

THE 2010

JUDICIAL REVIEW

OF THE



MONTANA SUPREME COURT

A Publication of the Montana Chamber of Commerce



The 2010 Judicial Review of the Montana Supreme Court

Presented by the Montana Chamber of Commerce

The Montana Chamber of Commerce is pleased to present the 2010 Judicial Review of the Montana Supreme Court. It is a companion piece to the Montana Chamber's biennial Legislative Voting Review, which evaluates the other two branches of state government – the Legislature and the Governor.

Following past practice, this review encompasses a two-year period of important business court decisions from 2008 and 2009. Our intent is to assist the business community in tracking trends in judicial rulings relating to Montana's economy. The report also provides a means of evaluating each individual judge's stance on business-related issues.

We understand judges are bound by the rule of law. The federal and state constitutions, judicial construction, and prior case decisions, rather than anti-business or pro-business positions, may dictate the outcome of a particular case. In these instances, it is difficult to hold a judge philosophically accountable for a particular outcome.

In preparing this analysis, the Montana Chamber sought input from various business leaders from across the state. A strict set of criteria was used to achieve the most objective report possible. Input from affected trade associations and individual businesses allowed the Montana Chamber to independently verify the research conducted in specific categories. Cases selected must have had an impact, either positive or negative, on businesses in the state. The Chamber excluded decisions with a negative impact on one type of business and a positive effect on other businesses. Many of the case summaries were provided by the descriptions from the "Montana Law Week" publication.

The Montana Supreme Court

Previous Chamber Judicial Reviews have evaluated Montana Supreme Court decisions from 1990 to 2007. The dynamic of the Court has changed considerably in the past few years, which makes it even more important to continually measure the Court's record. This Review provides a greater understanding of the important role that Court decisions play in shaping our economy. Only then can we judge how, and if, the state's business climate and image are truly improving or suffering as a result of Court decisions.

Cases are divided into 10 categories: Contracts, Medical Malpractice, Employment, Environment, Property & Estate, Insurance, Tort, Tax, Workers' Compensation, and General Business. Each case was assigned one category for the purpose of the record even though some cases could obviously be included in multiple categories. In those instances, the Chamber attempted to select the most appropriate category for the case selected.

Montana Chamber's Recent Legal Efforts

Over the past few years, the Montana Chamber has stepped up its legal efforts in order to provide a private sector, free enterprise perspective in important cases before the Montana Supreme Court.

Our efforts include legal action in two Montana Supreme Court cases that have impacts on workers' compensation and workplace injury lawsuits. The first case, *Satterlee v. Lumberman's Mutual*, involved plaintiffs who were asking the Court to overturn the statute that prohibits a person from collecting both permanent total disability payments from workers' compensation and retirement income. The theory behind the statute is that a person should not receive indemnity for lost wages if the person is no longer a part of the workforce.

If decided in the plaintiffs' favor, the *Satterlee* case would have cost the workers' compensation system more than \$250 million. The Montana Chamber filed an *amicus* brief outlining the reasons the statute should be upheld, including the need for an affordable, reliable workers' compensation system in the state to maintain a competitive business climate with other states. The Court ultimately upheld the statute on a 5-2 decision.

In addition, the Montana Chamber recently filed another *amicus* brief in the *Alexander v. Bozeman Motors* case, where two plaintiffs asked the Montana Supreme Court to essentially throw out the Legislature's 2001 amendments to the workers' compensation exclusive remedy rule. If decided in the plaintiffs' favor, Montana employers would see a flood of new frivolous workplace injury lawsuits outside of the workers' compensation system. The Montana Supreme Court has not yet ruled on the case.

Scoring

In the review of the Montana Supreme Court, individual justices were evaluated in comparison to the pro-business position. Justices were not scored when they did not participate in a case. When justices concurred in part or dissented in part, the Montana Chamber reviewed the written nature of their concurrence or dissent and made an evaluation of how the justice voted against the overall case. Scores were not weighted. Justices received a 0 to 100 percent score overall. Whether we agree or disagree with their rulings in individual cases, we appreciate each justice's service to the state of Montana.

Case Participation

The report shows the total number of cases for each category as well as the number of cases participated in by each justice. Higher case participation rates should reflect a higher degree of reliability. The case participation number reflects the number of case scored for a particular justice from the selected cases during the period of the study (2008 to 2009). District judges who filled in for recused justices were not scored in this Review.

Montana Supreme Court Justices

This report includes a review of the work of 8 Supreme Court Justices. During this period, Chief Justice Karla Gray served the final year in her eight-year term and did not run for re-election. State Attorney General Mike McGrath won election to the Chief Justice position in 2008 by a considerable margin. The other six justices stayed the same during this two year period. The following justices are evaluated in this Judicial Review:

Chief Justice Karla Gray - appointed in 1991, elected in 1992, re-elected in 1998, elected as Chief Justice in 2000, retired in 2008.

