restaurant Employees Union, spoke in opposition of the bill.

Jim Jensen, Montana Environmental Information Center, opposed the bill on the grounds of shenanigans he had seen in regards to forum-shopping. He offered documentation, if asked, to the committee.

Ed Caplis, representing the Montana Senior Citizens Association, opposed the bill.

David Ditzel, representing the Brotherhood of Locomotive Engineers, Montana, appeared on behalf of his organization and expressed their opposition to the bill. He submitted written testimony. (EXHIBIT 13).

Questions From Committee Members and Responses:

SENATOR BARTLETT asked about the proposed amendments and asked the testifiers to help sort out the papers.

SENATOR DOHERTY asked **Mr. Alke** why in the last hearing he had said that a juror could not be impartial if he felt that there was a monetary interest as stake, then why would a juror living in Havre that relied upon the Burlington Northern be able to give a fair and impartial verdict to an injured worker?

Mr. Alke said he should not give an opinion on what may or may not happen in Havre.

SENATOR DOHERTY pursued the question by substituting any town in which a dominant industry is being sued.

Mr. Alke asked **SENATOR DOHERTY** to remember his question that couldn't he, through *voir dire* weed out that sort of thing. He said that he could not even ask the question on *voir dire* because he would be informing the jury of the existence of the law. In the case of prejudice or bias, that is the reason you have *voir dire*, he said, to inquire into the beliefs, connections and philosophies of the potential jurors. If bias is indicated, he said, they could be challenged for cause, so you would assume through the *voir dire* process that you could eliminate those problems.

SENATOR GROSFIELD asked **Leo Barry** in his estimate of court cases costing \$7,000 each, what would be the percentage of cost to the state, and to the county.

Mr. Barry said that of the \$7,000, \$5,000 would be paid by the county and \$2,000 by the state.

SENATOR GROSFIELD asked if in the trials listed on his exhibit, those counties were paying costs for action that occurred in another county?

Mr. Barry answered yes, and that he believed that those figures were conservative because it did not take into account each pre-trial activity that the circuit court has in relation to those actions.

SENATOR HALLIGAN asked **Mr. Barry** to comment on the amendment by **Mr. Blewett**. He responded that he had not seen it, but that he understood that it would prohibit non-residents of Montana from filing those actions. He thought that there would be an equal protection problem with that and would like it to be struck. In his estimation, **Mr. Hill's** amendment would not solve the problem, it would allow the company to be sued anywhere it does business, and he contended that was an undefined standard.

Mr. Blewett asked to be allowed to answer. He gave the committee an overview of a case called Missouri vs. Mayfield. The U.S. Supreme Court said that if a state chooses to prefer residence in access to often overcrowded courts and to deny such access to all non-residents, whether its own citizens or those of other states, is a choice within its own control. This is also true of actions for personal injuries under the actions of LFLA, he said. The Supreme Court has said we can keep those out-of-staters out of our state and quit paying for them.

Closing By Sponsor:

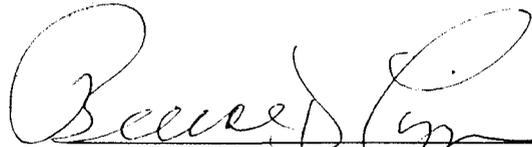
SENATOR CRIPPEN closed SB 63 by commenting on the amendment. He had heard of that case before, he said, and felt it was a totally different subject matter. He said that if a worker were injured in Havre while working for Montana Power, they would have to go to Butte under present law. Talk about the hand that bites you, he said, that might be the exception to the rule. The crux of the opponents' arguments seemed to be that they did not want to have their action in a company town and he found it hard to believe that a person who lives in that town would be without influence, but if there was, then it could be moved to the county in which the plaintiff resides. To satisfy the other side, maybe we should keep it so we can't go to where the plaintiff resides or the defendant has their place of business. Perhaps, he said, we should just say the action should be held where the tort was committed and leave it at that.

THE FOLLOWING DOCUMENTS WERE SUBMITTED AFTER THE CLOSE OF THE HEARING:

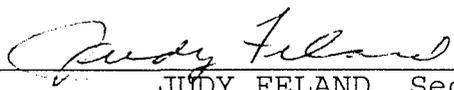
SENATOR DOHERTY presented a position statement. (**EXHIBIT 14**)
John C. Hoyt present comments on Senate Bill 63. (**EXHIBIT 15**)
Donald R. Judge, Executive Secretary, AFL-CIO, submitted written testimony. (**EXHIBIT 16**)

ADJOURNMENT

Adjournment: ACTING CHAIRMAN MIKE HALLIGAN adjourned the hearing
at 1:03 p.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 18, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 61 (first reading copy -- white), respectfully report that SB 61 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Following: "MISDEMEANORS"

Insert: ", EXCEPT DOMESTIC ABUSE, STALKING, AND DUI VIOLATIONS,"

2. Page 2, line 12.

Following: "confine"

Insert: "or to continue to confine"

3. Page 2, line 13.

Following: "45-2-101"

Insert: ", except a person charged with or convicted of a violation of 45-5-206, 45-5-220, 61-8-401, or 61-8-406"

-END-

PV
BT
Amd. Coord.
Sec. of Senate

151243SC.SPV

Amendments to Senate Bill No. 61
First Reading Copy

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
January 16, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 1-18-95

FILE NO. 61

1. Title, line 5.

Following: "MISDEMEANORS"

Insert: ", EXCEPT DOMESTIC ABUSE, STALKING, AND DUI VIOLATIONS,"

2. Page 2, line 12.

Following: "confine"

Insert: "or to continue to confine"

3. Page 2, line 13.

Following: "45-2-101"

Insert: ", except a person charged with or convicted of a
violation of 45-5-206, 45-5-220, 61-8-401, or 61-8-406"

(81)

Amendments to Senate Bill No. 81
First Reading Copy

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
January 16, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. # 2
DATE 1-1
BILL NO. 81

1. Title, lines 4 through 6.

Following: "AN ACT"

Strike: remainder of line 4 through "TO" on line 6

Insert: "REQUIRING THE COURT TO CONSIDER ALL ASSETS IN
DETERMINING INDIGENCY FOR PURPOSES OF OBTAINING"

2. Page 1, line 14.

Following: "sworn"

Insert: ", comprehensive"

3. Page 1, line 16.

Following: "necessities"

Insert: "without substantial hardship in providing for personal
or family necessities"

4. Page 1, line 18.

Following: "swearing."

Insert: "In analyzing the sworn, comprehensive financial
statement, the court shall consider whether the defendant
owns assets that are not essential for providing for
personal or family necessities."

Mike McGrath
County Attorney



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. # 3

DATE 1-17-95

SEN. BILL 113

Courthouse
228 Broadway
Helena, Montana 59601
Telephone 406/447-8221

LEWIS AND CLARK COUNTY

Office of the County Attorney

January 17, 1995

Bruce Crippen
Senate Judiciary Committee Chairman
Capitol Building
Helena, MT 59601

Re: Support of Senate Bill 113

Dear Chairman Crippen and Committee Members:

Please accept this letter in support of Senate Bill 113. I am a prosecutor for Lewis and Clark County and write this letter on behalf of our office as well as other prosecutors within the State.

There are two main reasons that I urge the passage of this bill. First, an increased penalty for a third or subsequent offense sends a clear message that repeat offenders will face significant penalties. Driving without insurance is irresponsible. An accident caused by such a driver increases costs for all of us, the government as well as private citizens.

Second, the passage of this bill allows prosecutors to tailor sentencing to specific situations. Currently, our office sees third, fourth, fifth, sixth, and seventh time offenders. The existing ten day penalty fails to differentiate between these repeat offenders. An increased penalty will allow prosecutors to take into account the driving and accident history of the offender, and to sentence accordingly. It is my experience that increased jail time is a powerful deterrent to repeat offenders.

I strongly encourage you to pass this bill, and thank you for your time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vicki Frazier".

VICKI FRAZIER

Deputy County Attorney

DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT AND TORT DEFENSE DIVISION

MARC RACICOT, GOVERNOR

MITCHELL BLDG., ROOM 111
PO BOX 200124



STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2812

HELENA, MONTANA 59620-0124

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 1-18-95

FILE NO. 58/23

M E M O R A N D U M

To: Bill Gianoulis, Chief Defense Counsel
Risk Management and Tort Defense Division

From:  Matt Clifford, Legal Intern
Risk Management and Tort Defense Division

Date: August 9, 1993

Re: State punitive damage-sharing laws

You have asked me to research laws other states have enacted diverting a share of civil punitive damage awards to the state treasury (damage-sharing laws). In addition, you are interested in the legal challenges which have been raised to such laws, and the likely fate of a similar law in Montana courts. My research has uncovered the following background information.

Nine states have passed damage-sharing laws: Colorado, Florida, Georgia, Illinois, Iowa, Missouri, New York, and Oregon. The states receive anywhere from 20% (New York) to 75% (Iowa) of awards, with the average being around 40%. Some of the statutes are very simple, specifying little more than the amount the state is to receive (Utah), while others provide for various contingencies such as partial collection of the judgment, and post-trial settlement (Oregon, New York). Some provide for the money to go to the state general fund, while others place it in special "victims' compensation" funds. Most of the statutes prevent the state from interfering in lawsuits other than to collect its share of any punitives.

The stated purpose behind such laws is usually twofold. First, obviously, the laws raise revenue for the state. Second, proponents argue that the laws discourage plaintiffs from pursuing questionable and excessive punitive damage claims by lessening the potential rewards for doing so. In almost every case, states have passed their damage-sharing provisions as part of a larger tort-reform package.

