IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 14

WCC No. 9305-6795

INDUSTRIAL INDEMNITY INSURANCE COMPANY

Petitioner

vs.

ROBERTA RYAN

Respondent.

ORDER TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE DISMISSED;
ORDER VACATING TRIAL

The Petition in this case was filed by an insurer and seeks a declaration that petitioner "is not liable for disability or medical benefits claimed by defendant/claimant, and that claimant's current condition and disability was not proximately caused by the injury of August 25, 1986, with Industrial Indemnity on the risk." Respondent has not petitioned for benefits. In her initial response filed June 1, 1993, respondent objected to this proceeding and specifically argued that she should be allowed to choose when and where she will pursue her claim.

The Petition in this case is a preemptive strike by the insurer. The respondent/worker is unrepresented by counsel and no longer resides in Montana. Her various filings indicate that defending against the petition will cause her great hardship.

Since respondent is unrepresented, the Court will look at the substance of her objections to this proceeding rather than to the form in which she has brought them to the Court's attention. It will therefore treat her objections as a motion to dismiss.

The Petition is in essence one for declaratory judgment by an insurer. Respondent's objection to the Petition raises serious issues concerning the appropriateness of action for declaratory judgment. Therefore,

IT IS HEREBY ORDERED that the petitioner show cause, if any, why its petition for a declaratory ruling should not be dismissed in light of ***Remington v. Department of Corrections and Human Services****, 844 P.2d 50 (Mont. 1992);* ***Brisendine v. Montana Department of Commerce****, 253 Mont. 361, 833 P.2d 1019 (1992);* and ***Empire Fire and Marine Insurance Company v. Goodman****, 1147 Mont. 396, 412 P.2d 569 (1966);* as well as

the general principles governing declaratory judgments, particularly the principles set forth in 26 C.J.S. Declaratory Judgments, sections 16, 21 and 32. Petitioner shall have 14 days in which to respond in writing to this order, and shall serve a copy of its response on the respondent. Respondent shall then have 14 days in which to serve her written response to petitioner's arguments. The Court will then decide whether the Petition should be dismissed.

In light of the foregoing, IT IS FURTHER ORDERED, that the trial which is presently scheduled for the week of January 17, 1994, is **vacated**.

IT IS FURTHER ORDERED that the time for respondent to respond to petitioner's motion for summary judgment shall be continued without date until further order of the Court. The motion for summary judgment and any other outstanding motions or requests shall be held in abeyance until further order of the Court.

DATED in Helena, Montana, the 3rd day of November, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Charles E. McNeil
Ms. Roberta C. Ryan