Justice Jim Nelson - appointed in 1993, elected in 1994, re-elected in 1996 and 2004.

Justice William Leaphart - elected in 1994, re-elected in 2002, retiring in 2010.

Justice Patricia Cotter - elected in 2000, re-elected in 2008.

Justice Jim Rice - appointed in 2001, elected in 2002, reelected in 2006.

Justice John Warner - appointed in 2003, elected in 2004, reelected in 2006, resigned in 2008.

Justice Brian Morris - elected in 2004.

Justice Brian Morris - elected in 2004.

Chief Justice Mike McGrath - elected in 2008.

Contact Us

The Montana Chamber of Commerce is Montana's business advocate, representing its members before all three branches of government, as well as in the private sector. For further information about the Montana Chamber or this report, please contact us:

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CONTRACTS

Access Organics v. Hernandez – Former employee who signed a covenant not to compete opened a similar business. Court invalidated the covenant not to compete because employee signed it after he was already employed and no additional consideration was given (Majority: Leaphart, Gray, Warner, Cotter, Morris).

Cole v. St. James Healthcare – A hospital denied the reappointment of a radiologist who was accused of threatening staff. The radiologist sued alleging the hospital bylaws constituted a contract which the hospital breached. The Court upheld the district court's issuance of a preliminary injunction in favor of the radiologist saying it is a minimal cost to the hospital (Majority: Leaphart, Warner, Nelson, Morris; Dissent: Cotter, Rice).

Kortum-Managhan v. Herbergers – A plaintiff sued Herbergers for violations of the Unfair Trade Practices Act and Consumer Protection Act, and Herbergers moved to dismiss and compel arbitration based on an arbitration provision it required and noticed through a bill stuffer in the mail. The plaintiff claimed she did not notice it because she routinely threw away the bill stuffers. The Court held that arbitration could not be compelled because the provision was ambiguous and misleading (Majority: Nelson, Warner, Cotter, Leaphart, Morris; Dissent: Rice).

Weimar v. Barrett – A plaintiff sued for fraudulent inducement in a contract involving a Florida company for the chartering of a yacht over the internet. He claimed there was no issue over personal jurisdiction because the fraudulent inducement happened in Montana over the internet. The Court upheld the lower court's ruling that personal jurisdiction under such circumstances was lacking (Majority: Morris, McGrath, Warner, Nelson, Leaphart).

Woodruff v. Bretz RV – The purchaser of an RV sued the seller for numerous torts and breach of contract due to undisclosed problems with the vehicle. The seller moved to compel arbitration pursuant to its purchase contract. The Court held the purchase contract was a contract of adhesion, and those types of contracts will not be enforced against the weaker party when it is not within the party's reasonable expectations or is unduly oppressive, unconscionable, or against public policy. The Dissent believed the Majority allowed the alleged circumstances of the breach of contract to influence its analysis of the arbitration issue (Majority: Nelson, Leaphart, Cotter, Morris; Dissent: Warner, Rice)

MEDICAL MALPRACTICE

Runstrom v. Allen – A 16-year old died following an ATV accident in 2000. The parent sued his surgeon that treated him following the accident, but did not commence proceedings until 2004. The Court held the 3-year statute of limitations had passed, and the parents could not proceed with the survival claim (Majority: Gray, Warner, Cotter, Morris, Rice; Dissent: Nelson, Leaphart).

Cobb v. Saltiel – A widow sued a medical provider after her late husband died after surgery. She failed to properly bring her complaint before the Montana Medical-Legal Panel, and afterward, did not file a complaint in district court until four and a half years after her husband's death. The Court held the claim is barred by the three-year statute of limitations for medical malpractice claims (Majority: Morris, McGrath, Leaphart, Warner, Nelson).

EMPLOYMENT

Vettel-Becker v. Deaconess Billings Clinic – A former hospital chaplain sued the hospital for discrimination and wrongful discharge after being fired as a result of mixed reviews. The district court dismissed the discrimination lawsuit for failing to allege a prima facie case and for failing to rebut the hospital's evidence of legitimate reasons for the termination. The wrongful discharge suit was also dismissed since the Human Rights Act provides the sole avenue for redress. The Court reversed the lower court's ruling because the plaintiff should have been allowed to go forward in court with his wrongful discharge suit (Majority: Cotter, Leaphart, Gray, Warner, Nelson, Rice, Morris).

