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Montana Legislative Services Division

Legal Services Office

April 21, 2004

To: Economic Affairs Interim Committee
From: Bart Campbell, staff attorney
Re: State Supreme Court decision permitting stacking of multiple policies providing underinsured motorist coverage.

Dear Committee Members:

Our state Supreme Court in *Hardy v. Progressive Specialty Insurance Co.*, 2003 MT 85, 315 Mont. 107 (2003), held that Hardy was entitled to recover \$150,000 by stacking three \$50,000 underinsured motorist coverages for which he had paid three separate premiums. The Court stated that section 33-23-203, MCA (specifically 33-23-203(1)(c)), is not rationally related to the stated objective of maintaining affordable insurance in Montana nor any other "permissible legislative objective" and therefore constitutes an arbitrary and capricious action.

In light of the *Hardy* decision, the committee may want to consider proposing legislation to make section 33-23-203, MCA, conform to the Supreme Court's holding that a portion of the statute's language is unconstitutional. I am enclosing two potential bill drafts that address the Court's decision. The first, LCxxxx, deletes the language the Court held was unconstitutional. The second bill draft, LCyyyy, adds language that clarifies that stacking is allowed if separate premiums are charged for uninsured motorist coverage.

At this point in time, since no bill draft is on the table, this office has received no input from the State Auditor's office, the insurance industry, or consumer groups as to what might be the best approach to dealing with the *Hardy* decision. However, it is likely that if the committee decides to request a bill draft addressing this issue that the matter will be fully debated during the 2005 session.

Bart Campbell
Staff Attorney