The legal justification for damage-sharing laws is simple. Unlike compensatory damages, which serve to reimburse plaintiffs

for the wrongs they have suffered, and to which they clearly have a right, punitive damages represent a "windfall" which theoretically makes plaintiffs better off than they were before the wrong. In the words of one court, a plaintiff is a "fortuitous beneficiary" of a punitive award "simply because there is no one else to receive it." Berenger v. Frink, 314 N.W. 2d 388, 391 (Iowa 1982). States argue that since the goals of punitive damages--i.e. punishing wrongdoers and deterring harmful conduct--are public goals, the public is entitled to receive a share of awards, just as it receives the entire amount of criminal fines. They point out that the plaintiffs and their attorneys also get a share of the punitive award, serving as compensation for prosecuting the case on the public's behalf.

Plaintiffs have challenged damage-sharing laws in four states. The most common arguments have been that the laws constitute a Fifth Amendment taking without due process of law, and that they deny equal protection to plaintiffs for no legitimate government purpose. Plaintiffs have also argued that the laws deny them their right to a jury trial, that they constitute an unfair and illegal tax, and that they violate the Excessive Fines Clause.

The results of these challenges have been mixed. The supreme courts of Florida and Iowa have upheld their states' laws. The Colorado Supreme Court has struck down the Colorado statute on due process grounds. A federal district court has found that Georgia's law violates due process, equal protection, double jeopardy and the Excessive Fines Clause, but the law remains in effect since the decision is not binding on state courts.

Prospects for a Montana law look good. Such a law could be drafted so as to avoid the objections of the Colorado court. The Georgia law would be readily distinguishable because it applied only to product-liability plaintiffs, and not to other plaintiffs, raising obvious equal protection problems. Moreover, existing Montana precedent is similar to that in Florida and Iowa in that it recognizes no fundamental right to punitive damages, and grants the legislature broad authority to limit their application. Attached is a memorandum of law analyzing the legal issues which arise with respect to a Montana damage-sharing law.

I have also attached the following materials which may be helpful:

- A proposed bill which draws heavily on other states' experiences in drafting damage-sharing laws and defending them in court.
- A summary of existing damage-sharing laws.
- Copies of existing damage-sharing laws.

EXHIBIT 4

DATE 1-18-95

SB 123

•An informal survey of Montana punitive damage awards over the past three years.

If you or anyone at the director's office need more information, or would like to arrange a formal presentation of my findings, please let me know.

DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT AND TORT DEFENSE DIVISION



MARC RACICOT, GOVERNOR

MITCHELL BLDG., ROOM 111
PO BOX 200124

STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2812

HELENA, MONTANA 59620-0124

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 1-16-93

FILE NO. SB 123

Memorandum

To: Bill Gianoulis, Chief Counsel
From: MC Matt Clifford, Legal Intern
Re: Constitutionality of Proposed Damage-sharing Law
Date: August 9, 1993

Question Presented

Would the Montana Supreme Court uphold a statute providing for a portion of civil punitive damage awards to be paid to the state?

Brief Answer

Probably yes. The court has already upheld broad restrictions on the availability of punitives, and has made clear that plaintiffs have no vested right to receive them. Other jurisdictions have upheld damage-sharing laws based on similar precedent.

Background

To date, courts in four jurisdictions have ruled on laws giving states a share of punitive damage awards (damage-sharing laws). Two jurisdictions have upheld such laws. See Gordon v. State, 585 So.2d 1033 (Fla.App. 3 Dist. 1991), affirmed, 608 So.2d 800 (Fla. 1992), cert. denied, ___ S.Ct. ___ (1993); Shepherd Components, Inc. v. Brice, ___ N.W.2d ___ (Iowa 1992). Colorado's law has been declared unconstitutional, and is no longer in effect. See Kirk v. Denver Publishing Co., 818 P.2d 262 (Colo. 1991). A federal court has declared the Georgia law unconstitutional, but the decision is not binding on state courts. See McBride v. General Motors, 737 F.Supp. 1563 (M.D.Ga. 1990).

This memo examines the various arguments plaintiffs have used to challenge damage-sharing laws in other states. It analyzes these challenges in the context of Montana law, and predicts how the Montana Supreme Court would resolve each of them.

Discussion

I. Fifth Amendment Taking

A common challenge to damage-sharing laws is that they constitute a taking of plaintiffs' property without due process of law. See, e.g., Kirk, 818 P.2d at 265-73. The controlling issue here is whether punitive damages are "property" under the Fifth Amendment--that is, whether a plaintiff has a vested interest in them. Surprisingly, almost all jurisdictions agree on a general rule: plaintiffs have no vested right to punitive damages before judgment, but they do have such a right--immune from legislative divestment--after a judgment has been entered. See, e.g., Id. at 268-69; McCullough v. Virginia, 172 U.S. 102, 123-24. Typically, then, courts portray the takings issue as a simple question of whether the state's interest in its share of punitives is created before or after judgment. Those upholding damage-sharing laws have held that the state's interest in awards is created at or before judgment, vesting simultaneously with the plaintiff's interest. See, e.g., Gordon, 585 So.2d at 1036. Courts striking down such laws have found that the state's interest arises after judgment, illegally divesting plaintiff of a portion of his award. See, e.g., Kirk, 818 P.2d at 272-73.

Despite this apparent agreement on the basic rule, courts seem to decide the takings question more on the basis of their particular notion of punitive damages than on strict application of a legal formula. Courts striking down damage-sharing laws characterize punitives as a basic right of plaintiffs. See, e.g., Id. The Kirk court reasoned that punitives have reparative as well as punitive aspects, and therefore plaintiffs are entitled to them as additional compensation for their injuries. Kirk, 818 P.2d at 265-66. Similarly, the McBride court, while conceding the lack of a vested right to punitives, found they had a lengthy common-law pedigree, and declined to "deprive a tort victim of [a] right . . . which has been so long and so universally recognized." McBride, 737 F.Supp. at 1574.

The Gordon and Shepherd courts, on the other hand, reasoned that punitives are merely a windfall created by legislative whim: "[T]he very existence of an inchoate claim for punitive damages is subject to the plenary authority of . . . the legislature." Gordon, 585 So.2d at 1035. "[A] plaintiff has been a fortuitous beneficiary of a punitive award simply because there is no one else to receive it." Shepherd, 473 N.W.2d at 619. Thus, it seems that a court's conclusion on the takings question depends largely on the degree of respect it has for punitives in the first place.

Montana case law suggests that our supreme court would follow Gordon and Shepherd, holding that a properly drafted damage-sharing law would not constitute a Fifth Amendment taking. Like the Gordon and Shepherd courts, the Montana Supreme Court has refused to recognize any vested right to punitives under either the common law

or the state constitution. See, e.g., Meech v. Hillhaven West, Inc., 776 P.2d 488, 491-96. Unlike the Kirk court, it has declined to hold that punitives serve any goals beyond punishment and deterrence. See First Bank (N.A.)-Billings v. Transamerica Ins., 679 P.2d 1217 (Mont. 1984). Moreover, the court has used this reasoning to uphold statutes abolishing punitive damages for certain types of cases. These include: wrongful discharge, Meech, 776 P.2d at 496; employment discrimination, Romero v. J & J Tire, 238 Mont. 146 (1989); and suits against the state, White v. State, 661 P.2d 1272 (Mont. 1983). Having thus established its power to abolish punitives altogether, the state can make a compelling argument for its power to take the less drastic step of claiming a portion of awards (provided, of course, that the law clearly created a state interest before judgment). The Montana Supreme Court's recent views on punitives suggest that it would not find that such a law interfered with a vested property right.

Opponents of a Montana damage-sharing law might attempt to distinguish Meech and other cases which limit punitives, by pointing out that in those cases the state provided a quid pro quo to plaintiffs--that is, the state abolished their right to seek punitives in exchange for something else, usually the creation of a statutory scheme for the enforcement of other rights. See McBride, 737 F.Supp. at 1574-76; see also Meech, 776 P.2d at 505-07. Though the Meech court hinted that no quid pro quo need accompany the repeal of a common-law right, it did not decide the issue. However, the California Supreme court has held that in the absence of a vested right to a particular measure of damages, the legislature may restrict those damages without a quid pro quo. American Bank & Trust Co.v. Community Hospital, 683 P.2d 670, 676 (Cal. 1984). Given the Montana Supreme Court's refusal to recognize a vested right to punitives, the court would probably agree that no legislative quid pro quo is necessary to restrict their availability. See also White, 661 P.2d 1272, (an example of curtailment of punitives with no quid pro quo). Even without a quid pro quo, then, the court would probably reject a Fifth Amendment challenge to a damage-sharing law.

Another objection to damage-sharing laws, closely related to the takings argument, is that they are a de facto tax on damage awards. Since legislatures usually do not intend them as such, the laws typically fail to meet state constitutional restrictions on how taxes may be assessed. See Kirk, 818 P.2d at 270-71; see also McBride, 737 F.Supp. at 1569-70 (title of bill enacting damage-sharing law failed to identify it as a revenue measure). A court's holding on this issue is controlled by its analysis of the takings issue: if a court rules that punitives are property, then damage-sharing laws constitute a tax; otherwise, they simply reflect the state taking its rightful share of a windfall to which a plaintiff is not clearly entitled. Assuming the Montana Supreme Court would reject the takings argument, it would likely reject a tax-based challenge as well.

II. Equal Protection

Another constitutional challenge to damage-sharing laws is that they deny the equal protection of the laws by creating arbitrary classifications among plaintiffs. The exact basis for the alleged discrimination is not clear from the cases (except McBride, where the statute in question applied only to product-liability plaintiffs). However, the gist of the argument seems to be that the laws require some plaintiffs to remit a portion of "their" awards to the state, while others (those who receive only compensatory damages) are allowed to keep their entire award. See Gordon, 585 So.2d at 1036-37. Arguably, a threshold question exists whether the laws make any such "classification" at all. One can argue that the laws treat all plaintiffs the same: all are entitled to recover full compensatory damages plus a percentage of any punitives awarded. No court has addressed this issue, however. Instead, all have proceeded directly to the question of whether classifications among plaintiffs are justified under the Equal Protection Clause.

