

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 55A

WCC No. 2001-0294

MARK MATHEWS

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

ORDER AMENDING DECISION CONCERNING RETROACTIVITY

[REMANDED 02/10/05 \(REMAND FILED IN WCC 05/19/05\)](#)

Summary: Respondent requests reconsideration of the Court's previous determination, 2004 MTWCC 55, that the decision in *Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116, 315 Mont. 441, 68 P.3d 865 is retroactive.

Held: The Court overlooked *Poppleton v. Rollins*, 226 Mont. 267, 735 P.2d 286 (1987), in holding that *Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116, 315 Mont. 441, 68 P.3d 865 applies retroactively. *Poppleton* requires nonretroactive application if any of the three *Chevron* factors favors nonretroactive application. Since I found that one factor favors nonretroactive application of *Mathews*, that decision must be applied prospectively only.

Topics:

Courts: Retroactivity of Decisions. If any one of the three *Chevron* factors favors nonretroactive application, then the decision at issue must be applied prospectively and not retroactively. *Poppleton v. Rollins*, 226 Mont. 267, 735 P.2d 286 (1987).

¶1 Liberty Northwest Insurance Corporation (Liberty) requests a new trial or amendment of this Court's Order and Judgment Concerning Class Action, Retroactivity, and Common Fund. The motion challenges the Court's conclusion that the Supreme Court decision in *Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116, 315 Mont. 441, 68 P.3d 865, is retroactive. Liberty argues that the Court overlooked *Poppleton v. Rollins*, 226 Mont. 267, 735 P.2d 286 (1987), in concluding that the *Mathews* decision is retroactive. The Court agrees.

¶2 In the challenged decision, found at 2004 MTWCC 55, I held that the retroactivity issue is governed by the *Chevron* test, *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), rather than the *per se* rule of retroactivity more recently adopted by the United States Supreme Court in *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993). The *Chevron* test is based on three factors. Those factors are (1) whether the decision at issue establishes a new principle of law by overruling precedent or "by deciding an issue of first impression whose result was not clearly foreshadowed"; (2) whether the rule announced in the case will be furthered or retarded by a retroactive application; and (3) whether retroactive application of the rule announced in the case is equitable. *Ereth v. Cascade County*, 2003 MT 328, ¶ 29, 318 Mont. 355, ¶ 29, 81 P.3d 463, ¶ 29.

¶3 In my Order and Judgment Concerning Class Action, Retroactivity, and Common Fund, I found that the first factor "favors non-retroactive application." (2004 MTWCC 55 at ¶ 35.) I went on to find that the other two factors favored retroactive application. I then "weighed" all three factors and found that the three factors weighed in favor of applying the *Mathews* decision retroactively.

¶4 In its motion, Liberty correctly notes that I misapplied the *Chevron* factors. Specifically, it cites *Poppleton v. Rollins, Inc.*, 226 Mont. 267, 735 P.2d 286 (1987). In that case the Supreme Court held, "The general rule is that a rule of law will not be applied retroactively if **any** of the [Chevron] factors listed below are present." 226 Mont. at 271, 735 P.2d at 289 (emphasis added). In my prior order, I specifically found that factor one favored nonretroactive application. Under *Poppleton*, there is no wriggle room: my finding concerning factor one required that I find that the *Mathews* decision, 2003 MT 116, is prospective only. I therefore erred in holding it to be retroactive.

¶5 Accordingly, my Order and Judgment Concerning Class Action, Retroactivity, and Common Fund is amended to find and hold that the decision in *Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116, 315 Mont. 441, 68 P.3d 865, is not retroactive but is prospective only.

SO ORDERED.

DATED in Helena, Montana, this 12th of August, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Geoffrey C. Angel
Mr. Larry W. Jones
Submitted: August 4, 2004