

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1998 MTWCC 1**

**WCC No. 9710-7853**

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**PHILLIP R. JENSEN**

**Petitioner**

**vs.**

**STATE COMPENSATION INSURANCE FUND**

**Respondent/Insurer for**

**LOREN'S HOUSE OF CARPETS**

**Employer.**

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**ORDER DENYING MOTION TO DISMISS**

**Summary:** Insured employer appeared in litigation and moved to dismiss on ground that claimant was not an employee and that his fall was intentional.

**Held:** Motion to Dismiss denied where not supported by "appropriate supporting documents and affidavits" as required by ARM 24.5.316(3).

**Topics:**

**Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.316(3).** Employer's motion to dismiss on ground that claimant was not an employee and faked his fall denied where not supported by "appropriate supporting documents and affidavits" as required by ARM 24.5.316(3).

**Procedure: Motion to Dismiss.** Employer's motion to dismiss on ground that claimant was not an employee and faked his fall denied where not supported by "appropriate supporting documents and affidavits" as required by ARM 24.5.316(3).

¶1 Employer, Loren's House of Carpets' Entry of Appearance[,] Motion to Dismiss and Brief in Support were filed on December 5, 1997. Petitioner's Brief in Opposition to Motion to Dismiss has been received and filed. Insurer, State Compensation Insurance Fund, did not respond.

¶2 Employer alleges that the claimant, Phillip R. Jensen, was not an employee, but rather an independent contractor and further that the claimant's fall was premeditated and

intentional. Employer's brief is not supported by "appropriate supporting documents and affidavits." (ARM 24.5.316(3).) Petitioner disputes these contentions. These are issues which must be resolved through a trial.

¶3 IT IS HEREBY ORDERED that the employer's Motion to Dismiss is **denied**.

DATED in Helena, Montana, this 12th day of January, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Dennis E. Lind

Ms. Ann E. Clark

Mr. Keith W. McCurdy

Submitted: December 26, 1997