

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 54

WCC No. 9906-8257

JOHN BALLARD

Petitioner

vs.

STILLWATER MINING COMPANY

Respondent/Insurer/Employer.

ORDER REGARDING VARIOUS MOTIONS

Summary: Respondent moved to join another insurance company as a third-party respondent under ARM 24.5.308, but failed to serve the other insurer, as required by the rule.

Held: Motion denied where respondent failed to serve the other insurer.

Topics:

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rule 24.5.308. Respondent moved to join another insurance company as a third-party respondent under ARM 24.5.308, but failed to serve the other insurer, as required by the rule. Motion denied where respondent failed to serve the other insurer.

Procedure: Joining Third Parties. Respondent moved to join another insurance company as a third-party respondent under ARM 24.5.308, but failed to serve the other insurer, as required by the rule. Motion denied where respondent failed to serve the other insurer.

¶1 The matter before the Court is respondent's motion to join Alaska National Insurance Company (ANIC) as a third-party respondent, to then stay the present proceeding pending mediation between respondent and ANIC, and to determine whether Montana or Alaska law applies to the dispute. In reviewing the motion and briefs, the Court notes that respondent has not served ANIC as required by Rule 24.5.308, which provides in relevant part:

2) Unless otherwise permitted by order of the court, a motion to join a third party must be served within 30 days of the service of the petition by the court. **The motion shall be filed and served on all parties and the proposed third party.** Any party and the proposed third

party shall have 10 days from the date of service to serve objections to the motion. The court may, for good cause shown, grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy. [Emphasis added.]

Lacking service upon ANIC, and an opportunity for it to object to the motion, the motion for joinder is **denied**. Since the request for the stay is based on joinder, that motion is also **denied**.

¶2 The motion asking that the Court determine which laws are applicable to the dispute is **deferred** until trial and will be resolved in conjunction with the merits of the case.

¶3 Petitioner's request for interim benefits was conditioned upon the Court joining ANIC and postponing the trial. In light of the disposition of the joinder motion, it is unnecessary to consider the request.

¶4 SO ORDERED.

DATED in Helena, Montana, this 1st day of September, 1999.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston
Mr. Joe C. Maynard
Submitted: August 27, 1999