



Chamber of Commerce

Issue Brief:

Strengthen Exclusive Remedy in Work Comp

EXHIBIT 1
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Background: Montana's workers' compensation law provides that in return for the right to receive workers' compensation, an employee relinquishes his right to sue his employer for damages in tort. This is referred to as the "exclusive remedy doctrine." However, Montana law specifically provides for an exception to this exclusive remedy in MCA 39-71-413(1):

if an employee is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of employment.

The Legislature has embraced a narrow exception to exclusive remedy for intentional acts by an employer or co-worker that cause a known injury. A good example of an intentional act would be a criminal act such as battery. The Legislature never meant for negligent acts, no matter how egregious, to be equated with intentional acts such that an injured worker is entitled to a cause of action for damages *in addition to* work comp benefits. Negligence, and even gross negligence, whether committed by an employer or an employee, still allows for an injured worker to collect worker's compensation under the no-fault system.

Problem: In its recent *Alexander v. Bozeman Motors* (2010) decision, the Montana Supreme Court ruled that determining intent is a genuine issue of material fact and summary judgment should not be granted unless the facts are known and indisputable. In that ruling, the Court created a test for determining intent that effectively provides injured workers with a roadmap to avoid exclusive remedy. According to Justice Rice's dissent, the Court's *Alexander* ruling opens the door for personal injury actions where the defendant's conduct rises to a level of gross negligence. This means that more employers are subjected to costly and frivolous lawsuits even though the work comp system is designed to be exclusive remedy.

In addition, there is a gap in insurance coverage for employers in these situations since work comp insurers are not obligated to defend these employers, and property/casualty insurers do not cover intentional torts. In short, Montana employers may be paying some of the highest work comp rates in the country, but coverage may not even be there.

Chamber Solution: The Court's *Alexander* decision points toward a solution to strengthen exclusive remedy in work comp. The Court based its test on how intent is determined in criminal law. Therefore, the Chamber is proposing to incorporate a criminal law evidentiary standard into the exception statute. Doing so would require a plaintiff to *prove beyond a reasonable doubt* that an employer or co-worker committed an intentional and deliberate act to injure an employee. This evidentiary standard would encourage district court judges to grant summary judgment in frivolous cases that should be dealt with in the no-fault work comp system. It would in no way undermine an injured worker's right to work comp benefits.