

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 17

WCC No. 9712-7880

RON BEAULIEU

Petitioner

vs.

UNINSURED EMPLOYERS' FUND and HUMAN DYNAMICS, INC.

Respondent/Insurer for

EUREKA PELLET MILLS, INC.

Employer.

ORDER GRANTING MOTION TO PROTECTIVE ORDER IN PART,
DENYING THE MOTION IN PART, AND DENYING SANCTIONS

Summary: Claimant moved for a protective order regarding discovery requests seeking among other things, income information and information regarding subsequent injuries.

Held: Where the putative insurer has already paid TTD benefits, and the issue surrounding TTD is only unreasonable delay in payment, claimant need not produce information regarding income or subsequent injuries. Other discovery ordered.

Topics:

Discovery: Protective Orders. Where the putative insurer has already paid TTD benefits, and the issue surrounding TTD is only unreasonable delay in payment, claimant need not produce information regarding income or subsequent injuries. Protective order granted, though other discovery ordered.

¶1 Claimant has moved for a protective order with respect to certain interrogatories and requests for production propounded upon him by respondent Human Dynamics, Inc., (HDI).

¶2 The present proceeding consists of two cases which have been consolidated. One of the actions seeks medical benefits from, in the alternative, HDI or the Uninsured Employers' Fund (UEF). The second seeks a 20% penalty and attorney fees with respect to temporary total disability benefits claimant alleges were paid by HDI but which were

unreasonably delayed. Discovery which may lead to relevant evidence concerning either of the issues is proper. Rule 26(b)(1), Mont.R.Civ.P.

¶3 Some of the discovery launched by HDI concerns claimant's entitlement to temporary total disability benefits. For example, HDI seeks income information and information with respect to subsequent injuries. This sort of discovery is not calculated to lead to admissible evidence. The penalty and attorney fees are sought with respect to benefits paid, i.e., benefits that HDI has already admitted are due. There is no counter-claim for fraud or mistake, and the Court will not permit discovery which goes beyond the bounds of the issues raised.

¶4 HDI also asks for copies of all exhibits claimant intends to offer at trial. That is not a proper request for production and is covered in any event by the Court's exchange requirement.

¶5 Having considered the claimant's objections, the Court makes the following Order:

ORDER

¶6 1. Claimant's objections to interrogatories 1 and 2 and requests for production 1, 2, 4, and 6 are **sustained**.

¶7 2. Claimant's objections to interrogatory 3 and request for production 3 are **overruled** since the information requested may be relevant to his entitlement to medical benefits.

¶8 3. Claimant's objection to request for production 5, which seeks medical records relating to his injury, is **overruled**; irrespective of the request, he has a continuing obligation to provide those records. ARM 24.5.317.

¶9 4. Claimant's objections to requests for production 7, 8 and 9 are **overruled**. The information concerning post-marking of benefits mailed to him is plainly relevant to his claim of undue delay. Information concerning conversations with HDI may be relevant to the claim of undue delay.

¶10 5. HDI's request for attorney fees is **denied** since some of the objections to discovery were meritorious.

¶11 6. No later than Friday, March 6, 1998, the claimant shall FAX further answers and responses to HDI with respect to those interrogatories and requests for production to which his objections have been overruled.

DATED in Helena, Montana, this 2nd day of March, 1998.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Laurie Wallace - U.S. Mail and FAX
Mr. Daniel J. McGregor - U.S. Mail and FAX
Mr. Andrew J. Utick - U.S. Mail and FAX
Submitted: February 26, 1998