Saucier by Mallory v. McDonald's Restaurants of Montana – Employer was sued as a result of one of its managers having a sexual relationship with a mentally disabled employee. The manger was fired immediately by the employer when the relationship was revealed, and the mentally disabled employee's guardian filed suit against the employer and manager. The Human Rights Bureau dismissed the complaint and the district court granted summary judgment in favor of the employer. Court reversed the lower decisions and said the plaintiff's tort suit against the employer could go forward (Majority: Cotter, Leaphart, Gray, Warner, Nelson, Rice, Morris).

Becker v. Rosebud – An employee was fired after cursing the supervisor that came to investigate the cause of malfunctioning piece of equipment. The employee alleged it was because of his statements regarding unionization of the plant. The Court held there were sufficient facts to show the employee violated company policy and therefore good cause existed for the termination (Majority: Rice, Cotter, Leaphart, Gray Warner, Nelson, Morris).

Dean v. Sanders Co. – A fired employee who was arrested for marijuana distribution conspiracy sued the county-employer for wrongful discharge. She moved the district court to exclude post-arrest evidence. The Court held this evidence was relevant because it showed she was engaged in drug distribution while on the job (Majority: Warner, Leaphart, Nelson, Cotter, Rice).

Stevenson v. Felco Industries – An older employee was fired from a sales job after he failed to meet his quota for cold calls. He filed a lawsuit alleging age discrimination. The Human Rights Bureau found no evidence of discrimination and filed a final investigative report. The report was admitted as evidence at trial after a late objection from the plaintiff, and the jury handed down a defense verdict at trial. The Court overturned the jury decision saying the report should not have been admissible (Majority: Cotter, Nelson, Leaphart, Morris; Concurring in Part and Dissenting in Part: Rice).

Christie v. DEQ – A staff attorney at DEQ was fired after supervisors noticed he was leaving work hours early, taking extended breaks and lying about his time sheet. The employee sued for wrongful discharge after going through the department’s appeal process. The Court found that there was substantial evidence in the record, including falsification of time records, to show there was “just cause” to terminate his employment (Majority: Cotter, McGrath, Rice, Warner, Nelson).

ENVIRONMENT

Clark Fork Coalition et al v. DEQ – DEQ issued a Pollution Discharge Elimination System permit to Revett Silver in 2001. Plaintiffs sued alleging that the permit violated the Water Quality Act, but the trial court granted summary judgment to DEQ. The Court reversed the trial court saying DEQ misinterpreted its own regulation and has not sufficiently studied the issue. The Dissent argued the Majority mistakenly substituted its own judgment for that of the state agency (Majority: Warner, Nelson, Cotter, Leaphart, Morris; Concurring in Part and Dissenting in Part: Gray, Rice).

PROPERTY & ESTATE

Flathead Citizens for Quality Growth v. Flathead Board of Adjustments – A growth group sued the Board of Adjustments and a private landowner over the approval of a gravel pit on the landowner’s property. Court reversed a summary judgment decision in favor of the Board and landowner because of arbitrary and capricious standards and unanswered questions regarding the definition of “gravel extraction” (Majority: Leaphart, Gray, Warner, Nelson, Cotter, Rice, Morris).

Lammers v. Allstate Ins. – A tenant sued the property insurer after the insurer denied coverage of personal property burned in a fire. The policy stated that personal property in apartments or rooms furnished by the landlord would be covered, but it did not expressly exclude coverage of tenant’s personal property. The Court held the policy was ambiguous and therefore should be construed in favor of the tenant (Majority: Warner, Gray, Leaphart, Morris, Nelson).

Prosser, White and Crotty v. Kennedy Enterprises and Hamilton – Neighbors of a new casino in Hamilton sued the casino and city alleging public nuisance. A public nuisance tort requires a showing of a “special relationship” between the city and the neighbors, and the Court held the plaintiffs could not show any specific relationship (Majority: Morris, Gray, Warner, Rice; Dissent: Leaphart, Cotter, Nelson).

Estates of Louisa Swanson and Sven Swanson – A husband petitioned to have his wife’s interest in their children’s estate after she pleaded guilty to their homicides. Montana law prohibits one who “feloniously and intentionally kills” from inheriting from the decedent’s estate. The Majority held that a guilty plea does not automatically establish that the murders were intentional, so a trial should be held to determine the wife’s mental state (Majority: Leaphart, Gray, Nelson, Cotter, Warner, Morris; Dissent; Rice).

Kafka v. FWP – Game farm owners sued the state after I-143 was narrowly passed by voters and prohibited them from operating the farms. For 83 years, the state had facilitated and promoted the game farm industry. The Majority upheld the district court and found that the owner’s game farm licenses were not compensable property interests, no physical condemnation or occupation of the real property took place, and the owners did not show any measurable “economic impact.” The Dissent warned this decision would be improperly used as a basis for increased government takings (Majority: Cotter, Gray, Judge Christopher; Dissent: Nelson, Rice, Judge Swandal).

