**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2000 MTWCC 39A**

**WCC No. 9901-8140**

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**EMPLOYMENT RELATIONS DIVISION**

**UNINSURED EMPLOYERS' FUND**

**Appellant**

**vs.**

**TOTAL MECHANICAL HEATING & AIR CONDITIONING, et al.**

**Respondents/Cross Appellants**

**and**

**HUMAN DYNAMICS CORPORATION**

**and**

**HRC/HRC ARMCO, INCORPORATED**

**Respondents.**

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ORDER VACATING FINAL CERTIFICATION AND AMENDING DECISION AND ORDER ON APPEAL

**Summary:** Following decision on appeal, parties contacted the Court to request delay in certification of the case for appeal to the Supreme Court and to establish dates for further proceedings in the Workers' Compensation Court.

**Held:** Orders entered to facilitate orderly handling of issues remaining in lower court.

¶1 On June 26, 2000, this Court entered its Decision and Order on Appeal Reversing a Department Decision Finding That Various Client Companies of Human Dynamics Corporation and Hrc/hrc Armco Were Insured. 2000 Mtwcc 39. As a Part of That Decision, I Provided the Parties with an Opportunity to Recalculate Penalties Based upon Actual Employment Records. ¶ 86 and 87. The Order Required the Uef to Notify the Court Within 10 Days as to Whether it Objected to the Recalculation. If it Did Not, Then the Client Companies Were Given 30 Days to Provide Employee Records to the Uef. The Uef Then Had 30 Days to Recalculate the Penalties and the Client Companies Had 20 Days Thereafter to Object.

¶2 Following My Decision the Uef Filed a Notice Stating it Did Not Object to Recalculating the Penalty. Appellant's Notice of Non-objection to Order and Request for Conditions in Event of Appeal (Docketed June 29, 2000). On its Part, Hdc and the Client Companies Moved for Reconsideration of the Merits of the Court's Decision. Respondent's Combined Motion for Reconsideration, Petition for New Trial, Motion to Reopen the Evidence, or Request for Amendment to the Decision.

¶3 on July 21, 2000, Mr. Utick, Attorney for Respondents, Requested a Telephone Conference with the Court and a Conference Call Was Thereafter Held with Myself, Mr. Utick and Mr. Mcgregor Participating. Following the Conference Call, Mr. Peter J. Stokstad Was Contacted by the Court and He Agreed with the Substance of the Conference. The Purpose of the Conference Was to Discuss the Deadlines and Procedures for Recomputation and the Impact on the Running of Any Appeal Period. After Discussion, Both Counsel and the Court Agreed That the Decision Shall Be Amended as Follows:

1. The Certification of the Decision as Final Shall Be Vacated. Accordingly, ¶ 94 Is Amended to Provide as Follows:

    ¶94. 4. This Decision Shall Not Become Final until (1) the Court Rules on All Post-decision Motions to Amend, for Reconsideration, for a New Trial, or to Present Additional Evidence, **and** (2) the Penalties Are Recalculated and the Time for Objections for the Recalculation Has Either Expired Without Objections or the Court Has Ruled on the Objections, or the Client Companies Fail to Submit the Employee Records Necessary for Recalculation to the Department by August 24, 2000.

2. Paragraph 93 Is Amended as Follows:

    ¶93. 2. If the Uef Objects to this Court's Provision Giving the Client Companies Leave to Submit Employee Records Which Will Enable the Department to More Accurately Calculate the Penalties Due from the Companies, Then it Shall File its Written Objections Within 10 Days of this Decision. If No Objection Is Filed, Then the Client Companies Have until August 24, 2000 in Which to Submit Employee Records to the Uef and the Uef Shall Have 30 Days Thereafter to Prepare and Submit Recalculated Penalties. The Client Companies Shall Then Have 20 Days in Which to File Objections to the Manner or Amounts of Those Calculations. If Objections Are Filed, They Shall Be Treated as Part of this Appeal and the Parties Will Be Provided with a Further Opportunity to Brief and Argue the Objections. If the Uef Objects to the Recalculation of the Penalties or the Client Companies Fail to Avail Themselves of the Opportunity Provided Herein, Then the Penalty Amounts Set Forth in Paragraphs 52 and 54 of this Decision Shall Become Final. Meanwhile, the Court Retains Continuing Jurisdiction in this Matter.

¶4 We Also Discussed Respondents' Motion for an Order Requiring a Settlement Conference. I Advised Counsel That I Would Not Order a Settlement Conference, However, I Did Encourage Them to Engage in Settlement Negotiations in an Attempt to Resolve this Entire Matter Without Further Litigation or Appeal. If it Will Be Helpful to Them, Clarice Beck Is Available to Act as a Mediator.

¶5 Finally, We Agreed That the Time for the Uef to Respond to the Respondents' Motion for Reconsideration Shall Be Deferred until the Penalties Are Recalculated and the Time for Filing of Objections Has Expired. So That the Parties Have Firm Dates in Mind, the Uef's Answer Brief Shall Be Filed on or Before September 20, 2000, and Any Reply Brief Shall Be Filed on or Before October 2, 2000. If the Motion Is Denied, Then the Court Will Set a Schedule for Briefing and Arguing Any Objections to Recalculated Penalties.

¶6 a Draft of this Order Was Prepared and Sent by Facsimile Transmission to Counsel and They Have Agreed with its Contents.

¶7 So Ordered.

Dated in Helena, Montana, this 25th Day of July, 2000.

(Seal)

/s/ Mike Mccarter
Judge

c: Mr. Daniel B. Mcgregor
Mr. Peter J. Stokstad
Mr. Andrew J. Utick
Mr. Jon G. Beal
Mr. Dennis E. Lind (Courtesy Copy)