Assuming that a damage-sharing law does create classifications among plaintiffs, a state need only show that these classifications are rationally related to a legitimate government interest for the law to survive equal protection scrutiny. See, e.g., id.; See also Meech, 776 P.2d at 502-507. States have advanced two main government objectives in support of damage-sharing laws: discouraging excessive punitive damage claims, and raising revenue.

A primary legislative goal of most damage-sharing laws has been to discourage plaintiffs from seeking large punitive awards by reducing the rewards for doing so (all of the nine laws but New York's were passed as part of a larger tort-reform package). By discouraging punitives, states hope to improve their business climate and make insurance more affordable. Some courts have found these to be a legitimate legislative policy goals. See Gordon, 608 So.2d at 801-02. Others have not. See McBride, 737 F.Supp at 1576-77.

Even where damage-sharing laws are not intended to discourage punitives, they serve another, more fundamental purpose. Like criminal fines, they rationally divert money collected for public purposes--punishment and deterrence--to the public treasury. Gordon, 585 So.2d at 1036-37. Since compensatory damages serve no similar public function, it makes sense that the laws apply only to punitives. Thus, such "discrimination" is justified under equal protection analysis.

Recent decisions by the Montana Supreme Court make it all but certain that the court would find a damage-sharing law to be rationally related to a legitimate state interest. In the first place, the court has recognized that promoting economic growth by protecting businesses from excessive liability is a legitimate state interest. Meech, 776 P.2d at 504-05. Second, the court

increasingly recognizes a strong presumption in favor of the constitutionality of statutes in equal-protection cases. See Stratemeyer v. Lincoln County, 50 St.Rep. 0731 (1993). In Stratemeyer, the plaintiff, a policeman who claimed to have suffered severe mental injury on the job, challenged a workers' compensation statute on equal protection grounds, arguing that it arbitrarily denied compensation to workers whose injuries were entirely mental. Id. at 732. Upholding the law, the supreme court first reasoned that courts must make every effort to construe legislation in such a way that it passes constitutional muster, and should strike down a law only if its unconstitutionality appears beyond a reasonable doubt. Id. Applying this reasoning, the court held that even if the legislature does not articulate the government purpose behind a statute, a court reviewing the statute should consider "any possible purpose of which the court can conceive." Id. at 733. Noting that it had acknowledged the legitimate state goal of promoting the financial interests of business in Meech, the court found that the workers' comp statute was rationally intended to control costs to employers, and was therefore constitutional. Id. at 734.

Even more to the point is Meech itself, in which the plaintiff argued that the Montana Wrongful Discharge Act violated equal protection by denying punitive damages to wrongful discharge victims. Meech, 776 P.2d at 502-506. Rejecting this argument, the court stated:

"the Legislature retains broad control over the measure . . . of damages that a defendant is obligated to pay and a plaintiff is entitled to receive, and . . . may expand or limit recoverable damages so long as its action is rationally related to a legitimate state interest."

Id. at 503 (quoting Fein v. Permanente Medical Group, 695 P.2d 665, 680 (Cal. 1985) (emphasis in Fein)).

Stratemeyer and Meech have obvious implications for a potential Montana damage-sharing law. Like the statutes challenged in those cases, a damage-sharing law could be construed as intended to promote growth by reducing the liability expenses of state businesses. In addition, it could be seen as analogous to statutes imposing criminal fines. Even if the legislature did not expressly state these purposes in the law or its legislative history, the court could presumably discover them on its own initiative and uphold the law.

III. Trial by Jury

Some plaintiffs have argued that damage-sharing laws deny them their right to a trial by jury. See Gordon, 608 So.2d at 804 (Shaw, J., dissenting). Under this argument, a function of the

jury is to determine the amount of damages which the plaintiff should receive "where no precise rule of law fixes the recoverable damages[.]" Id. Since damage-sharing laws typically forbid instructing juries that a share of punitives will go to the state, the argument goes, the laws prevent the jury from fulfilling this function. Id. The Gordon majority rejected this argument without comment. Id. at 802.

An examination of Montana precedent suggests that our supreme court would not favor a right-to-jury argument. The argument seems to ignore the distinction between punitive and compensatory damages, implying that juries should use punitives to provide additional compensation to plaintiffs. Montana law, however, has always recognized a bright line between the two types of damages. See First Bank (N.A.)-Billings v. Transamerica Ins., 679 P.2d 1217 (recognizing punishment and deterrence as the only goals of punitives); See also Mt. Code Ann. 27-1-220 (1991) (Punitives by definition are awarded in addition to compensatory damages, when punishment and deterrence are necessary). Since Montana juries are free to use compensatory damages to fix the amount plaintiffs should receive, it is hard to see why the court would blur this line by holding that juries need the additional tool of punitives to ensure that plaintiffs receive adequate compensation.

IV. Excessive Fines and Double Jeopardy

Two final objections to damage-sharing laws are based on the U.S. Supreme Court's recent decisions in U.S. v. Halper, 490 U.S. 434 (1989) and Browning-Ferris Industries v. Kelco Disposal, Inc., ___ U.S. ___ (1989). In Browning, the Court held that civil punitive damage verdicts are not subject to review under the Excessive Fines Clause where "the government has neither prosecuted the action nor has any right to receive a share of the damages awarded." Id. at ___. Although the Court claimed to leave the question open, Id. at ___ n. 21, the decision seems to imply strongly that the Clause would apply to actions in which the government is entitled to a portion of damages. Similarly, the Halper court, holding that the Double Jeopardy Clause precludes the government from seeking punitives against a defendant whom it has already fined criminally, left open whether the same reasoning would apply to cases in which the plaintiff and the government share a damage award. Halper, 490 U.S. at 1903 n.11.

The potential effect of Browning and Halper on damage-sharing laws is not clear. Although the McBride court cited both cases as additional support for its rejection of the Georgia law, 737 F.Supp. at 1577-78, it is difficult to see anything in Browning or Halper which would require a court to declare a damage-sharing law unconstitutional on its face. Instead, a court applying the decisions could simply reduce a punitive award it found to be excessive, or deny the state its share of a punitive award where a defendant had already been criminally fined. Alternatively, a court could take Browning and Halper at face value and simply

EXHIBIT 5

DATE 1-18-95

SB 123

decline to apply them at all, as the Gordon and Shepherd courts apparently did. Either approach would be consistent with the Montana Supreme Court's policy of striking down laws only as a last resort.

Conclusion

Although it is impossible to predict with certainty how any court will rule, it appears more likely than not that the Montana Supreme Court would reject the challenges which have been offered in other states, and uphold a damage-sharing law. If the court holds to its established doctrines that no vested right exists to punitive damages and that the legislature has broad authority to alter the statutory scheme providing for them, it will likely find no compensable Fifth Amendment taking under such a law. The court would likely find that the law satisfied the Equal Protection Clause, since the state could easily show a legitimate government interest, and the court's long-standing distinction between punitive and exemplary damages suggests that it would find no impairment of a plaintiff's right to a jury trial. Finally, assuming the court applies the same presumptions in favor of constitutionality as it has in the past, it will not apply the Excessive Fines and Double Jeopardy clauses to a damage-sharing law.

COURT REPORTER
 COURT NO. # 6
 DT 1-18-95
 SB 123

Montana Punitive Damage Awards, June 1990-June 1993

Date	Court	Plaintiff	Award
9/20/90	Supreme	Bennett	\$10,000
8/24/90	Supreme	N.L.L.	100,000
5/10/90	District	Rogers	50,000
7/9/90	District	Dill	6,000
7/30/90	Supreme	Lee	5,000
11/16/90	District	Wheeler	750,000
10/2/90	District	Alpine Ranch	2,500
9/25/90	District	Anderson	25,000
5/16/91	District	Floerchinger	26,000
5/22/91	District	B&T Pacific	1,000
4/9/92	Federal Dst.	Coddington	1,600,000
3/13/92	District	Kitchen Krafters	18,000
6/16/92	Supreme	Daniels	35,000
6/5/92	District	Morgan	25,000
7/27/92	Supreme	Foster	5,000
10/14/92	Supreme	Flikkema	30,000
11/15/92	Federal Dst.	Robinson	10,500,000
10/9/92	District	Van Valkenburg	50,000
12/14/92	Federal Dst.	House of Stuart	2,750,000
4/29/93	Blackfeet	Glacier Const.	775,000
5/4/93	Federal Dst.	Wood	2,000
Total			16,765,500.00

The above table was compiled from Montana Law Week. It is not an exact calculation of punitive damages awarded because some of the cases are no doubt being appealed, or have settled pending appeal. The table is intended to give a rough estimate of the amount of punitives awarded, and to give an idea of the size of typical awards.

