

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 14

WCC No. 9307-6828

CARL LARSON

Petitioner

vs.

CIGNA INSURANCE COMPANY

Respondent/Insurer for

YELLOWSTONE FORD TRUCK SALES

Employer.

ORDER DENYING MOTION TO COMPEL

Petitioner has filed a motion to compel respondent, Cigna Insurance Company (Cigna), to produce its entire claim file respecting the petitioner. The problem is not that Cigna ignored or rebuffed petitioner's original request for the file, but that the file which was produced by Cigna is incomplete. In its reply to the motion, Cigna states that, with the exception of privileged documents which are not at issue herein, it has produced its entire file. Cigna acknowledges that its file may well be incomplete but states that "[a]ny other documents or correspondence between Respondent and Petitioner throughout the years have either been lost or accidentally destroyed." Cigna's attorney has signed the response. That signature constitutes a representation that "to the best of his [her] knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact." Section 39-71-2914(3)(b), MCA.

Petitioner nonetheless persists in his motion, pointing out that four additional documents were thereafter provided by Cigna and that to date "he has not received an additional explanation for the existence of the additional documents." He states his request for relief as follows:

Claimant therefore requests an order from the court compelling Defendant to produce its claims file or all records in its possession not previously produced pertaining in any manner to the claimant. Claimant feels that an order of the Court compelling production of the claims file is necessary to protect the record in this matter, even if in response Defendant is required to produce an affidavit from an authorized agent stating under oath that the file

has been destroyed. Some further explanation for the absence of the claims file is appropriate.

In light of the certification of Cigna's attorney that all documents in the claims file have been produced, and a continuing duty to disclose any later discovered documents, see Rule 26 (e), Mont.R.Civ.P., there is no basis for an order compelling discovery. Petitioner is free to engage in further discovery to test Cigna's response and to inquire into the circumstances of the loss or destruction of documents, as well as the circumstances leading to the discovery of the four additional documents.

For the foregoing reasons, petitioner's motion to compel is **denied**.

DATED in Helena, Montana, this 22nd day of February, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston

Ms. Sara R. Sexe