IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 8605-3765

RONALD F. HILBIG

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND/
CENTRAL GLASS COMPANY

Defendant/Employer.

ORDER GRANTING DEFENDANT'S MOTION TO STAY

On April 7, 1993, defendant's counsel, Oliver H. Goe, filed MOTION TO DISMISS WITHOUT PREJUDICE OR TO STAY FURTHER PROCEEDINGS and brief in support.

On May 10, 1993, claimant's counsel, R.V. Bottomly, filed a MOTION TO STAY ANY FURTHER PROCEEDINGS ON DEFENDANT'S MOTION based on improper service of the document.

On July 19, 1993, claimant's counsel filed a MOTION AND RESPONSE requesting that the May 18, 1993 order of this Court be amended, that this Court grant claimant partial summary judgment which has previously been denied, and deny defendant's motion for dismissal or a stay in the proceedings.

On August 6, 1993, defendant's counsel filed STATE FUND'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS OR TO STAY FURTHER PROCEEDINGS AND IN REPLY TO CLAIMANT'S MOTION AND RESPONSE.

Defendant's motion requests either a dismissal of this action without prejudice or an order to stay further proceedings pending the determination by the Department of Labor and Industry (DOLI) as to whether defendant has a subrogation interest in claimant's third party settlement.

Both parties agree that the controlling statute is section 39-71-414, MCA (1983). Subsection 5 of that statute states:

> (5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what

> proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge. [Emphasis added.]

The parties agree that the State Compensation Insurance Fund has petitioned the DOLI for a ruling on the subrogation interests which this Court has the jurisdiction to review on appeal. No final determination by DOLI has been issued to this date.

Claimant's counsel takes the position that this Court should assume total jurisdiction over all disputes regardless of the wording of section 39-71-414(5), MCA (1983).

After reviewing the arguments of counsel and the authority cited therein, this Court now determines that the petition before the Court cannot be resolved without the additional decision from the DOLI as requested. *Malek v. State Compensation Mutual Insurance Fund*, 242 Mont. 311, 790 P.2d 965 (1990).

IT IS HEREBY ORDERED that defendant's motion to stay further proceedings is **GRANTED.**

IT IS FURTHER ORDERED that claimant's motion to reconsider past orders in this case is **DENIED.**

DATED in Helena, Montana, this 13th day of September, 1993.

(SEAL)

/s/ Robert J. Campbell
ROBERT J. CAMPBELL
Hearing Examiner

c: Mr. R.V. Bottomly
Mr. Oliver H. Goe