Bitterroot River Protection Association v. Bitterroot Conservation Dist. – The BPRA appealed the conservation district’s ruling that a ditch was not a “natural, perennial-flowing stream” according to the Natural Streambed Act of 1975. The Court reversed the district court’s ruling, and held the ditch was subject to stream access and public recreation under the state’s stream access law (Majority: Rice, Cotter, Gray, Nelson, Morris, Judge McCarter, Warner).

Delaney v. Bozeman – A developer shared his idea of developing an industrial park with Bozeman city officials who expressed interest in the idea. Later, the city entered into a buy-sell agreement to purchase the area planned for the industrial park. The developer sued the city claiming it had interfered with his plans, and a jury awarded him \$3 million. The Court upheld the district court and said the city had unlawfully interfered with the developer’s acquisition plans, causing a loss of profits (Majority: Warner, McGrath, Cotter, Rice, Morris, Leaphart, and Nelson).

Liberty Cove, Inc., v. Missoula County - Liberty Cove appealed an order from the district court affirming the County's decision to adopt interim zoning banning development of gravel pits on Liberty Cove's property. Liberty Cove argues that County's decision to enact interim zoning was arbitrary and capricious, and violated Montana public notice law. The Court upheld the decision saying "a reasonable emergency existed to enact the interim zoning." Furthermore, it stated while the County failed to follow Montana law on notice requirements, the insufficient notice challenge was without merit due to the fact that Liberty was at the meeting and provided comments (Majority: McGrath, Leaphart, Cotter, Rice; Specially Concurring: Nelson).

INSURANCE

Estate of Wamsley v. Nodak Mutual Ins. – Montana anti-stacking law applied to a North Dakota insurance policy of two North Dakota citizens involved in an auto accident outside of Bozeman. Court's majority upheld the use of Montana law in the case even though ND law was different (Majority: Cotter, Nelson, Morris; Specially Concurring: Rice, Gray, and Judge Phillips; Specially Concurring and Dissenting: Warner).

Lee v. Great Divide Ins. – A plaintiff who was injured by a drunk driver tried to recover uninsured motorist coverage from a separate commercial policy from a business he operated after he recovered from a separate corporate policy. He eventually also added an unfair trade practices complaint and a demand for punitive damages. The Court held he could not recover from the commercial policy since he was not in one of the vehicles insured by the policy (Majority: Judge Larson, Gray, Morris, Warner; Dissent: Cotter, Nelson, Leaphart).

Newbury v. State Farm Fire & Casualty Ins. - A state employee was plowing roads when he stopped to check on a vehicle in a ditch. The driver of the car struck him with the door of the car as she backed out and fled. Workers' compensation paid all but \$1,176 of his medical bills, so he sued his own auto insurer to stack his two policies that had \$5,000 medical benefits. The Court ruled he was not entitled to the \$10,000 – just the \$1,176 because of the offset from work comp (Majority: Nelson, Cotter, Warner, Morris; Specially Concurring: Rice).

Robertus v. Farmers Union Mutual Ins. – An injured driver sued his own auto insurer for \$2.1 million in underinsured motorist coverage. The insurer originally charged separate UIM/UM premiums for each of the family vehicles, but had changed its policy to a single premium intended to limit benefits to \$300,000 per occurrence. The Court held the insurer had not properly notified the insured of the policy change (Majority: Morris, Gray, Nelson, Cotter, Warner; Concurring and Dissenting in Part: Rice).

Allstate Ins. v. Wagner-Ellsworth and Rusk – A mother sued the driver who injured her son for emotional and physical injuries resulting from her watching the accident and the aftermath. Prior rulings stated “bodily injuries” language as stated in insurance policies did not include injuries similar to the plaintiffs. The Court overruled these earlier cases and stated the plaintiffs could recover the policy limits. “Bodily injury” can now include physical manifestations of mental injury or sickness (Majority: Rice, Warner, Cotter, Leaphart, Nelson, Gray, Morris).

Geraldine v. MMIA – The town of Geraldine sued its own insurer after it refused to defend the town against a lawsuit involving a breach of contract, negligent misrepresentation, and constructive fraud. The refusal stemmed from exclusions for non-monetary damages, punitive damages, breach of contract and liability based on estimated probable costs or faulty bid specifications. The Court held there was no duty to defend the town since the underlying claim was for breach of contract (Majority: Nelson, Gray, Warner, Morris, Rice; Dissent: Cotter and Leaphart).

