

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Cause No. CDV-2020-307 Hon. Kathy Seeley ORDER GRANTING UNOPPOSED MOTIONS FOR: (1) CERTIFICATION OF ORDERS AS FINAL FOR PURPOSES OF INTERLOCUTORY APPEAL; AND (2) STAY OF ISSUE OF ATTORNEYS' FEES AND COSTS
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INTRODUCTION

The parties have moved for an order certifying the Court's Findings of Fact, Conclusions of Law, and Order filed August 14, 2023, (Doc. 405), and the Court's prior Orders ancillary thereto and referenced therein, as final for purposes of interlocutory appeal under Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., excluding only the issues of attorneys' fees and costs, and for an order staying the issues of Plaintiffs' entitlement to and amount of attorneys' fees and costs pending a Montana Supreme Court ruling on the merits of the interlocutory appeal.

The Parties agree that such an order furthers judicial economy and public policy by permitting swift and efficient adjudication of the merits in this case of statewide concern without expending the further time and resources necessary to decide Plaintiffs' request for attorneys' fees and costs.

Although the Parties have together moved for certification, "[p]arties cannot stipulate certification of an order under M. R. Civ. P. 54(b)." *Rogers v. Lewis & Clark Cnty.*, 2020 MT 230,

¶ 10, 401 Mont. 228, 472 P.3d 171. This Court must exercise its discretion to determine whether to grant or deny the motion. *See Roy v. Neibauer*, 188 Mont. 81, 85, 610 P.2d 1185, 1188 (1980).

LEGAL STANDARDS

Montana Rule of Civil Procedure 54(b) provides:

(1) When an action presents more than one claim for relief -- whether as a claim, counterclaim, crossclaim, or third-party claim -- or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(2) Any order or other decision granted pursuant to Rule 54(b)(1) must comply with the certification of judgment requirements of Montana Rule of Appellate Procedure 6(6).

Montana Rule of Appellate Procedure 6(6) provides:

Certification of a judgment as final for purposes of appeal. Notwithstanding the provisions of section (5)(a) of this rule, a district court may direct the entry of final judgment as to an otherwise interlocutory order or judgment, only upon an express determination that there is no just reason for delay, pursuant to M. R. Civ. P. 54(b). In so doing, the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final, and the court shall, in accordance with existing case law, articulate in its certification order the factors upon which it relied in granting certification, to facilitate prompt and effective review. A certification order failing to meet these requirements shall be subject to summary dismissal pursuant to rule 4(4)(b).

If a district court directs an entry of final judgment under Rule 54(b), Mont. R. Civ. P., then, following the filing of a notice of appeal with the Montana Supreme Court, the Montana Supreme Court will review the district court's certification order, determine whether the certification order complies with Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., and enter an order allowing or declining to allow the appeal to proceed. Mont. R. App. P. 4(4)(b).

The factors normally considered for a Rule 54(b) certification include: (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, triviality of competing claims, expense, and the like. *Roy*, 188 Mont. at 87, 610 P.2d at 1189.

This Court has the discretion to grant a Rule 54(b) certification. *Weinstein v. Univ. of Mont.*, 271 Mont. 435, 439, 898 P.2d 101, 104 (1995). To do so, the Court must make two separate determinations. *Rogers*, ¶ 13. First, the Court must “‘expressly determine[] that there is no just reason for delay,’ as required by M. R. Civ. P. 54(b) and M. R. App. P. 6(6).” *Id.* (citations omitted). Second, the Court must address the five-factor test set by the Montana Supreme Court. *Id.* The burden is on the moving party to sway the Court that Rule 54(b) certification is appropriate. *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2007 MT 325, ¶ 15, 340 Mont. 176, 178 P.3d 689.

BACKGROUND¹

Youth Plaintiffs are sixteen Montana youth who filed a Complaint for declaratory and injunctive relief against the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission, challenging the constitutionality of the fossil fuel-based provisions of Montana’s State Energy Policy Act, Mont.

¹ The Court incorporates by reference the detailed Procedural History set forth in its August 14, 2023 Order. (Doc. 405 at 1-9).

