

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 16

WCC No. 9612-7667

RICHARD WARE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

HAGEMAN CONSTRUCTION

Employer.

ORDER REGARDING FURTHER PROCEEDINGS

On this date, the Court conducted a telephone hearing with Mr. Rex Palmer, counsel for petitioner, and Mr. Charles G. Adams, counsel for respondent. The hearing was requested by Mr. Adams for the purpose of arguing the motion for summary judgment. However, the discussion expanded to other issues.

The issues were resolved in the following manner:

1. The Court will read additional cases pertaining to res judicata before deciding the summary judgment motion, then will issue a written ruling.
2. Mr. Adams will supply Mr. Palmer with any non-privileged documents which are in his attorney file pertaining to this claim. He will also provide a list of privileged documents in his file, identifying the documents in accordance with ARM 24.5.324(4) and (5). If Mr. Palmer determines that the claim of privilege is unwarranted, then he may move to compel production, in which event the procedures set out in ARM 24.5.324(6) shall apply. This directive shall constitute the Court's Order concerning petitioner's pending motion to compel discovery.
3. Counsel shall consult with one another concerning whether the request for a penalty based on any delay in the approval of or payment for surgery has in fact been mediated. If it has not, then counsel shall notify the Court and promptly mediate the issue.

SO ORDERED.

DATED in Helena, Montana, this 3rd day of April, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Rex Palmer

Mr. Charles G. Adams