BCBS v. Insurance Commissioner – Blue Cross Blue Shield of Montana worked out an agreement with the Montana Insurance Commissioner containing exclusions for health care if the beneficiaries received benefits from an auto or premises liability policy. Four years later, the Commissioner reversed himself and disapproved forms containing the exclusion language. The Court upheld the district court’s ruling that the language contained illegal attempts at subrogation (Majority: McGrath, Nelson, Leaphart, Cotter; Dissent: Rice).

Revelations Industries v. St Paul Fire & Marine – Revelation Industries sued its insurer for failure to defend arising from a contractual dispute. The dispute was a result of an error in the manufacture of a product by Revelation’s subcontractor. In the complaint against Revelation, no mention was made of the subcontractor, which would have allowed for coverage. The lower court held the insurer did not have a duty to defend based on the complaint. The Court reversed and ruled the insurer may not ignore facts that may give rise to coverage simply because the complaint fails to recite those facts. This took Montana away from the “4-corners” rule (Majority: Cotter, McGrath, Nelson, Leaphart, Morris, Warner; Dissent: Rice).

TORT

Korst v. Benefis Health Care – Nurse who received work comp benefits as a result of a latex allergy also filed a tort claim against the hospital. The Court ruled the nurse failed to present facts that show the hospital knowingly disregarded facts that created a high probability of injury to her. This case was analyzed using a standard the Court developed in 2000 that opened the door to more frivolous workplace injury lawsuits, but it still said the suit belonged in work comp law. The Legislature redefined this standard in 2001. (Majority: Leaphart, Gray, Nelson, Rice, Morris).

Fisher v. Swift Transportation – A policeman sued the driver of a company vehicle that caused the original crash he was investigating for injuries sustained during the investigation of the crash. The Court ruled that it could have been foreseeable to the company vehicle that others would be injured after the crash, so the case was remanded to the district court for trial. The dissenters noted the majorities ruling created a standard where essentially everything that is imaginable is foreseeable (Majority: Leaphart, Nelson, Cotter, Morris; Dissent: Warner, Gray, Rice).

Nelson v. Cenex – A former employee diagnosed with asbestos-related illness past the deadline for an occupational disease claim sued his former employer for strict liability, failure to provide a safe workplace, and negligent/intentional infliction of emotional distress. The Court held that under pre-1979 ODA, upon expiration of the deadline for an OD claim, an employee may pursue a tort action against the employer (Majority: Nelson, Cotter, Warner, Morris, Leaphart).

Brady v. PPL Montana – An injured employee sued his employer for intentional tort asserting §39-71-413 is unconstitutional because it strips an employee's right to sue an employer directly for work-related accidents. The Majority of the Court declined to decide the constitutionality of the law because of a lack of a factual record. The dissenters preferred to go forward with the analysis by upholding the statute (Majority: Morris, Nelson, Cotter, Leaphart; Dissent: Gray, Rice, Warner).

Olson v. Shumaker Trucking & Excavating – An injured employee who worked for a subcontractor sued the general contractor for failure to provide a safe workplace. The general contractor alleged the employee was contributorily negligent because he was riding back from the worksite in the bucket of a loader after being instructed to wait for the regular transportation to return. The Court held that while a non-delegable duty does in fact exist, §27-1-702 also requires damages to be diminished in proportion to the percentage of fault attributable to the person recovering (Majority: Morris, Gray, Leaphart, Warner; Concurring in Part and Dissenting in Part: Nelson).

Emanuel v. Great Falls School Dist. – A student who wrote a violent list of “to do’s” and was referred to school administrators later ran over a jogger. The jogger sued the Great Falls School District under a theory of negligence. The district court dismissed the case against the school because there is no special duty to protect others from 3rd persons absent a special relationship. The Court held the jogger was not a foreseeable plaintiff, and therefore the school had no duty to protect (Majority: Leaphart, McGrath, Warner, Rice, Morris).

Paull v. Park Co. and State – During a prisoner transfer, the van transporting the felons rolled near Dillon. One prisoner who was injured sued the state and county for negligence in hiring the prisoner transport company. The district judge granted summary judgment to the defendants because the state had no contractual relationship

with the company, and the county had an independent contractor relationship with the company. The Court reversed the district court's ruling saying prisoner transports are inherently dangerous activities, so therefore the county could still be liable as the contractor. In addition, the state is also potentially liable because it is by the state's authority and permission that the prisoner was being transported to another state (Majority: McGrath, Nelson, Warner, Cotter, Morris; Concurring in Part and Dissenting in Part: Leaphart; Dissent: Rice).

