IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 47

WCC No. 2002-0622

ROBERT RICHTER

Petitioner

vs.

TRANSCONTINENTAL INSURANCE COMPANY

Respondent/Insurer for

NORTHERN PACIFIC/PACIFIC ROAD BUILDERS

Employer.

DECISION AND ORDER DENYING MOTION TO QUASH DISCOVERY

Summary: Petitioner moved to quash request for production and subpoena duces tecum on grounds that the requests were unduly burdensome and irrelevant.

Held: The motion is denied since the petitioner did not object to producing the records when responding to the request for production. Any objection should have been set forth in the response. His belief that producing income tax returns would satisfy the broader request for business records is no excuse.

Topics:

> **Discovery: Requests for Production.** A party must produce records requested in requests for production to which no objection is noted.

¶1 Respondent insurer issued requests for production, including requests for income tax returns and business records. Petitioner responded that the requested records would be produced at his deposition. The requests and responses were as follows:

> **REQUEST FOR PRODUCTION NO. 4:** Please produce copies of your state and federal income tax returns from 1998 to the present.
>
> **RESPONSE:** These documents are to be produced at the Claimant's deposition pursuant to the Deposition Subpoena Duces Tecum served by the Respondent.
>
> **REQUEST FOR PRODUCTION NO. 5:** Please produce any and all business documents in which you or your wife have any interest since 1998 to the present.

> These records include but are not limited to: state and federal tax returns, accounting documents, documents of income and expense, financial statements, documents submitted to accountants for said business, and any other documents associated with said business.
>
> **RESPONSE:** See Response to Request for Production No. 4.

¶2 In accordance with the petitioner's responses, the respondent issued a subpoena duces tecum requesting the petitioner to produce the records at his deposition. The subpoena specified the identical documents as the requests for production.

¶3 At deposition petitioner produced his income tax returns, including tax schedules filed in connection with business income. However, he failed to produce any other business records. The respondent continued the deposition pending production. The petitioner then filed a motion to quash the production, arguing that the production is unduly burdensome and irrelevant to the issues of the case.

¶4 The motion is **denied**. The petitioner did not object to the request for production. The subpoena duces tecum merely parroted the request. Any objection had to be interposed within the 20 days and had to be in writing, specifying the grounds of the objection. Rule 24.5.324(3) provides:

> (3) The party upon whom a request is served shall serve a written response within 20 days after service of the request. The court may allow a longer or shorter time. In no event shall a response be due in less than 30 days from the service of the petition. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. For a partial objection, the part shall be specified.

Since no objection was made and no grounds for objection stated, the petitioner was required to produce the requested records. The fact that petitioner may have thought that his income tax returns would satisfy respondent is of no avail.

DATED in Helena, Montana, this 15th day of October, 2002.

(SEAL)

/s/ MIKE McCARTER
JUDGE

c: Ms. Laurie Wallace
Mr. Todd A. Hammer
Submitted: October 7, 2002