EXHIBIT 4
DATE 3-23-05
SB 481

The Montana Trial Lawyers Association supports SB 481.

The merger of Occupational Disease and Workers' Compensation in SB 481 is an excellent and long overdue change.

This bill corrects constitutional problems of equal protection between the two acts identified by the Supreme Court. The bill essentially ratifies what Insurers and Employers are currently doing in regard to occupational disease. It treats injured workers fairly and equitably, whether that worker was injured in a mishap that took place in an instant or suffers from an occupational disease that developed over years of exposure to a harmful circumstance in the workplace.

The Montana Trial Lawyers Association believes that **one amendment** is necessary to make this bill better, for both workers and for employers.

The Amendment:
Page 22, line 17:
STRIKE: "more than 50% responsible for"
INSERT: "the major contributing factor of"

The Reason:
The 50% requirement is a change in current law. With that exception, the rest of SB 481 is an outright merger of the two acts. Why is this a problem?

- **First:** The current language of the bill requires a doctor to determine among several possible causes whether or not the work related causes were 50% of the overall cause. That would be fine if there were only two factors in play - work was or was not the major contributing factor. But when there are several factors that are possibly a cause, how can the doctor say with certainty that work was only 49% of the cause, and the other 4 or 5 causes together were 51%? That is not fair to the doctor, and it is not fair to the worker.
- **Second:** Assuming that the doctor could say with certainty that work was 49% of the cause of an occupational disease, and the remaining factors (such as genetics, a hobby, environmental factors, etc) were each 10-15%, is it fair to say that workers' compensation should not cover that worker? Without the work related causes, it is likely the disease would never have manifested itself, yet we are going to deny workers compensation because work was only 49% of the cause, and was clearly the ***Major Contributing Factor.***
- **Third:** If we do bar a worker whose occupational disease was 49% caused by work, we also exempt them from the ***exclusive remedy*** provisions of work comp. That results in the worker filing a civil ***lawsuit against the employer***. And the employer is not covered by the work comp insurance that the employer has paid for in such a lawsuit. This is a bad result for the worker and for the employer.

For the above reasons, MTLA supports amending SB 481, striking 50%, and inserting "major contributing factor." It is fair to workers and fair to employers. And it avoids recreating the problem that SB 481 is fixing, that the differences between the two Acts violates equal protection.

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