IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 39A

WCC No. 9905-8227

STATE COMPENSATION INSURANCE FUND

Petitioner/Insurer

HARVEY VAN DYKEN & SONS

Employer

vs.

MARTIN J. DOUMA

Respondent/Claimant.

SUPPLEMENT TO ORDER DISMISSING PETITION

¶1 The day following the entry of the Court's Order Dismissing Petition for Failure to Mediate, the Court received a Request to Withdraw Memorandum. The request was with respect to a memorandum filed by Mr. William J. Mattix on behalf of the State Compensation Insurance Fund (State Fund). Mr. Mattix noted that he had overlooked, as did the Court, a memorandum already filed on behalf of the State Fund by Mr. Thomas E. Martello. Since the request is belated, it is **denied**. However, the Court has reviewed Mr. Martello's memorandum and finds it appropriate to address his arguments in opposition to dismissal.

¶2 Mr. Martello's memorandum advances three additional basis in support of the State Fund's contention that mediation is not required in this case. First, he points out that in 1997 the Legislature amended section 39-71-414, MCA, to add a specific requirement that subrogation disputes be mediated. He cites the general rule that in amending a statute the legislature ordinarily intends to make a change in existing law. *Tuttle v. Morrison-Knudsen Co., Inc.,* 177 Mont. 166, 172, 580 P.2d 1379, 1382 (1978). The rule, however, is applicable only if there is ambiguity. In this case, there was no ambiguity: The 1993 amendment revoking the jurisdiction of the Department of Labor and Industry (Department) to hear subrogation cases vested the Court with jurisdiction under the general grant of jurisdiction to adjudicate disputes concerning benefits, thereby subjecting subrogation disputes to the mediation requirements applicable to the Court.

¶3 The State Fund's argument that subrogation does not concern benefits is unpersuasive. Subrogation entitles the insurer to reduce future benefits or recoup benefits already paid.

¶4 The State Fund's contention that, at the time of claimant's injury, the Department's administrative rules exempted subrogation disputes from mediation is similarly unpersuasive. As stated in the Court's original Order, an administrative regulation cannot nullify the plain requirement of a statute.

¶5 The Order Dismissing Petition for Failure to Mediate is **reaffirmed**.

DATED in Helena, Montana, this 13th day of July, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. William J. Mattix
Mr. Michael D. Cok