IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 9A

WCC No. 9812-8125

CHARLES C. HODGE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

FIGGINS SAND AND GRAVEL, INCORPORATED

Employer.

ORDER GRANTING MOTION TO AMEND RESPONSE

¶1 Respondent has moved to amend its response to include an affirmative defense of fraud. In his response, petitioner does not oppose the motion but states, "[I]t is Petitioner's position that if Respondent wants to raise fraud as an affirmative defense, it should plead the circumstances constituting the nine elements with particularity, and not be allowed to raise that defense by the simple use of one word, "Fraud."' (Brief Concerning Objection to Motion to Amend at 2.) I agree. Rule 9(b), MONT. R. CIV. P, requires, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

¶2 Therefore, while I grant the motion to amend, the respondent must plead fraud with particularity. An amended response shall be filed within **14 days**. If the petitioner believes the averments of fraud to be deficient, then he may file a motion to strike the defense.

¶3 SO ORDERED.

DATED in Helena, Montana, this 18th day of October, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Charles F. Angel
Mr. Greg E. Overturf
Submitted: October 13, 2000