IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 41A

WCC No. 2000-0220

DONALD R. HOUSEHOLDER

Petitioner

vs.

REPUBLIC INDEMNITY COMPANY OF CALIFORNIA

Respondent/Insurer for

POVERELLO CENTER, INCORPORATED

Employer.

ADDENDUM TO ORDER DISAPPROVING PROPOSED SETTLEMENT

Summary: In refusing to approve settlement compromising fees to medical provider (2001 MTWCC 41), the Court characterized the agreement as a subterfuge. Counsel contacted the Court expressing concern over the light in which counsel were cast.

Held: The Court takes responsibility for and apologizes for the erroneous implication. In fact, counsel were up front with the Court and with medical providers. In general, the Court encourages settlements, noting that through settlement the parties may be able to design more creative and better solutions to their controversies than the Court can fashion under the law.

Topics:

> **Settlements: Generally.** The Workers' Compensation Court encourages settlements, through which the parties may be able to design more creative and better solutions to their controversies than the Court can fashion under the law. Settlements can be and often need to be creative. So long as they are fair and do not conflict with specific requirements of the workers' compensation laws, they will typically be approved by the Court.

¶1 Subsequent to my issuing my Order Disapproving Proposed Settlement, counsel for the insurer contacted the Court to express concern over the light he and counsel for claimant had been put in by the decision, specifically by my characterization of the proposed agreement as a subterfuge and the possible implication that counsel were engaged in

underhanded conduct. That is not what I intended. Counsel in this case were up-front with the Court from the beginning and had alerted the Court that they wished to discuss the proposed settlement with the Court because of the issues it might raise. Moreover, they invited the medical providers to their settlement conference and made sure the providers were aware of the terms of the proposed settlement.

¶2 Even though the Court has characterized the agreement itself as a subterfuge, i.e., an artifice or device aimed at evading responsibility for the full amount of medical bills, counsel were not involved in any attempt to deceive the medical providers or the Court. The Court takes responsibility for and apologizes for any intimation that they were. To the contrary their conduct was exemplary. They were aware that the settlement might raise issues, and made sure that both the providers and the Court were fully involved.

¶3 I further note that over the years I have encouraged settlements and pointed out to counsel that through settlement the parties may be able to design more creative and better solutions to their controversies than the Court can fashion under the law, advice that I adhere to now. Settlements can be and often need to be creative, and so long as they are fair and do not *conflict* with specific requirements of the workers' compensation laws, I will approve them. Therefore, even though I find the proposed agreement in this case to be unacceptable, in view of counsel's efforts to notification of providers and the Court of their proposed agreement, I cannot fault counsel for proposing the solution they did.

¶4 Finally, it should be apparent from this addendum that counsel should not be afraid to take me to task where they believe I have gone astray. I am not hesitant in criticizing counsel when I believe their conduct is onerous; whether or not I always agree with their criticism of me, I am not offended when they reciprocate.

DATED in Helena, Montana, this 7th day of August, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Howard Toole
Mr. Kelly M. Wills
Mr. Michael J. Moore (Courtesy Copy)