Code Ann. § 90-4-1001(1)(c)-(g); a provision of the Montana Environmental Policy Act (“MEPA”), Mont. Code Ann. § 75-1-201(2)(a) (“MEPA Limitation”), which constricted Defendants’ consideration of the impacts of greenhouse gas (GHG) emissions or climate change in their environmental review of fossil fuel projects; and the aggregate acts of the State in implementing and perpetuating a fossil fuel-based energy system pursuant to these statutory provisions. Plaintiffs alleged the State’s implementation of these provisions causes and contributes to climate change, harming them in violation of their rights under Article II, Sections 3, 4, 15, and 17; Article IX, Sections 1 and 3 of the Montana Constitution; and the Public Trust Doctrine. (Doc. 1 ¶¶ 3-4).

On August 4, 2021 (Doc. 46), the Court partially granted and partially denied Defendants’ motion to dismiss, allowing Plaintiffs’ claims requesting declaratory relief and attendant injunctive relief (i.e., claims for relief # 1-5) to move forward. The Parties engaged in extensive discovery and motions practice throughout 2022, with the Court twice clarifying that Plaintiffs’ requests for declaratory relief and attendant injunctive relief (i.e., claims for relief # 1-5) remained live. (*See* Doc. 405 at 4-6).

On June 10, 2022, Defendants filed a Petition for Writ of Supervisory Control (OP 22-0315), requesting the Montana Supreme Court exercise supervisory control and “dismiss Request for Relief 5 from this case.” On June 14, 2022, the Montana Supreme Court denied the Petition. (OP 22-0315).

On May 23, 2023, following the legislature’s repeal of the challenged provisions of the Energy Policy Act, the Court issued an Order on Defendants’ Motions to Partially Dismiss for Mootness and for Summary Judgment. (Doc. 379). As to Defendants’ Motion to Partially Dismiss for Mootness (Doc. 343), the Court granted Defendants’ motion and dismissed without prejudice Plaintiffs’ claims involving the Energy Policy Act, the former § 90-4-1001, MCA, and Defendants’

aggregate acts taken pursuant to and in furtherance of the Energy Policy Act on redressability and prudential standing grounds. (Doc. 379 at 3-4). The Court denied Defendants' motion for summary judgment and allowed Plaintiffs' MEPA claims to proceed to trial. (Doc. 379 at 20-26; Doc. 405 at 8).

On June 2, 2023, Defendants filed an Emergency Petition for Writ of Supervisory Control with the Montana Supreme Court (OP 23-0311), requesting again that the Montana Supreme Court exercise supervisory control and reverse this Court's denial of the State's motion for summary judgment. The State also asked the Montana Supreme Court to stay the trial set to begin June 12, 2023. On June 6, 2023, the Montana Supreme Court denied the Emergency Petition for Writ of Supervisory Control. (OP 23-0311). The Montana Supreme Court observed Defendants had "not demonstrated that HB 971's amendments alter the allegations the Plaintiffs make in the Complaint" concerning the MEPA Limitation. (OP 23-0311 at 3).

On June 7, 2023, this Court entered the Final Pre-Trial Order for this proceeding. (Doc. 384). In addition to "supersed[ing] the pleadings as to the remaining issues and govern[ing] the course of the trial of this case," (Doc. 384 at 38), the Final Pre-Trial Order denied Defendants' Motion to Dismiss MEPA Claims (Doc. 376). (Doc. 384 at 38; Doc. 405 at 9).

A bench trial was held from June 12 - 20, 2023. Plaintiffs presented testimony from twenty-four witnesses, and Defendants presented testimony from three witnesses. (Doc. 405 at 9). The Court admitted one hundred sixty-eight of Plaintiffs' exhibits and four of Defendants' exhibits. (Doc. 405 at 9).

On June 19, 2023, while trial was proceeding, Defendants filed a Bench Memorandum on the Constitutional and Procedural Limits of the Montana Environmental Policy Act. (Doc. 396).

