

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 1003A-2

WCC No. 9511-7444

CAROL GIEST

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD AND DRUG

Employer.

**ERRATA TO ORDER REAFFIRMING PRIOR
ORDER DENYING MOTION TO DISMISS**

In its order reaffirming prior order denying motion to dismiss this Court held that subsection (3) of ARM 24.28.108 conflicts with section 39-71-2411(6), MCA, and is invalid. Subsection (3) requires both parties to agree that they cannot resolve a dispute in order to invoke the jurisdiction of the Workers' Compensation Court prior to the expiration of 45 days following the mediator's recommendation. The statute provides that the jurisdiction of the Court may be invoked once either party rejects the mediator's recommendation.

Subsequent to the issuance of that holding, the Department of Labor and Industry brought to the Court's attention the fact that effective January 1, 1996, subsection (3) has been repealed. Also, so there is no confusion, the Court's prior Order struck down subsection (3) only; the remaining provisions of ARM 24.28.108 are unaffected by the decision.

Dated in Helena, Montana, this 22nd day of December, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. R. Russell Plath

Mr. Steven S. Carey

Mr. Mark E. Cadwallader - Courtesy Copy

Mr. Kevin M. Braun - Courtesy Copy

Mr. Chuck Hunter - Courtesy Copy