SB63

Exhibit 1

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. #7

DATE 1/18/95

BY SA. M. DeLo's

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OUTSIDE MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ALLARD LYLE	NORTH DAKOTA	ROOSEVELT	COLLINS FIRM	USDC	CASCADE	CV-93-123-GF-PGH	
ASHKANNEHAD AHMAD	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-527	
BERG WILLIAM	WYOMING	WYOMING	YAEGER FIRM	STATE	CASCADE	DV-93-0167	SETTLED
BERGFIELD KENNETH D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1034	SETTLED
DILLON TAY	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-829	
EPPLER GARY D	NEBRASKA	WYOMING	ECKMAN FIRM	STATE	CASCADE	BDV-94-040	
FERGUSON SUSAN/RANDALL	WYOMING	BIG HORN CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-66-BLG-RWA	SETTLED
GALLO RALPH	WYOMING	WYOMING	HARTELIUS FIRM	STATE	CASCADE	ADV-93-300	
GITTINGS RICHARD E	MISSOURI	MISSOURI	MORRISARD FIRM	STATE	CASCADE	BDV-94-234	
GRAHAM ROCKY	NORTH DAKOTA	FALLON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-225-BLG	
JOHNSON LARRY D	TEXAS	YELLOWSTONE CO. MT	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-1226	SETTLED
LAW PATRICK D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-307	
LEFFLER EDWIN D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-645	SETTLED
LETEMPT GARY L	WYOMING	WASHINGTON	DOSHAN FIRM	STATE	CASCADE	ADV-93-798	
MALONE BURL	WASHINGTON	WASHINGTON	HOYT FIRM	USDC	YELLOWSTONE	CV-94-097-BLG-JDS	SETTLED
MEEKER ROBERT	WYOMING	WYOMING	BURRIS DON	USDC	YELLOWSTONE	CV-93-115-BLG-JDS	SETTLED
MILLER NORMAN R	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0014	
MILLS JAMES L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-1241	
MOORE LAURA L	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-423	
MUCKLE JR JAMES A	NORTH DAKOTA	MULTIPLE ND	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-0368	SETTLED
NOYES COLONEL L	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-36-BLG-JDS	
OLHEISER LESTER	NORTH DAKOTA	MULTIPLE MT/ND	YAEGER FIRM	STATE	CASCADE	CDV-93-892	SETTLED
PALATO LOUIE E	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-799	
REINICK LESLIE	WYOMING	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-94-671	
REVELL PANELA M	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-94-302	
ROBINSON JAMES C	ILLINOIS	SOUTH DAKOTA	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-213	SETTLED
ROTOLO JULIO	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-93-420	
SAMS ANDREW L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-607	
SCHUMACHER TERRANCE	NORTH DAKOTA	DAWSON CO. MT	COLLINS FIRM	STATE	CASCADE	ADV-94-314	
SEARLS MARCUS	WASHINGTON	WASHINGTON	STEPHENSON FIRM	USDC	MISSOULA	CV-93-164-M-CCL	
SELIG TERRY D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	ADV-93-520	SETTLED
SOSA DOMINGO D	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0285	
STOREIM JEROME M	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-012	SETTLED
THOMAS ROBERT A	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-31-BLG-RWA	
WADDELL DEAN A	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-237	
WITTMAN RANDY L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	ADV-94-323	
YOUNG SAMUEL F	WASHINGTON	WASHINGTON	DEARDEN FIRM	STATE	CASCADE	CDV-93-145	SETTLED

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #7
DATE 1-18-95
BY SA. M. DeLo's

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OF MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ANDERSON BARRY	DAWSON CO. MT	DAWSON CO. MT	COLLINS-FIRM	USDC	YELLOWSTONE	CV-93-175-BLG-RWA	SETTLED
ANDERSON IVAN	FLATHEAD CO. MT	WASHINGTON	YAEGER FIRM	STATE	CASCADE	CDV-94-891	
ANDERSON ROGER D	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-30	
BARRETT JOHN L	HILL CO. MT	FLATHEAD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-718	
BECK RANDY	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-93-146	SETTLED
BECK THOMAS L	FLATHEAD CO. MT	FLATHEAD CO. MT	CONNER FIRM	STATE	CASCADE	BDV-93-289	
BERNDT STEVE	VALLEY CO. MT	NORTH DAKOTA	ROSE FIRM	USDC	YELLOWSTONE	CV-93-183-BLG-JDS	
BODNER EUGENE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-557	
BOOTH RONALD L	SHERIDAN CO. MT	ROOSEVELT	COLLINS FIRM	STATE	CASCADE	ADV-94-115	
BRADFORD JAMES D	FLATHEAD CO. MT	FLATHEAD CO. MT	BRICKER FIRM	USDC	CASCADE	CV-93-142-M-CCL	
BRIEN FRANK	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	MISSOULA	CDV-93-506	
BROPHY MICHAEL L	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1000	SETTLED
BUNNELL BILL	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	CAVAN FIRM	STATE	YELLOWSTONE	DV-93-0616	SETTLED
BURGERT DAVID E	FLATHEAD CO. MT	FLATHEAD CO. MT	MCGARVEY FIRM	STATE	FLATHEAD	DV-93-505B	
CAMPBELL WALTER D	BLAINE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-391	
CARTER GREGORY A	LINCOLN CO. MT	IDAHO	HARRISON FIRM	USDC	MISSOULA	CV-93-147-M-CCL	
CARTWRIGHT RONALD L	HILL CO. MT	HILL CO. MT	CURE FIRM	STATE	CASCADE	CDV-94-954	
CHURCH WESLEY D	HILL CO. MT	GLACIER CO. MT	HOYT FIRM	STATE	CASCADE	CDV-93-729	SETTLED
COBB EDWARD	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-143	SETTLED
CONVERSE EDWIN F	HILL CO. MT	LIBERTY CO. MT	THUESON FIRM	STATE	CASCADE	BDV-93-392	
CORNWELL LYNN & FAY	VALLEY CO. MT	VALLEY CO. MT	HURLY FIRM	STATE	VALLEY	19107	
CRESS KENT	DAWSON CO. MT	DAWSON CO. MT	LEWIS TOM	STATE	CASCADE	ADV-93-443	SETTLED
CURL PAMELA A	DAWSON CO. MT	ROSEBUD CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-78-BLG-RWA	
DASSINGER ERNIE	ROSEBUD CO. MT	ROSEBUD CO. MT	HOUTZ JOHN	STATE	ROSEBUD	DV-93-28	
DEES PAUL R	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-526	
DERRY JOHN	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-306	
DOBSON JERALD L	DAWSON CO. MT	DAWSON CO. MT	MORRISARD FIRM	USDC	YELLOWSTONE	CV-94-9-BLG-RWA	SETTLED
DREW ALLAN E	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-035	
DUNNHOOD DALE F	YELLOWSTONE CO. MT	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-496	
ERICKSON KELLY R	HILL CO. MT	HILL CO. MT	HOYT FIRM	STATE	CASCADE	BDV-93-599	
FARMER LEE	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-692	
FEENEY FRANK D	FLATHEAD CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-94-049	SETTLED
FISHER GARRETT L	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-630	
FRIEDE MATTHEW M	PONDERA CO. MT	TOOLE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-93-630	
FRIEZ RICHARD L	CASCADE CO. MT	CASCADE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-94-367	SETTLED
GOLDEN ROGER	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-769	
GUERRERO SR ROBERT	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	STEPHENS FIRM	USDC	YELLOWSTONE	CV-94-100-BLG	
HAIGLER EUGENE W	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-507	
HALL THEODORE ROY	GLACIER CO. MT	GLACIER CO. MT	PRO SE	TRIBAL	BROWNING	94-CA-154	
HANSON ARLEN G	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-641	
HENDERSON JAMES P	CASCADE CO. MT	PONDERA CO. MT	CONNER FIRM	STATE	CASCADE	BDV-94-170	
HERZOG LARRY	FLATHEAD CO. MT	WEST GLACIER CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-970	
HITCHCOCK ALBERT	MISSOULA CO. MT	MISSOULA CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-79-M-CCL	
HOLMES JR HAROLD J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	DV-92-205	
KEYES ROBERT J	CASCADE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-476	SETTLED
KLOBOFSKI JOHN	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-758	
KNUDSEN LEONARD	CHOTEAU CO. MT	CASCADE CO. MT	HARTELIUS FIRM	STATE	CASCADE	ADV-93-505	SETTLED
KOVARIK SANDRA	FLATHEAD CO. MT	FLATHEAD CO. MT	HOYT FIRM	USDC	CASCADE	CV-93-130-CF	

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ARSON ROBERT	HILL CO. MT	HILL CO. MT	YAEGER FIRM	USDC	CASCADE	CV-94-63-GF-PGH	SETTLED
ASALLE-LOGAN F	HILL CO. MT	TREASURE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-177-BLG-RWA	SETTLED
UCKE ROBERT	FLATHEAD CO. MT	WEST GLACIER CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-277	SETTLED
LANEY PATRICK	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-93-727	SETTLED
MARTZ JR FRANK	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-048	SETTLED
AVIS DENNIS	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-132	SETTLED
HILLER PERRY H	HILL CO. MT	TOOLE CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-171	SETTLED
HILLER PERRY W	BLAINE CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-639	SETTLED
HILLS DENNIS G	FLATHEAD CO. MT	FLATHEAD CO. MT	GROSHONG FIRM	STATE	CASCADE	CDV-93-781	SETTLED
LAYLOR JAMES D	CASCADE CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-296	SETTLED
HEUMANN WALDEMAR	FLATHEAD CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-94-69-BLG-RWA	SETTLED
HOEL FREDERICK B	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-94-304	SETTLED
HOVIG DOUGLAS L	VALLEY CO. MT	MULTIPLE MT/ND	BRICKER FIRM	STATE	CASCADE	DV-93-535	SETTLED
PEARCY NADINE	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	FLATHEAD	DV-94-187R	SETTLED
PETERS DONALD L	FLATHEAD CO. MT	SHERIDAN CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-1226	SETTLED
RAMBO STAN	CASCADE CO. MT	CASCADE CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-152	SETTLED
REDWOLF REDHORSE ET AL	BIG HORN CO. MT	BIG HORN CO. MT	BELUE FIRM	TRIBAL	BIG HORN	94-31	SETTLED
RICKETT RICHARD P	CUSTER CO. MT	ROSEBUD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-1095	SETTLED
RUMMEL GREGORY S	HILL CO. MT	LIBERTY CO. MT	BRICKER FIRM	STATE	YELLOWSTONE	DV-93-201	SETTLED
RAPP STEVE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-306	SETTLED
SCHAUB DANIEL J	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	CASCADE	CDV-94-998	SETTLED
SCHMID RON	PARK CO. MT	PARK CO. MT	KELLER FIRM	USDC	YELLOWSTONE	CV-94-35-BLG-RWA	SETTLED
SCHRANTZ DONALD G	MISSOULA CO. MT	DEER LODGE CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-93-463	SETTLED
SHULUND DALE	HILL CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-877	SETTLED
SONJU BRUCE	TOOLE CO. MT	PHILLIPS CO. MT	COLLINS FIRM	STATE	CASCADE	BDV-93-531	SETTLED
SPRINGFIELD WILLIAM	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-303	SETTLED
SPRINGKLE JONATHAN B	BIG HORN CO. MT	BIG HORN CO. MT	LYNAUGH FIRM	TRIBAL	BIG HORN	94-341	SETTLED
STIFFARM JOE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-1018	SETTLED
TESKE LARRY B	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-045-GF	SETTLED
TESKEY ROBERT P	HILL CO. MT	HILL CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-24-M-CCL	SETTLED
TRETTZ ROBERT M	VALLEY CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-397	SETTLED
TURNER MARVIN	DAWSON CO. MT	MULTIPLE MT/ND	MORRISARD FIRM	USDC	YELLOWSTONE	CV-93-26-BLG-JDS	SETTLED
WANKLEECK TOM	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-256	SETTLED
WICKERS BYRON	HILL CO. MT	YELLOWSTONE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-490	SETTLED
WILSON ROBERT L	DAWSON CO. MT	PRAIRIE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-224-BLG	SETTLED
WABER JULIUS	HILL CO. MT	HILL CO. MT	BRICKER FIRM	STATE	YELLOWSTONE	CV-93-157-BLG-RWA	SETTLED
WAGNER ARCHIE	DEER LODGE CO. MT	NORTH DAKOTA	JOHNSON FIRM	STATE	SILVER BOW	93-C-424	SETTLED
WARREN CLIFF	PHILLIPS CO. MT	BLAINE CO. MT	COLLINS FIRM	STATE	CASCADE	GDV-92-289	SETTLED
WEAVER MOLLENE L	HILL CO. MT	VALLEY CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-252	SETTLED
WHITE LARRY E	VALLEY CO. MT	VALLEY CO. MT	YAEGER FIRM	STATE	CASCADE	CDV-93-303	SETTLED
WHITFORD DAVID	GLACIER CO. MT	MULTIPLE MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-737	SETTLED
WOUNG ETHAN V	FLATHEAD CO. MT	FLATHEAD CO. MT	THUESON FIRM	STATE	CASCADE	ADV-94-943	SETTLED
	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-172-BLG	SETTLED