On June 25, 2023, Plaintiffs filed a response. (Doc. 402). This briefing discussed in detail SB 557 and the newly-enacted § 75-1-201(6)(a)(ii), MCA.

This Court issued its Findings of Fact, Conclusions of Law, and Order (Doc. 405) on August 14, 2023. Youth Plaintiffs prevailed on their constitutional claims against the MEPA Limitation, § 75-1-201(2)(a), MCA. The Court further conformed its Conclusions of Law to the evidence presented at trial by both Parties pursuant to Rule 15(b)(2), Mont. R. Civ. P., and “address[ed] the constitutionality of Mont. Code Ann. § 75-1-201(6)(a)(ii), which was enacted by SB 557 and addressed by both parties during trial and in trial briefing.” (Doc. 405 at 86, 102).

Specifically, the Court held: (1) Plaintiffs have standing to bring the claims addressed; (2) Plaintiffs have a fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system; (3) the MEPA Limitation, § 75-1-201(2)(a), MCA, and § 75-1-201(6)(a)(ii), MCA, infringe Plaintiffs’ fundamental right to a clean and healthful environment (as well as their fundamental rights to equal protection, dignity, liberty, health and safety, and public trust resource rights stemming from harm to Montana’s environment) and are facially unconstitutional; (4) § 75-1-201(2)(a), MCA, and § 75-1-201(6)(a)(ii), MCA, do not pass strict scrutiny; and (5) Plaintiffs are entitled to injunctive relief barring Defendants from enforcing or acting in accordance with the statutes declared unconstitutional. (Doc. 405 at 101-03).

The Court issued a judgment in favor of Plaintiffs as prevailing parties (Doc. 405 at 102), acknowledged Plaintiffs’ Complaint had requested an award of reasonable attorneys’ fees and costs (Doc. 1 at 104), and, pursuant to Rule 54(d), Mont. R. Civ. P., ordered Plaintiffs to submit their motion for attorneys’ fees and costs and documentation in support thereof by August 28, 2023.

The Parties then requested a status conference with the Court at which time their respective counsel represented they had conferred and agreed to certification as final for purposes of interlocutory appeal the Court's Findings of Fact, Conclusions of Law, and Order filed August 14, 2023 (Doc. 405), together with the Court's prior Orders, and staying the issue of attorneys' fees and costs. On August 24, 2023, Plaintiffs filed an Unopposed Motion for Extension of Time to File Attorneys' Fees and Costs (Doc. 406), requesting an extension of time to file the attorneys' fees and costs motion and supporting documentation and to allow time for the Parties to draft and submit a joint motion for certification of the Court's orders for interlocutory appeal. The Court granted Plaintiffs' Unopposed Motion on August 25, 2023. (Doc. 408).

On September 7, 2023, Plaintiffs filed their unopposed motion for an order certifying the Court's Findings of Fact, Conclusions of Law, and Order filed August 14, 2023, (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, as final for purposes of interlocutory appeal, and for an order staying the issues of Plaintiffs' entitlement to and amount of attorneys' fees and costs pending the Montana Supreme Court's ruling on the merits of the interlocutory appeal. Defendants filed their unopposed motion for certification setting forth their reasons in support of certification.

ANALYSIS

The Parties maintain that an order from this Court certifying its August 14, 2023, Order (Doc. 405), and the Court's prior Orders, as final for purposes of interlocutory appeal, excepting only the issue of attorney fees and costs, furthers judicial economy by permitting swift and efficient adjudication of the merits in this case of statewide concern without expending the further time and resources that could attend determination of Plaintiffs' request for attorneys' fees and costs.

The Parties further assert that there is no just reason for delay in certifying the otherwise interlocutory August 14, 2023, Order (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, as final for purposes of interlocutory appeal under Rule 54(b)(1), Mont. R. Civ. P. The Parties argue that, given the pressing fundamental constitutional issues of statewide concern presented here, and after a balancing of the competing factors, it is in the interest of sound judicial administration and public policy for the Court to certify these orders as final for purposes of interlocutory appeal.