Rohlefs v. Stumble Inn – A plaintiff injured in an auto accident involving a drunk driver sued the bar where the driver was served alcohol. §27-1-710(6) requires that notice of intent to bring a lawsuit be given to the bar at least within 180 days of the accident. The plaintiff argued the statute was unconstitutional because it is “special legislation” that violates his equal protection rights. The Court held the legislature had specific reasons for the legislation and that it has a legitimate interest in establishing rules for the conduct of litigation and in setting limitation periods for particular types of cases (Majority: Warner, McGrath, Rice; Specially Concurring: Morris; Dissent: Leaphart, Cotter, Nelson).

TAX

Omimex Canada v. DOR – Omimex Canada owns an interest in 5 large and scattered smaller properties in Montana. It appealed from a district court ruling that DOR could centrally assess the property and classify it as class 9 property (taxed at 12%) rather than class 8 (taxed at 3%). The Court held that it was clear the Legislature intended exempt centrally assessed gas companies from class 9 unless they had a major distribution system in the state (Judge Deschamps, Gray, Cotter, Warner, Leaphart and Judge Hegel).

WORKERS' COMPENSATION

Michalak v. Liberty Northwest Ins. – Employee injured on wave-runner at company picnic files for workers' compensation benefits. Court held the injured employee was entitled to benefits because the employer invited him to the picnic and paid for the event (Majority: Leaphart, Warner, Nelson, Cotter, Morris).

Wilkes v. State Fund – Injured bus driver who reaches MMI files for PPD because he could no longer work on his farm. Court upholds the Workers' Compensation Court's finding that according to §39-71-703, he does not have an actual wage loss (Majority: Morris, Leaphart, Gray, Warner, Nelson, Cotter, Rice).

Kruzich v. Old Republic Ins. – An injured employee with mental impairment settled his work-related claims, but later developed Parkinson’s disease as a result of the earlier injury. He petitioned to re-open his claim based on mutual mistake of fact. The Court ruled that because he did not actually have Parkinson’s disease at the time of the settlement, there was no mistake of fact. Failure to predict the future is not a mistake of fact. (Majority: Nelson, Warner, Rice, Cotter; Dissent: Morris)

Lanes v. Montana State Fund – A man injured his left knee during his work as an electrician. When he filed an OD claim for his left knee, the State Fund accepted liability. He later went on to be a minister, but later gave it up due to his bad knee. He filed an OD claim for his right knee claiming the work as an electrician was also responsible. The State Fund denied liability because his work after being an electrician was his last injurious exposure. The Court upheld the Workers’ Compensation Court’s finding that the work in the ministry was not a significant aggravation of his knee, therefore the State Fund was liable (Cotter, Gray, Nelson, Warner, Rice).

Siebken v. Liberty Mutual Ins. - A security officer who was involved in the arrest of a trespasser later developed flu-like symptoms and back pain, but he did not file a claim for more than four months after the incident. The Court held he failed to notify his employer of the injury in compliance with the 30-day notice requirement for work-related injuries and was therefore not entitled to work comp benefits (Majority: Rice, Leaphart, Warner, Cotter, Morris).

Kratovil v. Liberty Northwest Ins. - A plumber filed for work comp and OD benefits for alleged job-related injuries. Liberty Northwest claimed the injuries stemmed primarily from a motorcycle accident, and said it was not liable for the benefits since the accident accounted for more than 50% of the cause of the injury. The Court held that this is not the standard in work comp cases. A plaintiff must only show that work duties significantly aggravated or contributed to the injury (Cotter, Gray, Leaphart, Warner, Nelson).

Aldrich v. Montana State Fund – An injured worker who received Social Security Retirement income requested TTD work comp benefits. The request was denied because he could not show a “total loss of wages” pursuant to §39-71-701 since he was retired. The Court upheld the Workers’ Compensation Court finding he could not demonstrate a “total loss of wages” (Majority: Cotter, Nelson, Warner, Morris, Rice).

Narum v. Liberty Northwest – A worker with a bad hip settled his claim with medicals reserved. When the insurer learned the bad hip was a degenerative joint disease, it refused to pay further medical costs including a hip replacement surgery. The Workers’ Compensation Court ordered the insurer to pay for the surgery because it believed the insurer had settled the claim and had agreed to pay future medicals. In addition, it assessed attorney’s fees and penalties against the insurer. The Court agreed with the lower court on the fees and penalties because the denial was unreasonable (Majority: Cotter, McGrath, Nelson, Morris; Concurring in Part and Dissenting in Part: Rice).

Heth v. Montana State Fund – Intoxicated plaintiff was injured when he was ejected from a work truck. MSF denied his work comp claim because he was intoxicated. The Workers’ Compensation Court held MSF was liable under the “employer knowledge” exception because the employer knew the plaintiff sometimes drank on the job. The Court held the employer need not have specific knowledge of alcohol use that is contemporaneous with an accident, and a general ongoing knowledge of alcohol use is sufficient (Majority: Cotter, McGrath, Leaphart, Morris, Warner).