EXHIBIT
DATE 1-18-95
SB 63

LEGISLATIVE COMMITTEE

COMMITTEE NO. 8

DATE 1-18-95

FILE NO. SB 63

AMENDMENT TO SB 63

1. Amend page 1, line 21: Following "its" strike remainder of sentence and insert "resident agent is located as required in § 35-1-313, or the first judicial district."

LEGISLATIVE COMMITTEE

COMMITTEE NO. 8

DATE 1-18-95

FILE NO. SB 63

SENATE BILL NO. 63

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. # 9

DATE 1-16-95

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN THE DEFENDANT IN AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, M.C.A"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. **Torts.** (1) The Except as provided in Subsection (2), the proper place of trial for a tort action is:

~~(1)~~ (a) the county in which the defendants, or any of them, reside at the commencement of the action; or

~~(2)~~ (b) the county where the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, and if the plaintiff is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation does business."

EXHIBIT NO- 10

DATE 1-18-95

FILE NO. 5663

25-2-113. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

History: En. Sec. 3, Ch. 432, L. 1985.

25-2-114. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

History: En. Sec. 4, Ch. 432, L. 1985.

25-2-115. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

History: En. Sec. 5, Ch. 432, L. 1985.

25-2-116. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

History: En. Sec. 6, Ch. 432, L. 1985.

25-2-117. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

History: En. Sec. 7, Ch. 432, L. 1985.

25-2-118. Residence of defendant. Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action; *resides in*

(2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint; *and the plaintiff ~~resides in~~ the state,*

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 8, Ch. 432, L. 1985; sec. 25-2-108, MCA 1983; redes. 25-2-118 by Code Commissioner, 1985.

orders in chambers,
see Title 25, ch. 20).
place of trial, Rule 1,
ch. 21).

oner, 1985.

oner, 1985.

oner, 1985.

oner, 1985.

ssioner, 1985.

ssioner, 1985.

L. 1867; en. Sec. 25,
Div. Rev. Stat. 1879;
oc. 1895; re-en. Sec.
Sec. 395; re-en. Sec.

oner, 1985.

e) of a civil action

jurisdictional.
ce of trial is not
any court of this

er Courts, 3-7-224;

courts, Title 3, ch. 11,

all Claims Courts,

ersons, Rule 4B,
ch. 20).

course that the State has acquired jurisdiction over the defendant.)

(2) By reason of the Privileges-and-Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art

4, § 2. Therefore Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers Liability Act arising out of conduct outside that State and discriminatorily deny access to its

*[4] courts to a non-resident who is a citizen of another State. But if a State chooses to "[prefer] residents in access to often over-crowded courts" and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers Liability Act. *Douglas v. New York, N. H. & H. R. Co.* 279 US 377, 387, 73 L ed 747, 751, 49 S Ct 355.

Whether a State makes such a choice is, like its acceptance or rejection of the doctrine of forum non conveniens, a question of State law not open to review here.

But, (3), a State may reject the doctrine of forum non conveniens in suits under the Federal Employers Liability Act because it may deem itself compelled by federal law to reject it. Giving the opinion of the Supreme Court of Missouri in these cases a scope most favorable to reliance on a non-federal ground, doubt still remains whether that Court did not deem itself bound to deny the motions for dismissal on the score of forum non conveniens by its view of the demands of our decisions in *Baltimore & Ohio R. Co. v. Kepner*, 314 US 44, 86 L ed 28, 62 S Ct 6, 136 ALR 1222, and *Miles v. Illinois Cent. R. Co.* 315 US 698, 86 L ed 1129, 62 S Ct 827, 146 ALR 1104.

But neither of these cases limited the power of a State to deny access

to its courts to persons seeking recovery under the Federal Employers Liability Act if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially, see *McKnett v. St. Louis & S. F. R. Co.* 292 US 230, 78 L ed 1227, 54 S Ct 690, so as not to involve a discrimination against Employers Liability Act suits and not to offend against the Privileges-and-Immunities Clause of the Constitution. No such restriction is imposed upon the

States merely because the Employers Liability Act empowers their courts to entertain suits arising under it. There was nothing in that Act even prior to § 1404 (a) of the 1948 revision

*[5] of the Judicial Code, title 28, USC,¹ which purported "to force a duty" upon the State courts to entertain or retain Federal Employers Liability litigation "against an otherwise valid excuse." *Douglas v. New York, N. H. & H. R. Co.* supra (279 US at 388, 73 L ed 752, 49 S Ct 355).

Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits according to its own local law. To that end we

Headnote 4 vacate the judgment of the Supreme Court of Missouri and remand the cause to that Court for further proceedings not inconsistent with this opinion. *State Tax Com. v. Van Cott*, 306 US 511, 83 L ed 950, 59 S Ct 605; *Minnesota v. National Tea Co.* 309 US 551, 84 L ed 920, 60 S Ct 676; *Herb v. Pitcairn*, 324 US 117, 89 L ed 789, 65 S Ct 459, 325 US 77, 89 L ed 1483, 65 S Ct 954.

Judgment vacated.

Mr. Justice Jackson, concurring.

¹ Section 1404(a) reads, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other dis-
95 L ed 8

trict or division where it might have been brought." See *Ex parte Collett*, 337 US 55, 93 L ed 1207, 69 S Ct 944, 959, 10 ALR2d 921.

45 USCS § 55, n 51

RAILROADS

Purvis v Pennsylvania R. Co. (1950, DC Pa) 96 F Supp 698.

Question of validity of release executed by employee should be permitted to go to jury; withdrawal of this question from jury constitutes reversible error. Pacific E. R. Co. v Dewey (1949) 95 Cal App 2d 69, 212 P2d 255.

52. Summary judgment

Defendant was not entitled to summary judgment based on defense of accord and satisfaction where allegations of complaint set forth serious injuries sustained by plaintiff, and stated that

consideration for release executed by plaintiff was \$100 which claim agent said was wages. Kiloski v Pennsylvania R. Co. (1951, DC Del) 96 F Supp 321.

Issue as to material fact precluding summary judgment for railroad is raised by evidence that at time that plaintiff entered into settlement with railroad and signed release, which settlement almost exclusively represented plaintiff's wages for time lost from employment, neither plaintiff nor railroad claims agent contemplated that plaintiff had suffered permanent and disabling injury. Holmes v Missouri K. T. R. Co. (1978, Okla) 574 P2d 297.

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this act [45 USCS §§ 51 et seq.] unless commenced within three years from the day the cause of action accrued.

Under this act [45 USCS §§ 51 et seq.] an action may be brought in a circuit [district] court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act [45 USCS §§ 51 et seq.] shall be concurrent with that of the courts of the several States.

(Apr. 22, 1908, ch 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch 143, § 1, 36 Stat. 291; Aug. 11, 1939, ch 685, § 2, 53 Stat. 1404; June 25, 1948, ch 646, § 18, 62 Stat. 989.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word, "district" is inserted on authority of Act Mar. 3, 1911, ch 231, §§ 289, 291, 36 Stat. 1167, which appears as 28 USCS §§ 430 and 430a which transferred the powers and duties of the circuit courts to the district courts.

Amendments:

1910. Act Apr. 5, 1910 added "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

1939. Act Aug. 11, 1939, substituted "three years" for "two years".

1948. Act
Act) delete
state court
the United

Venue of dist
Change of ven
State court ac

Am Jur:
9A Am Ju
20 Am Ju
32 Am Ju
§§ 58, 60,
32 Am Ju
36 Am Ju

Am Jur Tr
Selecting t
Solving Sta
Litigation
Trials, p. 3

Am Jur Pr
Liability U
119.