In addition, the Parties argue that prompt interlocutory review of the merits of this case is necessary given other cases currently pending before the Supreme Court that present overlapping legal questions and related issues. The Parties believe that timely resolution of the merits, and delayed resolution of Plaintiffs' entitlement to and amount of attorneys' fees and costs, will best serve the Parties and the litigants of related cases, and will advance the interests of sound public policy and judicial economy. *See, Montana Env't Info. Ctr. v. Montana Dep't of Env't Quality*, DA 23-0225 (appeal docketed April 17, 2023) (involving the constitutionality of the MEPA Limitation, § 75-1-201(2)(a), MCA); *Forward Montana v. State*, DA 22-0639 (appeal docketed November 14, 2022) (involving the availability of attorneys' fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act, § 27-8-313, MCA, against the State); and *Barrett v. State*, DA 22-0586 (appeal docketed October 13, 2022) (involving availability of attorneys' fees under the Private Attorney General Doctrine and whether § 25-10-711(1)(b), MCA, is applicable when fees are sought pursuant to the Private Attorney General Doctrine).

A. The Court concludes that no just reason exists to delay the Montana Supreme Court's consideration of the merits

Having reviewed the Unopposed Motions and the *Roy* factors, the Court agrees this is the "infrequent harsh case" meriting a favorable exercise of discretion and certification. *Kohler v.*

Croonenberghs, 2003 MT 260, ¶ 16, 317 Mont. 413, 77 P.3d 531. The case presents pressing fundamental constitutional issues of statewide concern. The Court’s August 14, 2023, Order (Doc. 405) and prior Orders made several rulings on a range of constitutional issues and questions which are of crucial environmental, economic, and social import.

Namely, the Court’s August 14, 2023, Order (Doc. 405) made detailed findings of fact and conclusions of law that relate directly to several of Montanans’ fundamental rights, and in particular their right to a clean and healthy environment under Article II, Section 3, and Article IX, Section 1, Montana Constitution. Further, the August 14, 2023, Order, (Doc. 405), made detailed findings of fact concerning the basic science of climate change; the irrefutable connection between fossil fuel extraction, transportation, and combustion and the observed planetary warming and attendant consequences; and the array of serious harms that climate change has already caused and will increasingly cause to Montana’s environment and citizens. The Court found “Plaintiffs have proven that as children and youth, they are disproportionately harmed by fossil fuel pollution and climate impacts,” and Plaintiffs “have suffered injuries that are concrete, particularized, and distinguishable from the public generally.” (Doc. 405 at 87). The uncontested evidence presented at trial conclusively demonstrated that Youth Plaintiffs’ injuries increase and compound each passing day, including:

92. Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future. [SR 168:17-169:7; CW 279:14-20, 314:20-315:8, 318:2-5; PE-40].

98. According to the Intergovernmental Panel on Climate Change (IPCC), “Climate change is a threat to human well-being and planetary health (*very high confidence*). [SR-48]. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*).... The choices and actions

implemented in this decade will have impacts now and for thousands of years (*high confidence*).” [SR 149:15-150:7; P143; SR-48, SR-63; LB-43].

101. Dr. Byron provided expert testimony that climate change and the air pollution associated with it are negatively affecting children in Montana, including Youth Plaintiffs, with a strong likelihood that those impacts will worsen in the absence of aggressive actions to mitigate climate change. Dr. Byron outlined ways in which climate change is already creating conditions that are harming the health and well-being of the Youth Plaintiffs. Dr. Byron testified that reducing fossil fuel production and use, and mitigating climate change now, will benefit the health of the Youth Plaintiffs now and for the rest of their lives. Dr. Byron is a well-qualified expert, and the Court found her testimony informative and credible.

108. The physical and psychological harms are both acute and chronic and accrue from impacts to the climate such as heat waves, droughts, wildfires, air pollution, extreme weather events, the loss of wildlife, watching glaciers melt, and the loss of familial and cultural practices and traditions. [LB 498:12-25, 524:11-22; LVS 1178:13-1179:6, 1196:6-11, 1200:7-1201:25, 1202:6-24, 1204:21-1205:19, 1206:19-1209:12, 1218:2-16, 1219:25-1220:11, 1221:19-21; MDJ 595:18-596:2, 597:6-18, 600:23-604:14, 606:11-607:2, 608:1-13, 609:23-610:10].

