

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 7

WCC No. 9305-6795

INDUSTRIAL INDEMNITY INSURANCE COMPANY

Petitioner

vs.

ROBERTA C. RYAN

Respondent - Cross Petitioner.

ORDER REGARDING DISCOVERY;
ORDER DENYING RESPONDENT'S MOST RECENT MOTIONS; ORDER DENYING
CERTIFIED COPIES; ORDER SETTING TRIAL

The Court has before it the following motions:

- (1) **Motion To Exclude Witness** (filed by petitioner) and;
- (2) **Motion For Reinstating TTD Benefits, Taking Depositions Of Witnesses, And Reconsider Decision For Denial Of Lump Sum Advance** (filed by respondent).
- (3) **Motion To Order The Petitioner To Submit Certified Copies** (filed by respondent).

Since both parties raise matters regarding depositions, I will address those matters together.

DISCUSSION

1. Depositions

Petitioner is seeking an order barring respondent's husband from attending and participating in any depositions which may be taken. Based on Mr. Ryan's past involvement in this case, there is good reason to believe that Mr. Ryan would inject himself into any deposition he might attend. The Court doubts that he would remain a silent observer, and has already ruled that he cannot represent his wife. Petitioner's motion will therefore be granted.

Ms. Ryan asks that the Court direct petitioner to depose its witnesses prior to setting a trial date, but then asks that the Court award her financial relief so that she can attend any such depositions. The Court has no authority or funds to finance Ms. Ryan's travel to Montana for depositions.

Ms. Ryan's lack of funds to attend depositions creates a dilemma. Under this Court's rules, a deposition may be submitted for the Court's consideration irrespective of the availability of a witness. ARM 24.5.322 (10). Thus, Ms. Ryan's impecuniousness creates the possibility that petitioner could present its entire case through depositions taken in the absence of Ms. Ryan, thereby effectively depriving her of an opportunity for cross-examination. However, ARM 24.5.322 (10), also allows for exceptions. The rule provides:

(10) Regardless of the availability of a witness or party to testify at trial, the circumstances of workers' compensation cases make it desirable, in the interest of justice, that a deposition of a witness or a party may be used by any party for any purpose ***unless the court restricts such usage upon a finding that the interests of justice would be served thereby.*** [Emphasis added.]

I find that allowing the wholesale admission of depositions under the circumstances of this case would not serve the interests of justice. The rule therefore shall not apply in this case, and no deposition, other than a deposition of a party offered by the opposing party, shall be admitted as evidence unless the offering party strictly complies with Rule 804, Mont.R.Evid. For purposes of Rule 804, if petitioner properly notices a deposition and the witness is unavailable to testify at trial, Ms. Ryan will be deemed to have been afforded an opportunity to examine the witness even though she does not actually attend the deposition.

Since this case was commenced by the petition of the insurer against an unrepresented, out-of-state, and initially reluctant claimant, I also find it appropriate to adopt further limitations on the taking of depositions. At least 21 calendar days notice shall be given with respect to depositions taken by petitioner. Further, Ms. Ryan's deposition may be taken in Montana only if the petitioner pays for Ms. Ryan's travel, accommodations and meals.

Otherwise, her deposition may be taken in the state and county of her residence.

2. Ms. Ryan's Request For Financial Assistance And/Or Reconsideration.

Ms. Ryan requests the Court to reconsider its Order denying a lump sum advance and to also order reinstatement of temporary total disability benefits. There is no basis for the Court to award benefits prior to trial. Her requests are therefore denied.

In the alternative she asks that the Court provide her with financial assistance to pursue her claim. There is no provision or funding for such assistance, and this request must similarly be denied.

3. Certified Copies

Apparently unhappy with the documents provided by petitioner, Ms. Ryan requests an order directing petitioner to provide certified copies. Documents produced in the course of discovery do not need to be certified and certification would be of no consequence in any event. The motion is denied.

4. Trial Setting.

In accordance with Ms. Ryan's request, this matter is set for trial in Billings, Montana, at 1:00 p.m., on Monday, April 25, 1994. It is my intent to hold the parties to that setting. No continuance will be granted except for extraordinary circumstances beyond the parties' control.

ORDER

In accordance with the foregoing discussion, it is HEREBY ORDERED AS FOLLOWS:

- (1) Respondent's husband is prohibited from attending any deposition taken in this case. Ms. Ryan, however, may bring any other individual with her to any deposition, provided that the individual remain silent throughout the deposition.
- (2) ARM 24.5.322 (10) shall not apply to this case. Instead, the admission of any deposition, other than a deposition of a party-opponent, shall be governed by Rule 804, Mont.R.Evid.
- (3) Petitioner shall serve notice of any deposition it wishes to take at least 21 calendar days prior to the deposition.
- (4) Respondent's deposition may be taken in Montana only if the petitioner pays for Ms. Ryan's travel, accommodations and meals. Otherwise, her deposition may be taken in the state and county of her residence.
- (5) Respondent's motion to compel petitioner's taking of pretrial depositions is **denied**.
- (6) Respondent's motion for a pretrial award of temporary total disability benefits is **denied**.
- (7) Respondent's motion for reconsideration is **denied**.
- (8) Respondent's motion for financial assistance is **denied**.
- (9) Respondent's motion regarding certified copies is **denied**.
- (10) Any outstanding motion not specifically mentioned in this Order is **denied**.
- (11) This case is set for trial in Billings, Montana commencing at 1:00 p.m., on Monday, April 25, 1994.

DATED in Helena, Montana, this 25th day of January, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Charles E. McNeil
Ms. Roberta C. Ryan - Certified Mail