Alan L. Joscelyn
KD Feeback
GOUGH, SHANAHAN, JOHNSON & WATERMAN
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT 59624-1715
(406) 442-8560
(406) 442-8783 (fax)

Attorneys for Respondent Teck Cominco
    American Incorporated

FILED

AUG – 4 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2003-0840

CATHERINE E. SATTERLEE,

Petitioner,

v.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

**RESPONDENT/INTERVENOR TECK COMINCO AMERICAN INCORPORATED'S
MOTION FOR EXTENSION OF TIME TO ANSWER
PETITIONER'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

DOCKET ITEM NO. 215

Background

Respondent Teck Cominco American Incorporated was served with the Court's Summons in *Flynn v. Montana State Fund* on or about June 1, 2005. Thereafter, counsel for Teck moved the Court for an extension to answer the Summons for the reason that insufficient time was available to determine whether or not Teck Cominco had issued worker compensation insurance or benefits during the appropriate time period. The Court granted Teck Cominco's motion and granted it an extension until August 30, 2005.

Teck Cominco subsequently attended a hearing in open court on July 14, 2005, for purpose of clarifying procedural aspects of the common fund cases pending before the Court. Teck Cominco became aware of its potential involvement in common fund cases other than *Flynn* at that time. Jul. 14, 2005, Trans. at 45:8. Pursuant to the Court's request, counsel for Teck Cominco examined court records and determined that despite the lack of formal service Teck Cominco was potentially involved in *Reesor* as well as *Satterlee*.

Teck Cominco's predecessor in interest conducted mining operations in Montana that encompass relevant time frames in the subject matters. However, Teck Cominco has changed location several times and gone through several corporate transformations that complicate finding relevant documents. The matter is made more difficult because many of the records, if indeed such records even exist, predate computerized filing systems and will be found, if at all, in a box at a currently unknown location.

In short, Teck Cominco has not had sufficient time to locate its own records or to complete even rudimentary discovery such that it may familiarize itself sufficiently to brief the issue presented in a competent and substantive manner.

Law

Basic due process requires sufficient notice and a "hearing that provides a meaningful and timely opportunity to be heard." *Crismore v. Montana Bd. of Outfitters*, 2005 MT 109, ¶ 15, 327 Mont. 71, ¶ 15, 111 P.3d 681, ¶ 15. Montana's rules of procedure in the Workers' Compensation Court are found in Mont. Admin. R. § 24.5.301, *et seq*. The regulations set forth therein plainly contemplate an opportunity for all parties to conduct adequate discovery and fact investigation.

Discussion

Petitioners will not be prejudiced by the requested extension of time. The Court has previously advised the scheduled argument in the instant matter is vacated and will be re-set at a later date to allow Judge McCarter's replacement to hear and rule on this matter. *See* Jul. 27, 2005, email from Jackie Bockman to counsel. Judge Shea, Judge McCarter's replacement

arrives on the bench in September and one must imagine Judge Shea will require some time thereafter to acquaint himself with the docket prior to hearing Petitioner's Motion. Accordingly, since prejudice to Petitioners is clearly absent and prejudice to the Interveners is substantial, basic due process requirements favor an extension of time being granted as requested herein.

Conclusion

Accordingly, Teck Cominco respectfully requests the Court issue an order extending the time for Teck Cominco's response to Petitioner's motion for summary judgment until September 15, 2005.

Dated and respectfully submitted this 4th day of August 2005.

GOUGH, SHANAHAN, JOHNSON & WATERMAN

KD Feeback
Attorneys for Respondent Teck Cominco American
Incorporated