

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 16

WCC No. 9305-6796

VICTORIA KLOEPFER

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BECHTEL CONSTRUCTION COMPANY

Employer.

ORDER DENYING RESPONDENT'S REQUEST FOR AMENDMENT

Respondent, Lumbermens Mutual Casualty Co. (Lumbermens), has moved to amend the Court's Finding of Fact No. 27 and Conclusion of Law No. 2, and specifically the reference in those paragraphs to Dr. Shaw's role as assistant medical director of the work hardening program and as medical advisor for the employer. Lumbermens states that the Court's discussion concerning Dr. Shaw's role creates "significant practical difficulties . . . given the directive in the 1993 Montana Workers' Compensation Act, whereby medical facilities are specifically encouraged to enter into contracts with employers and insurers." Lumbermens' concern appears to be that physicians may be reluctant to enter into contracts with employers and insurers if the Court attributes bias to those physicians entering into such contracts.

The findings regarding Dr. Shaw's role in this case were in the context of the unique factual situation of this case and in the context of all of the evidence presented at trial and through depositions. I find no good cause to change them.

However, the decision in this case should not be construed as indicating that this Court will automatically discount a physician's testimony merely because the physician may have some sort of relationship with an employer or insurer. Similarly, it should not be construed as a comment on the use of the managed care and preferred provider organizations (MCOs) contemplated by chapter 71, part 11 of Title 39, MCA. Each case must be decided on its own merits and on its peculiar facts. The Court is frequently faced with conflicting testimony among physicians. Like it or not, it must resolve those conflicts. In doing so, it

must consider all of the facts presented, including the possible biases of all witnesses who testify. The Court recognizes that the Legislature encourages MCOs; that in itself is a factor that the Court will have to consider if the objectivity of a physician is challenged on account of his or her contractual affiliation.

The Court also recognizes the uncomfortable position in which litigation places physicians and that physicians may honestly disagree with one another. Physicians on their part must recognize the difficult job the Court has in resolving their often conflicting testimony.

IT IS HEREBY ORDERED that respondent's request for amendment is **denied**.

DATED in Helena, Montana, this 23rd day of February, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston, III

Mr. Steven S. Carey