Forms:
9 Federal
27:15, 27:
14 Federa
15 Federa
Time Lim
8 Am Ju
nastion A
11 Am J
Compens:

Annotatic
Tolling
Liability
Equitable
Ed 2d 18
State's p
ple unde
Local lav
ers' Liab

Montana Trial Lawyers ASSOCIATION

Directors:
Wade Dahood
Director Emeritus
John D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

Officers:
Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #11
DATE 1-18-95
BILL NO. SB-63

January 18, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: Senate Bill 63

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 63, which benefit out-of-state corporations at the expense of Montana citizens.

Background. Burlington Northern Railroad has repeatedly challenged Montana's current venue statute in both the Montana and U.S. supreme courts. BN has never succeeded. Now the Montana Supreme Court is preparing to issue yet another opinion in a legal challenge by BN.

• In 1991, then-Attorney General Marc Racicot filed a brief with the U.S. Supreme Court successfully defending Montana's current venue statute against the latest legal attack from BN. He was joined in his brief by the states of Wyoming, North Dakota, South Dakota, New Mexico, and Texas. Here's what he said:

"Montana law evinces a legitimate and real reason for permitting broader venue against foreign corporations than against domestic corporations." Amicus brief in *BN v. Ford*, No. 91-779, page 14.

"In the first instance, subjecting a foreign corporation to suit in a county in which it does business promotes the legitimate State policy to make its courts accessible to injured persons *and to hold accountable a corporation which avails*

itself of the privilege of doing business in the State." Amicus brief in *BN v. Ford*, No. 91-779, page 13.

". . . the state is not able to give its citizens the same assurance of effective redress for injuries committed by foreign corporations as it can in the case of domestic corporations." Amicus brief in *BN v. Ford*, No. 91-779, page 13, citing another U.S. Supreme Court decision.

". . . a foreign corporation need not have a principal place of business within the State of Montana and, if it does have one, need not identify it in any document filed with the Secretary of State. It is reasonable to expect, therefore, that a plaintiff seeking to choose a venue in which to file suit against the foreign corporation would have difficulty determining where, if at all, the corporation maintains its principal offices within the State. Moreover, since the corporation may select any of its places of business as its registered office, it may in fact have its principal offices elsewhere than the county housing its registered office." Amicus brief in *BN v. Ford*, No. 91-779, page 15.

- The U.S. Constitution prohibits states from discriminating against the *citizens* of another state. States can, however, reasonably discriminate against the *residents* of other states.

- Federal law, not Montana law, makes BN virtually the *only* out-of-state corporation which must defend itself in a state court selected by the plaintiff. Other out-of-state corporations. Other out-of-state corporations can already escape any lawsuit filed in state court simply by moving that lawsuit into federal court--and they almost always do.

- BN complains often about "out-of-state railroaders" who file lawsuits in Montana courts, especially in Great Falls and Billings. Some of those railroaders, however, are actually Montana *citizens* who happen, at the time of an accident, to be *residents* of surrounding states. In fact, BN itself can control the residence of its workers and frequently transfers Montana workers to other states. Other Montana citizens who commonly must surrender their residence (at least temporarily) in a Montana county include construction workers, students who attend college out of state, and elderly Montanans who enter nursing homes.

- Many so-called "out-of-state railroaders" actually obtain most or all of their medical treatment in one of Montana's regional health-care centers such as Billings, Great Falls, or Missoula.

- Faced with constitutional realities; intent on shielding itself from a handful of its own out-of-state employees; and attempting to attract political support from other out-of-state corporations, BN has drafted a bill which seriously disadvantages more than

800,000 Montana citizens.

Senate Bill 63. Although this bill technically amends Sec. 25-2-122, MCA (which actually provides fewer options for so-called "forum shopping" than BN's amendment), SB 63 really operates to amend Sec. 25-2-118, MCA.

- SB 63 dramatically impacts all Montana citizens who must resort to court, *not just individuals*. Small Montana businesses, too, would be severely disadvantaged whenever a large out-of-state corporation forced them into court over such varied wrongful business conduct as franchise disputes, debt-collection methods, and even damage to the good names and reputations of Montana businesses. In fact, the State of Montana itself would suffer the same disadvantages.

- SB 63 dramatically impacts many legal proceedings other than personal-injury lawsuits. The bill restricts other types of legal challenges against out-of-state corporations, including:

- (1) insurance companies which abuse their policyholders;
- (2) out-of-state manufacturers whose defective vehicles or machines or chemicals injure Montana citizens or damage their property; and
- (3) out-of-state banks which defraud their customers.

- Most obviously, SB 63 would force many Montana individuals and businesses to fight out-of-state corporations in their own backyard, in the "company towns" where those corporate giants exert the most influence. Not only BN but also powerful out-of-state mining companies, out-of-state timber companies, out-of-state oil companies, out-of-state banks, out-of-state construction companies, and the like would thus benefit from SB 63.

- Less obvious, perhaps, but equally prejudicial, SB 63 would force many more Montana individuals and businesses to fight out-of-state corporations in courts with less, not more, connection to the lawsuit. By injecting an artificial "county line" mentality in Montana statutes, SB 63 ignores the economic and geographical realities of Montana life, especially *rural* Montana life. For example:

- (1) In Lewis and Clark County, SB 63 would force an Augusta business or individual to fight any legal battle in a faraway Helena court rather than in Great Falls or Choteau, which are much closer in both distance and economic ties.

- (2) In Jefferson County, SB 63 would force a Whitehall business or individual to fight any legal battle in Boulder rather than Butte, which is often much more accessible and relevant.

- (3) In Big Horn County, SB 63 would force a Pryor business or individual to fight any legal battle in Hardin rather than in Billings, which is closer, more accessible, and often more relevant.

- (4) In eastern Roosevelt County, SB 63 would force a Froid or Culbertson

business or individual to fight any legal battle in Wolf Point rather than in Sidney or Plentywood.

(5) In Carter County, SB 63 would force a Hammond business or individual to fight any legal battle in Ekalaka rather than Broadus, which is both closer and more accessible.

Proposed amendment. If this committee finds it necessary to prohibit so-called "forum shopping" by non-residents, and if this committee finds it necessary to protect out-of-state corporations from being sued in Montana counties which have no connection to the lawsuit, then you can easily amend SB 63 to avoid the worst injustices of the bill. MTLA suggests the following amendment at line 21 of SB 63:

"(c) ~~the~~ any county in which the corporation ~~has its principal place of~~ does business."

This amendment would protect BN and all other out-of-state corporations from having to defend themselves in counties where they do not exercise the privilege of doing business. At the same time, this amendment would preserve the precious right of generations of Montana individuals and businesses to hold out-of-state corporations accountable wherever they do business.

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's opposition to Senate Bill 63.

Respectfully,

A handwritten signature in cursive script that reads "Russell B. Hill". The signature is written in dark ink and is positioned above the typed name.

Russell B. Hill
Executive Director

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. # 12

DATE 1-12-85

FILE NO. SB63

Mr. Chairman, Members of the Committee, I'm Fran Marceau, United Transportation Union State Legislative Director, and I ask you to oppose Senate Bill 63.

Montana has a long and proud history of fostering the rights of the common man and of railroad workers in particular. Senate Bill 63 would blemish that history by changing state venue laws to benefit foreign, non-resident corporations, at the expense of average Montana citizens and workers.

Throughout this century, through an unbroken chain of decisions of the Montana Supreme Court, it has been recognized that a foreign corporation has no Montana residence for venue purposes, and can be sued in any county selected by a citizen of this state. In 1985, this was formally codified by the Montana legislature. This law has served the citizens of this state well, and good reason does not exist to change it.

Montana's venue law, in fact, is one of the few venue statutes to have been examined by the United States Supreme Court in recent years. The Supreme Court found it to be fundamentally fair and reasonable, and held that it did not impose undue hardship on foreign corporations. In that 1992 decision, the Supreme Court recognized that inconvenience to a foreign corporation will not significantly vary if that foreign corporation has to defend in Billings as opposed to Havre, for example, and held that a non-resident corporation's interest in convenience is too slight to outweigh the interest of an injured citizen in suing in the forum of his choice.

Indisputably, the right to selection of forum is a critically important one to injured citizens and workers in this state. Any Montana citizen who is injured by the negligence or recklessness of a large non-resident corporation already has an uphill battle. The private citizen may arm himself only with the services of an attorney, while the corporation can bring to bear vast sums of money and a large army of lawyers to oppose him. To deny injured Montana citizens the forum of their choice is to afford one more tactical advantage to these non-resident, foreign corporations.

There are, of course, good and proper reasons why an injured citizen of this state might want to sue in a county other than that of his residence, where the accident occurred, or where the corporation claims to have its principal place of business. Litigation will frequently center where an injured plaintiff

receives his basic medical treatment; in many instances this will necessarily occur in a major metropolitan location, even if the plaintiff resides, and the accident took place, outstate. Trial will frequently center upon the testimony of these medical experts. At present, Montana citizens have the right to take this into account when determining where to bring suit. Under Senate Bill 63, this right would be taken away from them. The cost of bringing medical doctors to a distant trial for an injured individual would be a real hardship and would often result in loss of live medical testimony for injured residents of this state.

Senate Bill 63 would also afford non-resident, foreign corporations an unfair advantage when the citizens of this state are injured as a result of so-called "toxic torts." In recent years, for example, there has been a significant amount of litigation on behalf of injured railroad workers who have suffered asbestosis and related injuries as a result of their exposure to asbestos dust while working for the railroad. These workers reside in different counties across the state, and were similarly injured in different counties throughout Montana. Under the present venue law, it was possible to consolidate the bulk of these cases in a single forum because of the right of citizens of this state to sue non-resident corporations in any county of their choosing. This resulted in major savings to the taxpayers of this state. If this had not been possible, smaller district courts in Montana would have been literally overwhelmed through repetitive, complicated, time consuming litigation. Such would be the result of Senate Bill 63.

