IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 16

WCC No. 9806-7988

FAWN LYONS

Petitioner

vs.

MONTANA POWER COMPANY

Respondent/Insurer/Employer.

SUPPLEMENT TO DECISION AND JUDGMENT

Summary: On the same day the Court issued its decision in Fawn Lyons v. Montana Power Company, 1999 MTWCC 16, it received from claimant's counsel a request to note that counsel was under a deadline to submit a petition for hearing in another case which had similar issues and which counsel hoped to litigate on the same schedule as this matter. Counsel suggested the short deadline for response to demand it had given insurer's counsel was justified by the petition deadline.

Held: The Court does not find this explanation to excuse counsel's conduct in proceeding to litigation without giving opposing counsel adequate time to assess a demand. Counsel's desire to litigate two cases together and soon does not justify failure to allow the opposing party time to assess and possibly meet a demand.

Topics:

> **Attorneys: Correspondence.** Counsel's desire to litigate two cases together and soon does not justify failure to allow the opposing party time to assess and possibly meet a demand. Court condemns counterproductive hardball tactics.
>
> **Attorneys: Conduct and Tactics.** Counsel's desire to litigate two cases together and soon does not justify failure to allow the opposing party time to assess and possibly meet a demand. Court condemns counterproductive hardball tactics.

¶1 On the same day as this Court issued its decision and judgment, the Court received a request from claimant's counsel, Mr. Chris J. Ragar, that the Court take judicial notice of Exhibit 27 in the case of *Galetti v. MPC,* 1999 MTWCC 11 (February 4, 1999). He argues that

the exhibit is important to the Court's assessment of the June 1, 1998 demand he made upon MPC, which demand the Court criticized during the trial and again in its Decision.

¶2 The exhibit is the attorney fee agreement between Mr. Ragar and Gary Galetti, signed June 1, 1998. Mr. Ragar argues that the June 1st demand was reasonable because he intended to pursue both the *Lyons* and *Galetti* cases simultaneously and had been unable to get a get a signed agreement with Mr. Galetti until June 1st, and because the deadline for the next Butte term of Court was July 1st.

¶3 The Court is unpersuaded by Mr. Ragar's arguments, indeed it reiterates its criticism regarding the demand. The demand gave MPC's attorney, Mr. W. Wayne Harper, two and a half hours to accept the demand, that assuming it was transmitted at the time set forth in the letter. Mr. Ragar represents a number of clients who have claims against MPC and has for some time been communicating with Mr. Harper. MPC has agreed to pay benefits in a number of those cases without any order of this Court. Fawn Lyon's claim was over two years old and involved approximately $250 of out-of-pocket medical expenses. At the time of the demand and the filing of the petition, she had not determined the exact amount due her or even obtained all of the medical bills. There was no urgency in getting the matter on the Butte term of Court with the June 1st filing deadline. As it turned out, MPC admitted liability for the medical bills. Had Mr. Ragar allowed a reasonable time for a response this litigation could and should have been avoided.

¶4 Whether or not Mr. Ragar was *entitled* to pursue the *Lyons'* petition with such a short demand, his aggressive prosecution of the claim was neither necessary nor productive. His past dealings with Mr. Harper should have indicated to him that there was a reasonable prospect that the matter could be resolved without resort to litigation, at least as to the claim itself. He provided no opportunity for informal resolution and set a combative, uncompromising tone for the further course of the litigation, and even then he had not finally determined how much was owed claimant when the trial began. Certainly, *Lyons* was entitled to Mr. Ragar's best efforts on her behalf, but the Court fails to see how her case was advanced by the short-fused demand and the immediate resort to litigation. The Court has been burdened with litigation that was probably unnecessary and the attorneys have spent unnecessary time preparing and presenting the case.

¶5 The Court takes judicial notice of Exhibit 27 in *Galetti*. MPC need not respond to the claimant's request that it do so.

SO ORDERED.

DATED in Helena, Montana, this 12th day of February, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Chris J. Ragar
Mr. W. Wayne Harper
Date Submitted: February 11, 1999