

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 15

WCC No. 9611-7657

**ESTATE OF JAMES JACQUES, Deceased,
by and through ANN JACQUES**

Petitioner

vs.

BORDEN, INCORPORATED

Respondent/Insurer/Employer.

**ORDER DENYING MOTION TO REQUIRE PROPER SIGNING OF DISCOVERY
AND AWARDING RESPONDENT ATTORNEY FEES**

Summary: Petitioner moved the Court to require someone to sign interrogatory answers other than the attorney for the respondent corporation. Respondent argues that rules of procedure permit an attorney to sign answers to interrogatories. In response, petitioner asserts that if respondent's counsel signs interrogatory answers, he should sign under oath, and thereafter be subject to interrogation as a witness.

Held: While the rules of the Workers' Compensation Court make no provision for signature by an attorney for a corporation on interrogatory answers, precedent of federal courts, under rules identical to the M.R.Civ.Pro., allows an attorney to sign such answers. Moreover, under ARM 24.5.303(7), an attorney's signature to any document in the WCC is his/her certification that it is made to the best of his/her knowledge, information and belief. Sanctions awarded against petitioner's counsel for filing a motion obviously part of "hardball" litigation tactics, not based on any real concern in this particular case.

Topics:

Discovery: Interrogatories. An attorney for a corporate respondent insurer may sign interrogatory answers. While the rules of the Workers' Compensation Court make no provision for signature by an attorney for a corporation on interrogatory answers, precedent of federal courts, under rules identical to the M.R.Civ.Pro., allows an attorney to sign such answers. Moreover, under ARM 24.5.303(7), an attorney's signature to any document in the WCC is his/her certification that it is made to the best of his/her knowledge, information

and belief. Sanctions awarded against petitioner's counsel for filing a motion obviously part of "hardball" litigation tactics, not based on any real concern in this particular case.

Sanctions. An attorney for a corporate respondent insurer may sign interrogatory answers. While the rules of the Workers' Compensation Court make no provision for signature by an attorney for a corporation on interrogatory answers, precedent of federal courts, under rules identical to the M.R.Civ.Pro., allows an attorney to sign such answers. Moreover, under ARM 24.5.303(7), an attorney's signature to any document in the WCC is his/her certification that it is made to the best of his/her knowledge, information and belief. Sanctions awarded against petitioner's counsel for filing a motion obviously part of "hardball" litigation tactics, not based on any real concern in this particular case.

The present matter before the Court is a motion entitled Petitioner's Motion to Require Proper Signing of Respondent's Interrogatory Answers and Supporting Memorandum (Petitioner's Motion) filed March 11, 1997. In the motion petitioner objects to interrogatory answers signed by respondent's counsel and states, "Counsel for Jacques has requested Borden to have an authorized representative sign the responses under oath and Borden has refused." (Petitioner's Motion at 1.) The motion does not ask that counsel for Borden verify the answers, rather it says, "Jacques respectfully requests the Court for its Order requiring **Borden, as opposed to its counsel**, to sign the responses and to do so under oath." (Petitioner's Motion at 2, emphasis added.)

In pursuing the motion, petitioner rattles sabers, asserting that if someone from Borden does not sign the answers, then she "will have no alternative" but to call Borden's counsel at trial to interrogate him concerning the discovery responses. (Petitioner's Motion at 1.)

In its response to the motion, Borden argues that the rules of procedure permit an attorney to sign answers to interrogatories propounded to a corporation. It relies on three cases decided by federal courts under the amended Federal Rules of Civil Procedure. Those cases expressly hold that an attorney for a corporation may sign answers to interrogatories. *United States v. 42 Jars, More or Less*, 264 F.2d 666, 670 (3rd Cir. 1959); *Segarra v. Waterman S. Corp.*, 41 F.R.D. 245, 248 (D.C. Puerto Rico, 1966); *Fernandes v. United Fruit Co.*, 50 F.R.D. 82, 85-86 (D.C. Maryland, 1970).

The Federal Rules of Civil Procedure and the Montana Rules of Civil Procedure both provide that an "officer or agent" of a corporation may sign interrogatories on its behalf. Rule 33, Mont. R. Civ. P., provides in relevant part:

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability--Procedures for Use--Limitations. Any party may serve upon any other party written interrogatories to be answered by the parties served or, if the party served is a public or private corporation or a partnership or association or governmental agency, **by any officer or agent**, who shall furnish such information as is available to the party. . . .

Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to in which event the reasons for objection shall be stated in lieu of an answer. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer thereto. The answers are to be signed by the person making them, and the objections signed by the attorney making them. [Emphasis added.]

The rules of this Court make no express provision for signature in the case of a corporate party, providing only:

24.5.323 INTERROGATORIES (1) . . . The answers shall be signed by the person making them, and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 20 days after the service of the interrogatories, unless the court lengthens or shortens the time. . . .

. . . .

(4) Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to in which event the reasons for objection shall be stated in lieu of an answer. Objections may be made because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. Objections are to be signed by the attorney making them. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer or objection thereto.

However, this Court has repeatedly said that where no express provision is made in its own rules regarding a matter then it will look to the Montana Rules of Civil Procedure for guidance, a practice approved by the Supreme Court. *Murer v. Montana State Compensation Mut. Ins. Fund*, 257 Mont. 434, 849 P.2d 1036, 1037 (1993); *Moen v. Peter Kiewit & Sons Co.*, 201 Mont. 425, 434, 655 P.2d 482, 486 (1982).

In her response brief, petitioner does not dispute Borden's argument that an attorney may sign on its behalf. Rather, she says threateningly, "If Respondent's counsel insists on answering the interrogatories on behalf of Respondent, recognizing that he may be making himself a witness, then his responses should at least be provided under oath as plainly required by the rule." (Petitioner's Reply Brief in Support of Motion to Require Proper Signing of Interrogatory Answers at 1.)

The petitioner's motion is **denied**. As argued by Borden, and not contested by petitioner, an attorney for a corporation may sign answers to interrogatories made on its behalf. The motion requested that the Court order someone other than Borden's attorney to sign the answers. Only after Borden responded to the motion did petitioner demand in the alternative that the answers be signed under oath by the attorney. That request was outside the scope of the original motion and **will not** be considered.

The petitioner's motion, and her threats to call Borden's counsel as a witness in this case, smack more of hardball, "in your face," litigation tactics than any legitimate, good faith effort to secure necessary discovery. I requested, received, and read the discovery answers. There is nothing unusual about them and nothing in them remotely suggests any need to call the person preparing the responses to testify at trial. The central issues in this case, as evidenced by the motion for summary judgment, are legal ones involving matters of statutory interpretation. The legal nature of the defense is also clear from the answers to interrogatories. Almost all factual interrogatories propounded by petitioner involved requests for admission of some factual matter, and almost all the requests were admitted - - hardly a basis for calling and interrogating the preparer of the answers.

Moreover, an attorney's signature on any document filed in this Court is his/her certification that it is made

to the best of her/his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

ARM 24.5.303(7). In demanding that the answers additionally be verified under oath, the petitioner challenges the adequacy of the opposing counsel's obligations under both the rule and as a member of the State Bar of Montana. Even if the matter of an oath by the attorney had been properly presented in the original motion, petitioner has provided no good reason for insisting on the technicality.

I take note that in past cases I have warned counsel for petitioner and a different member of the law firm representing Borden about hardball tactics, personal attacks on one another, and unnecessary motions. I sanctioned a member of the firm representing Borden in one of those cases because the discovery disputes got out of hand. I will not tolerate unnecessary motions or uncivil conduct by any member of either firm, or by any other attorney.

Rule 24.5.326 governs motions to compel discovery. It provides:

If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. With respect to a motion to compel discovery, **the court may impose such sanctions as it deems appropriate, including, but not limited to, awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion.** If the party shall fail to make discovery following issuance of an order compelling responses, the court may

order such sanctions as it deems required and just under the circumstances. [Emphasis added.]

Pursuant to the rule, I find it appropriate to award attorney fees to Borden. Such fees shall be paid personally by petitioner's counsel and not passed on to petitioner.

Within 5 days of this Order, counsel for Borden shall submit a statement concerning the number of hours spent on resisting the motion and his customary hourly rate. Petitioner has 5 days thereafter in which to respond.

SO ORDERED.

DATED in Helena, Montana, this 20th day of March, 1997.

(SEAL)

/s/Mike McCarter

JUDGE

c: Mr. J. David Slovak

Mr. Dylan E. Jackson

Submitted: March 14, 1997