It cannot be emphasized enough that Senate Bill 63 would result in a major wasting of judicial resources in this state. At present, the venue law regarding non-resident corporations is clear and is not the subject of legal battles. Under this bill, it can be expected that foreign corporations will attempt to claim smaller, rural counties as their principal place of business, under the belief that such counties will return smaller verdicts to the injured citizens and workers of this state. Repeated court battles over what county constitutes a foreign corporation's true principal place of business can be expected, with unnecessary cost to taxpayers and unnecessary legal expense to this state's injured citizens.

Moreover, should a foreign corporation claim a small, outstate county as its principal place of business, the limited judicial resources of that county could be completely overwhelmed as a result of the claimed presence of that single company, even though that corporation does significant business throughout the entire state.

Senate Bill 63 would also significantly impede the rights of railroad workers in this state. Injured railroad workers are not covered by state workmans' compensation, but by a Federal law known as the Federal Employers' Liability Act. Under the Act, railroad workers can sue a railroad in any Federal district where the railroad does business or maintains a line of rail. At

present, the Montana court system affords injured Montana railroad workers this same fundamental right. The United States Supreme Court has recognized that the right of an injured railroad worker to select his legal forum is a critical one which must be protected. Senate Bill 63 would, in a very real sense, eliminate this right in the Montana courts, to the detriment of all railroad workers who live here.

In our society, the right to seek legal redress in the courts is a fundamental one and one of the highest and most essential privileges of citizenship. Senate Bill 63 seeks to fix something which is not broken, and would unnecessarily erode the practical legal rights of the citizens of Montana, and burden the courts of this state.

EXHIBIT 12
DATE 1-18-95
SB 63

BEFORE THE MONTANA SENATE
JUDICIARY COMMITTEE
TESTIMONY WITH RESPECT TO
SENATE BILL 63

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 1-18-95
BILL NO. SB63

Helena, Montana
January 18, 1995

My name is David Ditzel, I represent the Brotherhood of Locomotive Engineers here in Montana, our members are employed on Burlington Northern and Montana Rail Link railroads.

Rail workers do not participate in any work comp system, and under Federal law when they are injured on-the-job, they must seek redress in the courts for their injuries. Presently, workers may file their claim in any of the various State District courts or Federal courts here in Montana. Additionally, workers who have had injuries while working on the job outside the State may file claims in the State of Montana regardless whether they are residents of the State of Montana.

The legislation before you today deals with this matter and the so-called venue issue. A bill similar to the one before you has been introduced in the last three sessions at the behest of Burlington Northern and has been rejected by the legislature each time. Burlington Northern has also been to the US Supreme Court over the present standing Montana venue law.

It is obvious that BN wants a change made in the venue

law, and in fact, in this version of the bill before you today, BN has asked for and gotten language that uses a "sledge hammer" approach, which when applied in law would affect many more people than the limited number of out-of-state rail workers who file tort claims that BN wishes to restrict.

Indeed, the language contained in the present bill would restrict all Montanans in their ability to file tort claims, and more specifically it would affect our members in the State. For example, if a railworker who lived in Glendive, and was injured in Glendive, but due to the serious extent of his injuries had most if not all of his medical treatment in Billings were to then file a tort claim, he would have to file in Glendive and bear the extra expense of having the expert witnesses travel out of Billings to Glendive to appear before the court.

We have members as do the Maintenance of Way who routinely take temporary work assignments outside the State of Montana--some as far away as Texas to work for BN. Should they be hurt in say Texas, this bill would limit their ability to get equitable access to the courts.

In BN's attempt to reduce or eliminate claims from non-resident out of state rail workers, it will not work a hardship on in-state rail workers who should have not have to see their rights restricted.

Senate Bill 63 - D. B. Ditzel Testimony
page 3

EXHIBIT 13
DATE 1-18-95
SB 63

- Our preference would be to see this bill killed at best,
and if not, certainly amended to maintain the rights of in-state
rail workers, and current residents who might be temporarily
working out of state at the time of their injury. .



MONTANA STATE SENATE

Senator Steve Doherty
Senate Minority Whip
Senate District 24
1531 3rd Ave SW
Great Falls, MT 59404

A handwritten signature in black ink that reads "Steve Doherty".

It is said that Senate Bill 63 is against the public good, that it benefits only the Burlington Northern Railroad Company and that it hurts Montanans. Because of these claims, I have decided to set forth my position on this bill in writing.

As I read the pertinent statutes, they currently allow Montanans to file lawsuits against non-resident corporations in any county of the state. According to the uncontradicted testimony we heard, this legislature passed this venue law close to a century ago to assure that Montanans had a chance for a fair trial when they were injured by an out-of-state corporation. Some of our communities were then dominated by out-of-state interests. If the injured person had to sue the corporation in a company town, he or she had a difficult time obtaining a fair trial. The jurors, fearing retribution by the corporation, might vote against the injured citizen, even though he or she was right. Therefore, to prevent this from occurring, we have always allowed Montanans to sue out-of-state corporations in any county of the state, rather than limiting them to communities where the corporation had great power.

Senate Bill No. 63 would change this. Rather than allowing Montanans to sue a non-resident corporation in any county of the state, it would funnel most lawsuits against the

corporation into the communities where the corporation had its greatest power. At the beginning of the hearing on this bill, Senator Crippen stated the change was necessary because out-of-state plaintiffs were suing out-of-state corporations in Montana courts, even though the events leading to the lawsuit occurred outside the state. He stated that by limiting the venues where out-of-state corporations could be sued, these out-of-staters would be deterred from bringing lawsuits in Montana courts.

There seems to be no dispute that Senate Bill No. 63 was drafted by the Burlington Northern Railroad. BN presented evidence that it had been sued in Montana courts many times by people who were not residents of Montana and who had been injured outside of the state. The lawsuits they listed were all by injured railroad workers, who have a federally created right to sue the railroad in any state where it is "doing business." The undisputed evidence is that the Burlington Northern is the only out-of-state corporation facing this situation. No other corporations testified they were subject to this special law that allows out-of-staters to sue in Montana courts. Thus, Senate Bill No. 63 does appear to be specifically designed to directly benefit Burlington Northern.

Neither the opponents nor the proponents seriously doubted that Senate Bill No. 63 would accomplish its stated objective. It probably would discourage out-of-state injured railroad workers from suing Burlington Northern in our state courts. As such, to some degree it would diminish the case loads imposed upon our courts and the associated financial costs.

EXHIBIT 14
DATE 1-18-95
SB 63

The problem with Senate Bill No. 63 is that, as written, it also would harm Montanans. A lot of Montanans, of course, work for the Burlington Northern Railroad too. When they are injured, they currently have a right to file their lawsuit for damages against the railroad in any county of the state. Senate Bill No. 63, however, would funnel most of their lawsuits into communities where Burlington Northern has considerable influence and power--primarily Hill County, where Burlington Northern has its principal place of business. Thus Senate Bill No. 63 would undo the protection this legislature gave to Montana citizens many years ago so they would not have to face an unfair trial in a company town where the jury would be afraid of the corporation.

Because of this, I must oppose Senate Bill No. 63. I cannot in good conscience vote for a bill that hurts Montanans.

This bill, which benefits only the Burlington Northern, and hurts many Montanans is against the public interest. One had only to look at the people testifying at the hearing to recognize this. Virtually all of the people who spoke on behalf of this bill represented out-of-state corporations and interests. Virtually every person who spoke against the bill was either a Montana citizen or a citizen organization, speaking on behalf of Montanans.

If, however, this committee believes that our venue laws have to be modified because of overcrowding due to suits by non-residents, I would support a modified version of Senate Bill No. 63. Specifically, Senate Bill No. 63 currently limits a plaintiff's venue when he files a suit against a non-resident corporation. If the committee would entertain an amendment, which would

make this limitation apply only when the plaintiff, also, is a non-resident, then the modified would have my reluctant support. At least then, the bill would not hurt Montana residents.

Such a modification would be constitutional. We have been presented with legal briefs showing that both the United States Supreme Court and the Montana Supreme Court have recognized that a state has the power to do this. There have been no legal authorities presented to us to the contrary.

One of the proponents of the bill, a representative of Noranda Mining, a non-resident corporation, gave a second purported basis for passing Senate Bill No. 63. Specifically, he stated that a non-resident corporation should not be subject to a lawsuit away from the county where it has its principal place of business in the state. I do not see any basis for his position. If an out-of-state corporation can place a business in Montana, it certainly can reach the courthouses in Montana as well. At any rate, every non-resident person or corporation has a right to have a lawsuit removed to Federal Court, if the suit is filed in a Montana state court. The single exception is the Burlington Northern Railroad.

Nevertheless, if the committee feels that Noranda has a valid point, it, too, can be addressed with a simple modification of the bill--without seriously damaging the rights of Montanans. The modification would simply allow the lawsuit against the non-resident corporation to be filed in any county where the corporation is "doing business." "Doing business" can be defined as any county where the corporation has an office, real property, and/or pays taxes.

EXHIBIT 14
DATE 1-18-95
SB63

In this way, the corporation would not be subject to a suit in a county far from its home base simply because of an isolated business transaction. I do not recommend this modification. Some Montanans would still be affected. But at least it will harm less Montana citizens than what is being suggested by the unabridged version of Senate Bill No. 63.

In summary, Senate Bill No. 63 should be opposed. It is a bill designed solely to benefit the Burlington Northern Railroad. It will force both Montana residents and non-residents to file claims against the Burlington Northern primarily in a county where the railroad has immense influence.

My obligation is to the people of Montana--not non-resident corporations. Therefore, I cannot possibly support this bill.

COMMENTS ON SENATE BILL 63

By John C. Hoyt
January 13, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #15
DATE 1-18-95
BILL NO. SB 63

I am the president of the Montana Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is an organization comprised equally of attorneys representing plaintiffs and defendants in controversies which may be resolved by a trial by jury.

ABOTA is dedicated to the preservation of our jury system. In one guise or another, our jury system is under attack everywhere by special interests who don't want people they can't control to decide a controversy on a level playing field.

