

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

**1994 MTWCC 96**

**WCC No. 9408-7104**

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**BRUCE MARCOTT**

**Petitioner**

**vs.**

**LOUISIANA PACIFIC CORPORATION**

**Respondent/Insurer/Employer.**

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**ORDER REGARDING VARIOUS MOTIONS**

The Court met with counsel on October 20, 1994, to discuss three motions filed by the petitioner, as well as the numerous objections filed by respondent concerning exhibits. This Order will reflect the disposition of these matters at that time.

I

The first motion under consideration at the time of the conference was claimant's Motion to Strike, wherein he sought to strike a letter produced at the deposition of Dr. David King. The letter was from claimant's counsel to Dr. King. Claimant sought to suppress the letter because respondent delivered a Subpoena Duces Tecum to the doctor at the time of the deposition and had not previously disclosed his intent to do so. It should be noted that the deposition was noticed by the claimant.

Depositions may be taken without subpoena, and that is customarily the case when doctors are involved. During medical depositions it is a reasonable if not essential assumption that the doctor will not only have his file for the patient available but will rely on it during his testimony. The files are routinely attached to the deposition transcript. It should have come as no surprise that respondent's counsel would request an opportunity to view materials in the file, with or without a subpoena. Under these circumstances, failure to notify claimant's attorney in advance of the subpoena was not prejudicial.

The claimant admits in its motion that the letter is "completely innocuous" but argues that its the principle which is at stake. The Court has little time or patience for motions brought merely on principle and in absence of potential prejudice to the moving party.

The motion is **denied**.

II

The second motion considered was Petitioner's Motion to Compel wherein petitioner sought to compel further answers to Interrogatories 2, 5 and 6 of Petitioner's First Set of Interrogatories.

Interrogatory 2 requested expert witness information. In its response the respondent identified Dr. Donald P. Harrell as an expert and specified the subject matter of his testimony and the opinions which he will express at trial. Claimant asserts that the disclosure was insufficient and that the opinions were "coached [sic] in vague and ambiguous language." (Petitioner's Motion to Compel and Brief in Support Thereof at 2.) He cites *Montana Power Co. v. Wax*, 244 Mont. 108, 796 P.2d 565 (1990), as authority for his argument. Having reviewed the answer in this case, the Court finds that it is adequate and that it is not comparable to the answer found deficient in *Wax*. The motion regarding Interrogatory 2 is **denied**.

Interrogatory 5 requested respondent to "state specifically each and every fact upon which you base your denial of liability for this claim." The respondent registered objections based on attorney work product and overbreadth but went on to state:

However, without waiving the objection, our denial of liability is based on the fact that the injury occurred while Petitioner was walking. It is based on the further fact that, due to Petitioner's anatomical make-up, he was susceptible to the injury that is prominent among individuals in Petitioner's age group; often occurring during benign activities such as walking. See also Respondent's Response 2, Petition for Hearing.

(Petitioner's Motion to Compel and Brief in Support Thereof at 5)

This answer is cursory and vague but does give the import of the respondent's defense. During discussion with counsel, the Court ascertained that all witnesses who will be called at trial have either been deposed or claimant's attorney has been furnished with information concerning the substance of their testimony. Claimant has therefore been provided with a comprehensive picture of what evidence may be introduced by respondent at trial. The discussion with counsel resolved any questions concerning the nature of the respondent's defense. Any further answer to this interrogatory would amount to an unnecessary, academic exercise.

Interrogatory 6 asks:

If you contend that the facts surrounding Claimant's injury differ in any way from the facts described in the statement of Gene Quillen, which statement is attached hereto as Exhibit 1; please state specifically each and every such difference.

Respondent answered the interrogatory by referring claimant to various records and documents. As with the previous interrogatory, it was ascertained that the testimony on

which the respondent will rely in disputing Mr. Quillen's statement has been disclosed through deposition and exchange of information between counsel. Claimant's counsel was interested in ascertaining specifically whether respondent disputed that claimant was walking rapidly and twisting to the left when the alleged injury occurred, and respondent confirmed that it did dispute that description. As with the prior interrogatory, it appears that claimant has been provided with a comprehensive picture of what evidence may be introduced at trial. Any further answer to this interrogatory is unnecessary.

III

The final motion is Petitioner's Motion to Exclude Expert Testimony. This motion relates to Dr. Harrell's proposed testimony and is based on claimant's assertion that respondent's disclosures concerning Dr. Harrell's testimony were inadequate. The disclosure made on the exchange date did identify the subject matter of the doctor's testimony and the nature of his opinions. The respondent's answer to Interrogatory 2 provided even more detailed information. The disclosure appears adequate. If the doctor's actual testimony exceeds the subject matter identified in the disclosure, the claimant can object at that time. Otherwise, the motion is **denied**.

IV

The many objections made by respondent to exhibits were also discussed. Many of those objections concern materials contained in the respondent's claim file. The Court ruled that the claim file, which was identified in and attached to the deposition of John Mikkelson without either a formal offer by claimant or specific objection by respondent may be admitted with respect to claimant's request for a penalty. With respect to objections to admission of the file for other purposes, the Court suggested that the parties confer, identify which parts will be offered for other purposes, and narrow their differences. A new list of exhibits and objections shall therefore be submitted, along with the exhibits, to the Court by **November 14, 1994**.

The trial in the above-entitled matter is reset for 9:00 a.m. on Monday, November 21, 1994, in Courtroom No. 1, Missoula County Courthouse, Missoula, Montana.

DATED in Helena, Montana, this 21st day of October, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Chris J. Ragar  
Mr. Kelly M. Wills  
Martin-Lake and Associates