Quick v. Montana State Fund – An injured employee filed for retroactive domiciliary care payments his wife provided going back thirteen years. The Workers’ Compensation Court denied the request because no medical opinion had established the needed for the care prior to the request. The Court upheld the WCC (Majority: Morris, McGrath, Nelson, Warner, Rice).

MMIA v. Roche - A policeman who was injured and received TTD work comp benefits was also receiving undisclosed income from a repair shop he owned. During the investigation, the policeman routinely failed to respond to requests for more information from the work comp insurer. The insurer filed a petition to recover the payments, which was granted by the Workers’ Compensation Court. The Court upheld this decision and ordered the policeman to repay his work comp benefits (Majority: Nelson, Cotter, Warner, Leaphart, Morris).

Tinker v. Montana State Fund – A worker injured his hip but did not report the incident for more than two years. When he attempted to claim both the injury to his hip and an OD claim for his hip, MSF denied both claims as untimely. The Court upheld the lower court’s finding that the worker was required to report the injury sooner and not just when he realized his “disability” (Majority: Cotter, McGrath, Nelson, Leaphart, Rice).

Satterlee v. Lumberman’s Mutual Ins. – Three injured workers who had received PTD work comp benefits in the past filed a lawsuit to allow them to receive the benefits even after they past retirement. §39-71-710 prohibits a worker from receiving work comp benefits once they reach the age of retirement and become eligible for Social Security benefits. A favorable decision for the plaintiffs would have cost the Montana work comp system more than \$250 million. The Montana Chamber filed an amicus brief in this case to lay out the reasons the law should be upheld, including the need for employers to have affordable work comp premiums and cost control in the system. The Court held there were rational bases for the Legislature’s decision to close off work comp benefits for those that reach the age of retirement, so the statute was upheld (Majority: Leaphart, McGrath, Rice, Warner, Cotter; Dissent: Morris, Nelson).

GENERAL BUSINESS

Cook v. Soo Line – An injured railroad employee from Indiana sued under FELA in Illinois court. The Illinois court dismissed based on forum *non conveniens* and ordered him to refile in Indiana where he worked, most of the witnesses lived and where the accident occurred. Instead, the employee filed in Montana based on the fact that the railroad company owned a small stretch of rail in Toole County. The railroad company moved to dismiss the claim asking the Court to afford full faith and credit to the Illinois decision. The Court denied the motion saying the Illinois court had no authority to require the claim be filed in any one forum as long as the claim was filed in a place where the defendant was doing business (Majority: Leaphart, Morris, Gray, Cotter, Nelson, Rice; Specially Concurring: Warner).

Bunch v. Lancair International et al – The Oregon widow of a man who died in a plane crash in Montana sued a variety of defendants involved in the manufacture and sale of the aircraft. None of the defendants had any connection to Montana, but the plaintiff claimed they can be sued in Montana because they distribute their products into the interstate stream of commerce. The Court upheld the district court's ruling for lack of personal jurisdiction because the mere fact the crash happened in Montana is insufficient to protect the defendants' due process rights (Majority: Cotter, Nelson, Warner, Morris, Rice).

State v. Phillip Morris et al – When a dispute arose over payment calculations into the tobacco settlement account, the manufacturers moved to compel arbitration pursuant to the settlement agreement. The Court majority held the dispute does not arise out of the calculations made by the auditor, and therefore does not trigger the arbitration provision. The Dissent pointed out that 48 states already concluded the dispute belongs in arbitration (Majority: Nelson, Cotter, Leaphart, Morris; Dissent: Rice).

