

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

**1993 MTWCC 7**

**WCC No. 9308-6865**

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**EBI INDEMNITY COMPANY/MARKHAM ENTERPRISES, INC.**

**Petitioners**

**vs.**

**JANETTE SHARP, f/k/a Janette May Gomez**

**Defendant.**

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**ORDER DENYING MOTION TO DISMISS;  
ORDER STRIKING PETITIONERS' FIRST DISCOVERY REQUESTS**

The defendant has filed a Motion to Dismiss, alleging that the petition fails to meet the requirement of ARM 24.5.301(1)(c) that it contain "a short, plain statement of the petitioner's contentions." Defendant also asserts that petitioners have not negotiated in good faith. Finally, she complains about the number of petitioners' first discovery requests. There are thirty-eight items in those requests, twenty-five of which are interrogatories.

The petition contains eight and a half pages of allegations in thirty-eight separately numbered paragraphs. It contains more than is necessary for notice pleading and sets forth evidentiary matters. However, the nature of petitioners' claim is clear. Sending the petition back for abbreviation would only prolong this proceeding. The skirmish over the petition has already created a pile of documents a half inch thick.

The Court will not allow cases to become bogged down in pleading wars. The petition should not contain a recitation of evidence. It should set forth only those necessary allegations to put the defendant on notice of the nature and basis of petitioner's claims. On the other hand, the hardship of replying to extraneous allegations and a recitation of evidence can be alleviated by permitting the defendant to file a response which replies only to material allegations. Unlike Rule 8(b), Mont. R. Civ. P., the rules of this Court do not require defendant to admit or deny each averment made in the petition. While counsel are encouraged to do so with respect to material averments, ARM 24.5.302(1)(a) requires only "a short, plain statement of defendant's contentions." Thus, defendant in this case can fairly meet her obligation to respond to the petition without specifically replying to each and every allegation or evidentiary recital.

Defendant also argues that the petition should be dismissed because petitioners have not made a good faith effort to resolve the dispute. ARM 24.5.301(d) requires that petitions respecting industrial accidents which occurred prior to July 1, 1987, contain "a statement to the effect that the parties have made an effort to resolve the dispute, but have been unable to do so." Petitioner has complied with the pleading requirement. It is apparent from the briefs filed herein that the parties are at loggerheads. The Court is powerless to force the parties to negotiate or resolve their differences themselves.

With respect to the petitioners' first discovery requests, it is clear that those requests violate ARM 24.5.323(3), which prohibits parties from serving more than twenty interrogatories without permission of the Court. There is no similar limitation applicable to requests for production and, in any event, there are only thirteen such requests.

For the foregoing reasons, IT IS HEREBY ORDERED that the defendant's Motion to Dismiss is **DENIED**.

IT IS FURTHER ORDERED that respondent file her response within fourteen days of this order.

IT IS FURTHER ORDERED that the interrogatories contained in petitioners' first discovery requests are stricken and that defendant shall have twenty days from the date of this order in which to respond to the requests for production.

DATED in Helena, Montana, this 8th day of October, 1993.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Susan J. Rebeck

Mr. David A. Hopkins