ABOTA is comprised of lawyers with a great deal of legal and trial experience. That is a requisite to become a member and the composition of ABOTA is carefully maintained in balance.

Senate Bill 63 is a crude disguise on the part of the Burlington Northern Railroad Company to thwart the will of the Congress of the United States which passed the Federal Employers Liability Act nearly 90 years ago. This act requires an employee of a railroad who is injured while working for the railroad to bring a lawsuit directly against his employer. Under the Federal Act, a BN employee injured because of the fault of the BN may bring his claim for damages in any of the federal courts in

Montana and because the BN is an out-of-state corporation, he may bring his claim in any state court as well. This is what the BN wants the Montana Legislature to change.

The Federal Employers Liability Act (FELA) was designed by the Congress of the United States to make it easier for an injured railroad worker to recover damages for injuries he may sustain in the course of his employment if the railroad is at fault. The amount of the recovery is reduced by the amount of the negligence of the employee himself.

There is no workers' compensation coverage for an injured railroad worker. His only remedy is to file his suit if he cannot effectuate a settlement. When a settlement cannot be reached, then his case must be tried to a jury. The wisdom involved in permitting the injured employee to choose his place of trial is to provide the employee with an opportunity to choose a forum where he may get a fair trial before a jury, rather than permitting the railroad to dictate the place of trial as is the BN's purpose behind this bill.

The BN has railroad operations in many rural Montana counties where it knows its employees may be injured. It claims its principal place of

EXHIBIT 15
DATE 1-18-95
SB 63

Comments on Senate Bill 63
January 16, 1995
Page 3

business is at Havre. In all injury cases, both treating doctors and specialists in the medical profession must testify in order to properly advise a jury of the extent of the injuries sustained by the railroad worker in the course of his employment with the BN. The specialists necessary to provide a fair trial before a jury are located in the major cities in Montana. Usually it is a virtual impossibility to get specialists in the field of medicine or otherwise to travel to the small rural county seats in Montana and when they will consent to do so, the charges are astronomical. This often prevents an injured Montana railroad worker from even getting to trial in many instances.

It may be even more onerous to compel a Montana resident who is injured while working for the BN to have to bring his claim for damages against the railroad in Havre where the BN's presence is overwhelming and many people live in fear of offending the BN. How then could an injured railroad worker expect to obtain a fair trial in Havre?

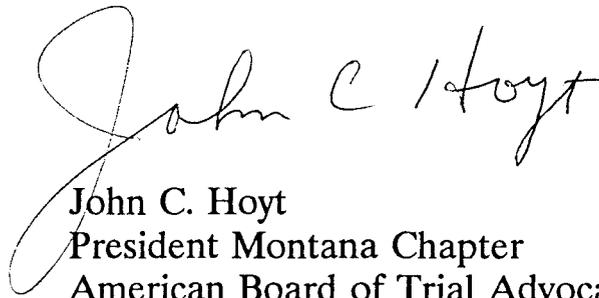
The sole premise of ABOTA is the preservation of a fair and equitable jury system. Contrary to the claims of many special interests an impartial jury is the only assurance of a true workable civil justice system

Comments on Senate Bill 63
January 16, 1995
Page 4

and jurors should be drawn from a panel of unbiased citizens and trials held where the evidence can be presented.

In the case of injured Montana railroad workers, it is essential that Senate Bill 63 not be enacted into law.

Respectfully submitted,



John C. Hoyt
President Montana Chapter
American Board of Trial Advocates

JCH:jld



Montana State AFL-CIO

SB
63
Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

January 20, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #16
DATE 1-18-95
SB NO. 63

Senator Bruce Crippen, Chair
Senate Judiciary committee
Room 325, State Capitol
Helena, MT 59620

Dear Senator Crippen:

Given the brevity of the January 18 hearing on Senate Bill 63 before your committee (limits on testimony afforded only enough time to offer the name of our organization and state our opposition to the measure), I thought I'd take this opportunity to express in more detail our organization's concerns about this legislation.

First, we want to make it perfectly clear that we believe that this bill was crafted for and introduced for the primary benefit of the Burlington Northern Railroad. Workers have faced repeated attempts by this large out-of-state corporation to restrict their rights to selection of venue in cases against this giant. Those attacks on venue have not only occurred in the Legislature, but also in our state's and our nation's highest courts ... and all have been soundly, and repeatedly, rejected.

We believe that there has been good reason to reject the BN's efforts to limit venue selection. Clearly, the courts have determined that BN does not have a legal leg to stand on. And, just as clearly, the Montana Legislature has consistently determined that granting the BN this privilege would be to the disadvantage of Montana citizens.

Now, following a political shakeup to which the BN contributed and believes to be in its advantage, this huge out-of-state corporation is seeking, once again, to gain advantage over Montanans through the legislative process. This time, however, the BN has pulled together an impressive list of allies who also seek to gain advantage over average Montanans. Your record of proponents will show an array of individuals representing large, out-of-state corporations involved in mining, timber, construction, oil, and corporate defense attorneys. In addition, the Montana Chamber of Commerce offered its support on behalf of these corporate giants, we believe, to the detriment of Montana's main street businesses.

As you heard from the bill's opponents, SB 63 seeks to limit venue in tort actions against out-of-state corporations to three choices: (1) the county in which the tort was committed; (2) the county in which the plaintiff resides; or (3) the county in which the corporation has its principal place of business. Although a number of amendments were offered to change, or perhaps just clarify, these limitations, we don't believe that any of them fully address our concerns.

The committee should note that this legislation doesn't just address the concerns of the Burlington Northern. Even though Federal law allows non-rail corporations to move any case filed against them from state to federal courts, there may be advantage to corporations having such actions heard in state courts, instead. That would be especially true if said corporations were able to limit venue to choices which reflect counties in which said corporations have significant economic interests. As you heard from the opponents, impartiality of jurors considering guilt and levels of damages certainly becomes an issue when the community in which said jurors live is substantially, economically dependent upon the operations of the defendant corporation. We agree.

Senator Bruce Crippen
Page Two
January 20, 1995

Taking this issue out of the realm of the BN, consider it's potential impacts on Montana corporations, main street businesses, farmers and ranchers and non-rail working men and women. SB 63 also limits their venue selection in tort actions against out of state corporations. What about the rancher who has a claim against an out-of-state corporate cattle buyer? There may be reasons, in rural Montana, why this rancher would like to file his case in a court not located in his county. They might include access to counsel, distance from the court location, personal disputes with local judges or community relations, availability of witnesses, etc. What if the claim involves product liability tort against an out-of-state producer of veterinary supplies?

This bill also affects Montana businesses in much the same way. Claims for non-payment of bills, defective products, non-delivery of goods, insurance fraud, misrepresentation of products purchased, etc., etc., etc., would be limited as to venue.

For individuals, and government, such claims could include non-payment of wages, workers' compensation and unemployment compensation taxes, failure to complete contracted services, fraudulent misrepresentations, and much more. SB 63's venue limitations could make things very inconvenient in Montana's more rural counties, especially where we find out-of-state contractors crossing our borders to build homes, businesses, schools, roads, public facilities, and more. Imagine, if you will, the independent logger who files suit against an out-of-state timber giant in the county where the economic stability of the community itself depends upon the whims of the corporation? What about the miner, rancher, landowner, or other affected individual who has reason to file a tort against the large out-of-state corporate mining company (many of which are actually foreign owned corporations)?

Isn't it the responsibility of the Montana Legislature to stand up for the rights of Montana citizens, rather than those of these huge out-of-state corporations? We believe so.

It was clear from the hearing that this issue is one of Montana citizens, main street businesses, workers and others against the interests of large out-of-state corporations. Although some may attempt to portray SB 63 as simply a fight between corporate and plaintiff attorneys ... nothing could be further from the truth. The issue is how this Montana legislature will respond when asked to choose between protecting the rights of its citizens versus the greed of large out-of-state corporations? We hope you'll decide with the interests of Montanans and reject Senate Bill 63.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don Judge", with a stylized flourish at the end.

Don Judge
Executive Secretary

cc: All members of the Senate Judiciary Committee

DATE 1-18-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John Albe	MT. Defense Trial Lawyers	63	X	
Jim Jensen	MEIC	63		X
Russell B Hill	MTZA	563		✓
Erik Thven	Self	563		X
John Holmes	SELF			X
Steve Sapp	"			X
Mike Lamb	"			X
Don Judge	MT STATE AFL-CIO	563		X
Don Allen	MT. Local Product Assoc	563	✓	
Jerry Driscoll	mt State Building trades	563		✓
Frank Marceau	UTU	563		✓
Ed Caplis	MSCA	563		✓
Melosa Luse	HERE	563		✓
Alle Kungorner	MT Def Trial Lawyers	563		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1 - 18 - 95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 63, SB 113, SB 123

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David Ditzel	Bro. of Locomotive Engrs	63		X
Jeff Sherlock	District Judges	113		
Les Beary	BNRR	63	X	
Dean Roberts	Dept of Justice	113	X	
Zander Blewett	Self	63		X
Kelly Erickson	Self	63		X
JIM TUTWILER	MT CHAMBER	63	X	
Russ Ritter	Kasler Holding	63	X	
Craig Reed	MHP	113		
Jacqueline Denmark	Am. En. Assoc	123		X
Jacqueline Denmark	Am. En. Assoc.	63	X	
John Spauld	ST Auditor	63		X
GARY LANGLEY	MONTANA MINING ASSN.	63	X	
MARK PETERSMEIJER	NORANDA MINERALS	63	X	

John Fitzpatrick Pegasus Gold Corp 63 X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-18-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: ~~SB 63~~ SB 63
SB 113, SB 123

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John Alke	McCabe Refinance Trust Lawyers	123		X
Russell B Hill	MTLA	S123	✓	
JEROME ANDERSON	SHOLL WESTON & P INC	S63	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY