

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2026 MTWCC 10

WCC No. MSF-2026-0000020-WCI

BRAD BOYER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

**ORDER GRANTING RESPONDENT'S MOTION FOR LEAVE TO AMEND
RESPONSE TO PETITION FOR HEARING**

INTRODUCTION

¶ 1 As Professor Eugene Volokh puts it, "the lawyer's true superpower is to turn every question into a question about procedure."¹ This case is no exception.

¶ 2 Respondent Montana State Fund (MSF) moves for leave to amend its Response to Petition for Hearing. MSF seeks to correct its statement that Petitioner Brad Boyer's temporary total disability (TTD) benefits were "reinstated" on August 29, 2025. MSF also seeks to revise a paragraph describing an earlier notice.

¶ 3 Mr. Boyer opposes the motion. He argues the statement is a binding judicial admission, and that he relied on it in moving for partial summary judgment.

¶ 4 The motion is now before the Court for decision.

¹ Eugene Volokh, *When Does Government "Fairly Represent" Public Interest Groups' Views, Thus Barring Them from Intervening?* The Volokh Conspiracy (Nov. 30, 2021, 10:34 AM), <https://reason.com/volokh/2021/11/30/when-does-government-fairly-represent-public-interest-groups-views-thus-barring-them-from-intervening/>.

¶ 5 For the following reasons, MSF's motion is granted. The motion was timely. Mr. Boyer has not shown prejudice to his ability to try his case. His remaining arguments go to the merits, and will be decided at summary judgment or trial.

ISSUES PRESENTED

Issue One: Is MSF's motion timely?

Issue Two: What must a party show to obtain leave to amend a pleading?

Issue Three: Should MSF be granted leave to amend?

FACTUAL BACKGROUND

¶ 6 This matter comes before the Court on a motion for leave to amend, not a motion for summary judgment. Statements of undisputed facts are not required, and none have been submitted. The following chronology is set out solely to provide context for the arguments addressed in this Order. Listing these facts here does not mean they are correct. Further proceedings in this matter may add to, subtract from, or otherwise alter this chronology.

¶ 7 On January 12, 2026, before this case was filed, MSF's counsel sent a letter to Department of Labor and Industry mediator Nick Turnage opposing Mr. Boyer's request for interim benefits. The letter stated: "After Mr. Boyer complied with his obligations within the 14-day period, his TTD benefits were reinstated on August 29, 2025, he received backpay for the period of August 19, 2025, to September 1, 2025."²

¶ 8 On April 30, 2026, Mr. Boyer filed his Petition for Hearing.³

¶ 9 On May 5, 2026, the Court issued its Scheduling Order, which set June 26, 2026, as the deadline for motions to amend pleadings.⁴

¶ 10 On May 26, 2026, MSF filed its Response to Petition for Hearing. Paragraph 13 of MSF's contentions repeats the statement made in the January 12 letter: "After Petitioner complied with his obligations within the 14-day period, his TTD benefits were reinstated on August 29, 2025. Petitioner received backpay for the period of August 19, 2025, to September 1, 2025."⁵

² Pet'r's Resp. Br. in Opp'n to Resp't's Mot. for Leave to Amend, Dkt. No. 30, at 4.

³ Dkt. No. 1.

⁴ Dkt. No. 2, ¶ 4.

⁵ Dkt. No. 3, ¶ 13, Contentions. Dkt. No. 25, ¶ 4, MSF's motion misstates the filing date of the Response as Apr. 26, 2026.

¶ 11 In its answer to Mr. Boyer's Interrogatory No. 1, MSF identified November 5, 2025, as a date on which it issued a 14-day notice terminating TTD benefits.⁶

¶ 12 On July 6, 2026, on Mr. Boyer's unopposed motion, the Court vacated and reset the scheduling order. The reset order requires the parties to serve all written discovery by September 18, 2026, and to file any motions to amend pleadings, dismiss, and for summary ruling by September 25, 2026. Trial is set for the week of November 9, 2026.⁷

¶ 13 On July 20, 2026, Mr. Boyer deposed MSF's claims examiner, Ali Cornwell. Ms. Cornwell testified that she "had not reinstated benefits as of August 29th," and that a check issued in early September 2025 was not a back payment to reinstate benefits.⁸

¶ 14 When asked whether the January 12 letter "[c]ontained a knowingly false statement," Ms. Cornwell answered, "It appears so."⁹

¶ 15 On August 20, 2026, Mr. Boyer moved for partial summary judgment, relying in substantial part on ¶ 13 of MSF's Response.¹⁰

¶ 16 On September 4, 2026, MSF filed its brief opposing Mr. Boyer's motion for partial summary judgment and, the same day, the present motion for leave to amend. MSF attached its proposed Amended Response as Exhibit A and a redline as Exhibit B.¹¹

¶ 17 On September 9, 2026, the Court granted MSF's motion before Mr. Boyer's time to respond had run.¹² On Mr. Boyer's motion, the Court withdrew that order on September 10, 2026, and allowed Mr. Boyer to file a brief in opposition.¹³

¶ 18 Mr. Boyer filed his brief in opposition on September 14, 2026.¹⁴ MSF did not file a reply. The motion is deemed submitted.¹⁵

THE PROPOSED AMENDMENT

¶ 19 MSF proposes the following amended paragraphs:¹⁶

⁶ Dkt. No. 30, at 5.

⁷ Dkt. Nos. 15, 16; Dkt. No. 17, ¶¶ 1, 3, 15.

⁸ Dkt. No. 19, Ex. 5 (Cornwell Dep.) at 66:4-7, 73:7-8.

⁹ *Id.* at 74:2-7.

¹⁰ Dkt. No. 19.

¹¹ Dkt. Nos. 23, 25.

¹² Dkt. No. 26.

¹³ Dkt. Nos. 27, 28.

¹⁴ Dkt. No. 30.

¹⁵ ARM 24.5.316(7).

¹⁶ Dkt. No. 25, Ex. A.

8. AMENDED. Later, on February 11, 2025, State Fund learned that Petitioner was able to attend a rescheduled physical therapy appointment on February 10, 2025, and therefore notified Petitioner the same day to disregard the letter that was already in the mail.

13. AMENDED. On August 29, 2025, State Fund issued bi-weekly TTD benefits check in \$1,405.58 (after non-work-comp related deduction from \$1,727.26) covering August 19, 2025, through September 1, 2025. After the August 22, 2025, fourteen-day notice for medical noncompliance under § 39-71-1106, MCA, was issued. [sic]

14. AMENDED. A subsequent payment of bi-weekly TTD benefits was issued on September 3, 2025, in the amount of \$332.29 (after non-work-comp related deduction from \$493.13) for the period of September 2, 2025, through September 5, 2025, covering the remainder of the fourteen-day period following the August 22, 2025, notice.

¶ 20 The remaining paragraphs are renumbered. This is still not a model of clarity in drafting, but it is the amendment MSF proposes.

APPLICABLE LAW

A. The Rules:

¶ 21 This Court's rules provide: A party may only "file an amended pleading within the time period set forth in the scheduling order or by leave of court."¹⁷

¶ 22 The rules do not state a standard for granting leave. Where the rules make no express provision on a matter of procedure, this Court "is guided, where appropriate, by considerations and procedures set forth in the Montana Rules of Civil Procedure."¹⁸ Rule 15(a)(2), M.R.Civ.P., provides that "[t]he court should freely give leave when justice so requires."

B. Controlling Case Law:

¶ 23 The leading Montana case on leave to amend is *Lindey's, Inc. v. Professional Consultants, Inc.* (Lindey's)¹⁹

¶ 24 *Lindey's* involved a boundary dispute and an inaccurate survey. The parties stipulated to a Rule 16(b) schedule, which the district court adopted by order, requiring all amendments to pleadings to be filed by July 1, 1989. Lindey's moved to amend on April 27, 1989. At the August 8, 1989, pretrial conference, the district court allowed the

¹⁷ ARM 24.5.319(1).

¹⁸ ARM 24.5.352.

¹⁹ *Lindey's*, 244 Mont. 238, 797 P.2d 920 (1990).

amendment if Lindey's provided a written order by August 17. Lindey's did not provide an order, therefore, on August 23 the court denied the motion. Lindey's then moved to file second and third amended complaints and, on August 29, to extend the schedule to add experts and continue discovery, having learned on June 21 that its retained expert would not support its negligence theory. The district court denied all three motions.²⁰

¶ 25 The issue presented was whether the district court erred in denying Lindey's motions to file amended complaints.

¶ 26 The *Lindey's* court held that the decision to grant or deny leave to amend lies within the discretion of the trial court and will be reversed only for an abuse of that discretion.²¹ Rule 15(a) provides for liberal amendment of pleadings but does not require amendments to be allowed in all instances.²² A trial court may deny leave for an apparent reason "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, futility of the amendment, etc."²³

¶ 27 The *Lindey's* court affirmed. The district court had already allowed Lindey's first amendment almost two months after the deadline, and when Lindey's failed to file it within the extended time, the court was well within its discretion in refusing the second and third amended complaints.²⁴

¶ 28 Montana law favors amendment. "The policy of the law is to permit amendments to the pleadings in order that litigants may have their causes submitted upon every meritorious consideration that may be open to them; therefore it is the rule to allow amendments and the exception to deny them."²⁵ The purpose of the amendment rules is to "put an end to wasteful and needless litigation and have trial on the merits of the case."²⁶ Although *Ward* arose under Rule 15(b), the policy it describes applies equally to Rule 15(a).

¶ 29 This Court follows the same rule: "it is the rule to allow, and the exception to deny, amendments."²⁷

²⁰ *Id.* 244 Mont. at 240-41, 797 P.2d at 922-23.

²¹ *Id.* at 242, 797 P.2d at 923 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

²² *Id.* (citing *Fry v. Heble*, 191 Mont. 272, 274, 623 P.2d 963, 964 (1981)).

²³ *Id.* (quoting *Foman*, 371 U.S. at 182).

²⁴ *Id.* at 242-43, 797 P.2d at 923.

²⁵ *Union Interchange, Inc. v. Parker*, 138 Mont. 348, 353-54, 357 P.2d 339, 342 (1960) (citation omitted) (originally quoted in *Ward v. Vibrasonic Labs., Inc.*, 236 Mont. 314, 318, 769 P.2d 1229, 1232 (1989)).

²⁶ *Reilly v. Maw*, 146 Mont. 145, 156, 405 P.2d 440, 447 (1965) (quoted in *Ward*, 236 Mont. at 318, 769 P.2d at 1232).

²⁷ *Ins. Co. of the State of Pa. v. Berquist*, 2000 MTWCC 26, ¶ 11 (quoting *Fowles v. Heinecke*, 87 Mont. 117, 120, 287 P. 169, 170 (1930)).

ANALYSIS

Issue One: Is MSF's Motion Timely?

¶ 30 Yes. This Court's July 6, 2026, Order set September 25, 2026, as the deadline for motions to amend pleadings. MSF filed its motion on September 4, 2026, three weeks early. The motion is timely, and arguments to the contrary are without merit.

Issue Two: What Must a Party Show to Obtain Leave to Amend?

¶ 31 Leave to amend is to be freely given when justice so requires. It is the rule to allow amendments, and the exception to deny them. Under *Lindey's*, leave may be denied for undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility. The question here is whether any of those reasons is present.

Issue Three: Should MSF Be Granted Leave to Amend?

¶ 32 MSF argues the pleadings should be amended to conform to the evidence developed in discovery. MSF argues there will be no delay, because the scheduling order is unchanged. MSF argues there is no bad faith or dilatory motive: when the error was identified at deposition, MSF moved to amend.

¶ 33 MSF further argues there is no prejudice to Mr. Boyer's ability to try the case, because the amendment merely removes a statement both sides acknowledge is incorrect. MSF argues the amendment is not futile, because it brings the pleadings into agreement with the facts established in discovery.

¶ 34 Mr. Boyer contends that a statement of fact in a pleading is a judicial admission. He argues MSF knew of the error on July 20, 2026, but did nothing until after he moved for partial summary judgment on August 20, 2026. MSF then filed its motion to amend and its summary judgment opposition on the same day.

¶ 35 Mr. Boyer also argues prejudice. His summary judgment motion is drafted and briefed. He contends the amendment raises substantive new matter, that he relied on MSF's Response to build his case, and that he must now adapt to new facts and theories. Finally, he argues that MSF made the same statement three times, to the mediator, in its Response, and in its discovery answers, and should be estopped from changing it now.

¶ 36 Cases need to be tried on the merits, and on accurate facts to the maximum extent possible. The *Lindey's* factors are addressed in turn.

Delay and Motive

¶ 37 MSF learned of the error at the July 20 deposition. It did not move to amend until September 4, after Mr. Boyer moved for summary judgment. The timing is not ideal.

¶ 38 However, MSF filed within the time this Court allowed for exactly this kind of motion. A motion filed within the scheduling order's deadline is not unduly delayed.

¶ 39 Nor does the record show bad faith. The error came to light through MSF's own claims examiner, in testimony adverse to MSF. MSF sought to correct it before the Court ruled on Mr. Boyer's motion.

Prejudice

¶ 40 Mr. Boyer's prejudice is not losing a case. It is losing an argument. That argument, it appears, is severely weakened by correcting the pleadings to match the actual facts: the dates, amounts, and periods of payment established by MSF's own ledger.

¶ 41 Those facts are not disputed. Mr. Boyer has had MSF's payment records throughout this case. He learned of MSF's position at a deposition he took. The amendment requires no additional discovery on these payments. The trial setting is unchanged.

¶ 42 Mr. Boyer objects that amended ¶ 8 adds a new assertion about a February 11, 2025, notice, which he has had no opportunity to test. That paragraph concerns an earlier notice cycle, not the period for which Mr. Boyer seeks benefits. Written discovery remained open for two weeks after MSF filed its motion. Any remaining prejudice is minimal, and can be addressed at trial.

Scope of the Amendment

¶ 43 MSF describes the amendment as replacing "one inaccurate word."²⁸ That is not correct. The amendment deletes an entire clause from both ¶ 8 and ¶ 13: the statements that Mr. Boyer complied with his obligations within the 14-day period. Whether Mr. Boyer cooperated during the notice period is central to his claim under § 39-71-1106, MCA. This is not, as MSF suggests, an immaterial change.

¶ 44 But a material change is not, by itself, a reason to deny leave. It is a reason to be clear about what granting leave does and does not do.

Futility

¶ 45 Mr. Boyer argues the amendment is futile, because the Amended Response still describes the November 5, 2025, notice as "terminating TTD benefits." He contends this cannot be reconciled with MSF's position that benefits had already terminated on September 6, 2025.

¶ 46 That inconsistency goes to the merits of MSF's defense, not to whether MSF may amend its pleading. It is a matter for argument and cross-examination.

²⁸ Dkt. No. 25, § IV.A.

¶ 47 Likewise, whether MSF may rely on its theory that benefits terminated automatically on September 6, 2025, a theory that appears in its summary judgment brief but in neither version of its Response, is a question for summary judgment or trial, not for this motion.

Prior Statements

¶ 48 The Court need not decide whether original ¶ 13 is a binding judicial admission to rule on this motion, and it does not.

¶ 49 Granting leave to amend does not eliminate MSF's prior statements. The January 12, 2026, letter to the mediator, MSF's answers to discovery, and its original Response remain in the record. They may be offered as evidence and may bear on the reasonableness arguments advanced by Mr. Boyer. What those statements establish, and what weight they deserve, will be decided at summary judgment or trial.

¶ 50 Mr. Boyer's argument that MSF is judicially and equitably estopped from changing its position likewise goes to the merits and is not decided here.

¶ 51 The Court decides here only that MSF may file a pleading that states its current position.

CONCLUSION

¶ 52 MSF's motion was timely. Mr. Boyer has not shown prejudice to his ability to try the case. His remaining arguments go to the merits. Justice requires that this case be decided on accurate facts.

¶ 53 For the foregoing reasons, MSF's Motion for Leave to Amend Response to Petition for Hearing is **GRANTED**.

¶ 54 Accordingly, this Court enters the following:

ORDER

¶ 55 IT IS HEREBY ORDERED that MSF shall file its Amended Response to Petition for Hearing, in the form attached to its motion as Exhibit A, within five days of this Order.

¶ 56 IT IS FURTHER ORDERED that Mr. Boyer may file a reply to the Amended Response within the time set forth in ARM 24.5.320.

¶ 57 IT IS FURTHER ORDERED that this Order does not decide the effect or weight of any statement in MSF's original Response to Petition for Hearing, its discovery responses, or its January 12, 2026, letter to the Department's mediator, all of which remain part of the record.

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DATED in Helena, Montana, this 13th day of October, 2026.

/s/ Lee Bruner
Judge Lee Bruner

c: Alex K. Evans
Jeffrey Doud

Submitted: September 22, 2026