IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 32

WCC No. 2003-0882

JEANNE VRASPIR

Petitioner

vs.

MONTANA STATE FUND

Respondent.

ORDER COMPELLING DISCOVERY

Summary: Discovery dispute. The claimant objected to production of medical treatises, journals, and articles identified as supporting medical opinions she intends to proffer at trial. She objects that such production would violate copyright law. She also objects to production of other documents as infringing the attorney work-product doctrine.

Held: Other than broad statements about copyright law, the claimant has failed to cite any authority for the proposition that copies of copyrighted material may not be copied in connection with litigation in which the materials are relied upon by witnesses, and has entirely overlooked the fair use doctrine. Lacking citation to authority, the objection to production is overruled. One of the respondent's requests, however, is overly broad and would require the claimant's attorney to evaluate evidence and furnish the products of that evaluation to the respondent. The request is therefore limited.

Topics:

> **Discovery: Objections to Discovery.** Where a party objects to discovery and in response to a motion to compel provides no legal authority for the objection other than general statements not addressing the specific issue, the objection will be overruled.
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> **Discovery: Objections to Discovery.** Where, other than broad statements about copyright law, the claimant has failed to cite any authority for the proposition that copies of copyrighted material may not be copied in connection with litigation in which the materials are relied upon by witnesses, and has entirely overlooked the fair use doctrine, the objection to production and copying of pertinent portions of the materials is overruled.

Discovery: Requests for Production: Copyrighted Materials. Where, other than broad statements about copyright law, the claimant has failed to cite any authority for the proposition that copies of copyrighted material may not be copied in connection with litigation in which the materials are relied upon by witnesses, and has entirely overlooked the fair use doctrine, the objection to production and copying of pertinent portions of the materials is overruled.

Discovery: Privileges: Attorney Work Product. Where compliance with a request for production would require the opposing party's attorney to evaluate the evidentiary value of documents in order to comply with the request, the request invades the attorney work-product privilege. The request will therefore be limited to readily identifiable documents not requiring such exercise.

¶1 The matter before the Court is the respondent's motion to compel production of documents. The sought after discovery includes medical treatises and journal articles on which various physicians testifying on behalf of the claimant will rely, as well as other letters, records, testimony, or other written evidence supporting the intended testimony of Dr. Gary P. Crawford. The requested documents are those specified in Request for Production numbers 1, 2, and 3.

¶2 The claimant objects to production of medical treatises and journal articles, claiming that they are protected by copyright law and she should not be forced to purchase copies for the respondent. She cites general principals of copyright law but fails to address the fair use doctrine and cites no cases whatsoever in support of her contention that copyright laws exclude copying of materials used by and relied upon by witnesses in their testimony in court proceedings. I decline to consider her argument since it is unsupported by authority. Broad statements about copyright law are not enough.

¶3 The claimant also opposes the requests on attorney work-product grounds, arguing that compliance would amount to her offering up her attorney's mental impressions of the evidence. Request for Production numbers 2 and 3 merely request publications and writings which the claimant identified earlier in witness, exhibits, and expert summaries exchange, as well as in her statement of particulars regarding attorney fees. No mental impressions or attorney work product are required to comply with those requests.

¶4 The attorney work-product objection therefore has relevance only to Request for Production No. 1, which I agree is artlessly worded. The request is as follows:

> **REQUEST FOR PRODUCTION NO.1**: Please provide letters, records, testimony or other written evidence supporting those alleged statements in the Claimant's Witness and Exhibits Lists, Expert's Summaries and Particulars of Claim for Attorney Fees and Penalty dated January 5, 2004 to which Dr. Gary P. Crawford would be expected to testify if presented before the Worker's [sic] Compensation Court in this

> matter. This Request for Production does not include medical records or other records already exchanged.

(Request for Production at 1.) As I read this request it is asking for all documents which may support testimony that Dr. Crawford may give. Sifting through documents to identify which documents might support Dr. Crawford's testimony would require evaluation of the documents, and thus their identification and production may well involve disclosure of the mental impressions of the claimant's attorney. This request should therefore be limited to production of all documents in Dr. Crawford's file and documents not in his file which he has reviewed or on which he will rely on in formulating his opinions. The claimant argues that the request excludes *all* "medical records." (Response In Opposition To Motion To Compel Production and Motion In Limine Excluding Evidence at 2.) She misreads the request. The language clearly states that only those medical records *already produced* are excluded.

¶5 Except with respect to the over-breadth of Request for Production No. 1, the claimant's objections are unsupported or without merit.

¶6 THEREFORE, IT IS HEREBY ORDERED that the claimant shall produce all original treatises, journal articles, and other medical literature previously identified by claimant as supporting the medical opinions of physicians testifying on her behalf. With respect to treatises, she shall identify the relevant portions of the treatise. The treatises, journal articles, and other medical literature shall be produced at a place and time designated by the respondent's counsel, who shall be permitted to examine them and make copies, if he so chooses. The claimant shall also copy and furnish respondent's counsel with any correspondence, medical records, and any other documents in Dr. Crawford's file, as well as other document which Dr. Crawford has reviewed or intends to rely upon, except for documents which have been previously furnished.

DATED in Helena, Montana, this 6th day of April, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Geoffrey C. Angel
Mr. Daniel J. Whyte
Submitted: March 29, 2004