138. The unrefuted testimony at trial established that climate change is a critical threat to public health. [LB 536:10-537:14].

139. Actions taken by the State to prevent further contributions to climate change will have significant health benefits to Plaintiffs. [LB 534:25-535:9].

194. The unrefuted testimony established that Plaintiffs have been and will continue to be harmed by the State’s disregard of GHG pollution and climate change pursuant to the MEPA Limitation.

(Doc. 405).

Against this factual backdrop, the Court’s August 14, 2023, Order (Doc. 405), struck down as facially unconstitutional the MEPA Limitations, § 75-1-201(2)(a), MCA, and § 75-1-201(6)(a)(ii), MCA, and permanently enjoined their enforcement, thereby significantly affecting

the environmental review and permitting process for Montana’s regulatory agencies and regulated industry. The Court recognizes that a broad array of stakeholders have an interest in the expeditious consideration of the merits of this case by the Montana Supreme Court so Montanans have certainty as to the nature of their constitutional rights and the State has clarity and guidance as to the nature and extent of its constitutional obligations.

The Court further agrees with the Parties that it is in the interest of sound judicial administration and public policy to certify the judgment as final and that there is no just reason for delay in doing so—particularly considering other cases currently pending before the Montana Supreme Court presenting overlapping legal questions and related issues. The Court agrees with the Parties that timely resolution of the merits and delayed resolution of Plaintiffs’ entitlement to and amount of attorneys’ fees and costs will best serve the Parties, the litigants of related cases, and judicial economy. *See Montana Env’t Info. Ctr. v. Montana Dep’t of Env’t Quality*, No. DA 23-0225 (appeal docketed April 17, 2023) (involving the constitutionality of the MEPA Limitation, § 75-1-201(2)(a), MCA); and *Forward Montana v. State*, No. DA 22-0639 (appeal docketed November 14, 2022) (involving the availability of attorneys’ fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act, § 27-8-313, MCA, against the State).

B. The Court concludes that the Parties’ unopposed motions satisfy the five-factor test utilized by the Montana Supreme Court

Through their unopposed motions, the Parties set forth distinct yet complementary reasons for seeking certification on the basis of which the Court concludes the Parties have carried their burden of establishing the presence of the factors considered for a Rule 54(b) certification. *Roy*, 188 Mont. at 87, 610 P.2d at 1189.

1. The relationship between the adjudicated and unadjudicated claims

Analyzing the *Roy* factors, Plaintiffs contend the relationship between the adjudicated and unadjudicated claims is not such that they must be heard together on appeal because the sole remaining unadjudicated claim in this case is Plaintiffs' request for attorneys' fees and costs—the adjudication of which is not necessary, essential, or relevant to the merits of Plaintiffs' constitutional claims, except insofar as they will be affected by the Supreme Court's decision on the merits. The Court agrees.

2. The possibility that the need for review might or might not be mooted by future developments in the district court

Plaintiffs further submit there is no possibility that the need for review might be mooted by future developments in this Court. Again, the Court agrees. The merits of the substantive claims have been fully adjudicated.

3. The possibility that the reviewing court might be obliged to consider the same issue a second time

If certification is granted, there is no possibility the Montana Supreme Court will have to consider the same issue a second time. If certification is not granted, there is a significant possibility that the Montana Supreme Court might be obliged to consider the fundamental constitutional issues raised in this case for a second time based on similar claims raised in other cases currently pending on appeal. *See Montana Env't Info. Ctr. v. Montana Dep't of Env't Quality*, No. DA 23-0225 (appeal docketed April 17, 2023).

4. The presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final

The record before the Court demonstrates there are no claims or counterclaims which could result in a set-off against the judgment sought to be made final because all of the claims the Parties seek to certify are declaratory or injunctive in nature. The issue of attorneys' fees and costs has no bearing on the outcome of the underlying merits claims.