MONTANA SUPREME COURT REVIEW - Cases from 2008-2009

	COURT	GRAY	NELSON	LEAPHART	COTTER	RICE	WARNER	MORRIS	McGRATH
Contracts									
<i>Access Organics v. Hernandez</i>	-	-		-	-		-	-	
<i>Cole v. St. James Healthcare</i>	-		-	-	+	+	-	-	
<i>Kortum-Managhan v. Herbergers</i>	-		-	-	-	+	-	-	
<i>Weimar v. Barrett</i>	+		+	+			+	+	+
<i>Woodruff v. Bretz RV</i>	-		-	-	-	+	+	-	
Medical Malpractice									
<i>Runstrom v. Allen</i>	+	+	-	-	+	+	+	+	
<i>Cobb v. Saltiel</i>	+		+	+			+	+	+
Employment									
<i>Vettel-Becker v. Deaconess Billings Clinic</i>	-	-	-	-	-	-	-	-	
<i>Saucier by Mallory v. McDonald's Restaurants of Montana</i>	-	-	-	-	-	-	-	-	
<i>Becker v. Rosebud</i>	+	+	+	+	+	+	+	+	
<i>Dean v. Sanders Co.</i>	+		+	+	+	+	+		
<i>Stevenson v. Felco Industries</i>	-		-	-	-	+		-	
<i>Christie v. DEQ</i>	+		+		+	+	+		+
Environment									
<i>Clark Fork Coalition et al v. DEQ</i>	-	+	-	-	-	+	-	-	
Property & Estate									
<i>Flathead Citizens for Quality Growth v. Flathead BoA</i>	-	-	-	-	-	-	-	-	
<i>Lammers v. Allstate Ins.</i>	-	-	-	-			-	-	
<i>Prosser, White and Crotty v. Kennedy Enterprises</i>	+	+	-	-	-	+	+	+	
<i>Estates of Louisa Swanson and Sven Swanson</i>	-	-	-	-	-	+	-	-	
<i>Kafka v. FWP</i>	-	-	+		-	+			
<i>Bitterroot River Protection Association v. Bitterroot Cons. Dist.</i>	-		-		-	-	-	-	
<i>Delaney v. Bozeman</i>	+		+	+	+	+	+	+	+
<i>Liberty Cove v. Missoula County</i>	-		-	-	-	-			-
Insurance									
<i>Estate of Wamsley v. Nodak Mutual Ins</i>	-	-	-		-	-	+	-	
<i>Lee v. Great Divide Ins</i>	+	+	-	-	-		+	+	
<i>Newbury v. State Farm Fire & Casualty Ins</i>	+		+		+	+	+	+	
<i>Robertus v. Farmers Union Mutual Ins</i>	-	-	-		-	+	-		
<i>Allstate Ins. v. Wagner-Ellsworth and Rusk</i>	-	-	-	-	-	-	-	-	
<i>Geraldine v. MMIA</i>	+	+	+	-	-	+	+	+	
<i>BCBS v. Insurance Commissioner</i>	-		-	-	-	+			-
<i>Revelations Industries v. St Paul Fire & Marine</i>	-		-	-	-	+	-	-	-

	COURT	GRAY	NELSON	LEAPHART	COTTER	RICE	WARNER	MORRIS	McGRATH
Tort									
<i>Korst v. Benefis Health Care</i>	+	+	+	+		+		+	
<i>Fisher v. Swift Transportation</i>	-	+	-	-	-	+	+	-	
<i>Nelson v. Cenex</i>	-		-	-	-		-	-	
<i>Brady v. PPL Montana</i>	-	+	-	-	-	+	+	-	
<i>Olson v. Shumaker Trucking & Excavating</i>	+	+	-	+			+	+	
<i>Emanuel v. Great Falls School Dist</i>	+			+		+	+	+	+
<i>Paull v. Park Co. and State</i>	-		-	-	-	+	-	-	-
<i>Rohlefs v. Stumble Inn</i>	+		-	-	-	+	+	+	+
Tax									
<i>Omimex Canada v. DOR</i>	+	+		+	+		+		
Worker's Compensation									
<i>Michalak v. Liberty Northwest Ins</i>	-		-	-	-		-	-	
<i>Wilkes v. State Fund</i>	+	+	+	+	+	+	+	+	
<i>Kruzich v. Old Republic Ins</i>	+		+		+	+	+	-	
<i>Lanes v. Montana State Fund</i>	-	-	-		-	-	-		
<i>Siebken v. Liberty Mutual Ins</i>	+			+	+	+	+	+	
<i>Kratovil v. Liberty Northwest Ins</i>	-	-	-	-	-		-		
<i>Aldrich v. Montana State Fund</i>	+		+		+	+	+	+	
<i>Narum v. Liberty Northwest</i>	-		-		-	+		-	-
<i>Heth v. Montana State Fund</i>	-			-	-		-	-	-
<i>Quick v. Montana State Fund</i>	+		+			+	+	+	+
<i>MMIA v. Roche</i>	+		+	+	+		+	+	
<i>Tinker v. Montana State Fund</i>	+		+	+	+	+			+
<i>Satterlee v. Lumberman's Mutual Ins.</i>	+		-	+	+	+	+	-	+
General Business									
<i>Cook v. Soo Line</i>	-	-	-	-	-	-	-	-	
<i>Bunch v. Lancair International et al</i>	+		+		+	+	+	+	
<i>State v. Phillip Morris et al</i>	-		-	-	-	+		-	
Participation:									
Total Business Score 2008-2009:	45%	48%	34%	32%	33%	79%	57%	42%	60%
Lifetime Business Score:		71%	40%	39%	28%	81%	60%	45%	60%