5. Prudential reasons support entering a Rule 54(b) certification order

As indicated above, the Court recognizes that a broad array of stakeholders—including young Montanans, regulated industry, and the State itself—have an interest in the expeditious consideration of this case by the Montana Supreme Court. The Court is satisfied the requested certification and stay will further judicial economy and public policy by allowing the pressing constitutional issues raised here, which are all but guaranteed to recur, to proceed up on appeal while the Montana Supreme Court clarifies the law of attorneys' fees under the Private Attorney General Doctrine and Uniform Declaratory Judgments Act in Montana. *See Forward Montana v. State*, No. DA 22-0639 (appeal docketed November 14, 2022); *see also Barrett v. State*, No. DA 22-0586 (appeal docketed October 13, 2022) (concerning availability of attorneys' fees under the Private Attorney General Doctrine).

In sum, having weighed the factors set forth in *Roy* and considered the Parties' mutual interest in obtaining rulings on the scope of Youth Plaintiffs' constitutional rights and the nature of Defendants' constitutional obligations, this Court expressly determines there is no just reason for delay in certifying as final for purposes of interlocutory appeal pursuant to Rule 54(b), Mont. R. Civ. P. and Rule 6(6), Mont. R. App. P., its August 14, 2023 Order (Doc. 405), together with the Court's prior Orders ancillary thereto and referenced therein, excluding only the issues of Plaintiffs' entitlement to and amount of attorneys' fees and costs. The Court has balanced the competing factors present in this case and has determined it is in the interest of sound judicial administration and public policy to certify these specific rulings, which involve fundamental constitutional issues of statewide import.

FOR THE FOREGOING REASONS, the following rulings, all of which are conclusions of law, declarations of rights, and invalidation of statutes, are certified as final and suitable for appeal:

Order dated August 14, 2023 (Doc. 405)

1. Finding in favor of Plaintiffs on all remaining claims.

Order dated August 4, 2021 (Doc. 46)

1. Granting Defendants' Motion to Dismiss (Doc. 11) with respect to Requests for Relief # 6, 7, 8, and 9; and
2. Denying Defendants' Motion to Dismiss (Doc. 11) with respect to Requests for Relief # 1, 2, 3, 4, and 5.

Order dated May 23, 2023 (Doc. 379)

1. Granting Defendants' Motion to Partially Dismiss for Mootness (Doc. 339) as to Plaintiffs' claims concerning the State Energy Policy, § 90-4-1001(1)(c)-(g), MCA, (repealed March 16, 2023, via HB 170); and
2. Denying Defendants' Motion for Summary Judgment (Doc. 290).

Order dated June 7, 2023 (Doc. 384)

1. Denying Defendants' Motion to Dismiss MEPA Claims (Doc. 376).

Order dated June 30, 2022 (Doc. 158)

1. Denying Defendants' Rule 60(a) Motion for Clarification of Order on State's Motion to Dismiss (Doc. 84).

Order dated September 22, 2022 (Doc. 217)

1. Denying Defendants' Second Rule 60(a) Motion for Clarification of Order on State's Motion to Dismiss (Doc. 167).

Order dated October 14, 2022 (Doc. 225)

1. Denying Defendants' Rule 35(a) Motion for Independent Medical Examination (Doc. 163).

Order dated June 1, 2023 (Doc. 381)

1. Ruling on various Motions *in Limine* (Doc. 260, 262, 264, 266, 268, 270, 272).

IT IS FURTHER ORDERED that the issues of Plaintiffs' entitlement to and amount of attorneys' fees and costs are hereby STAYED pending the Montana Supreme Court's ruling on the merits of the interlocutory appeal. Should the Montana Supreme Court decline to enter an order allowing the interlocutory appeal to proceed pursuant to Rule 4(4)(b), Mont. R. App. P., Plaintiffs shall file their motion for attorneys' fees and costs and supporting documentation with this Court within fourteen (14) days of the date of the Montana Supreme Court's order declining to allow the appeal to proceed.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Electronically Signed By:
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