IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9701-7682

GUY WALL

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE COMPANY

Respondent/Insurer for

BARRETTS MINERALS, INCORPORATE

Employer.

ORDER REGARDING DISCOVERY

Summary: Discovery dispute regarding scheduling of depositions, including deposition for physical therapist to translate illegible notes.

Held: Where an attorney agrees to a deposition or other discovery, the Court will hold the attorney to the agreement. In lieu of a deposition of a physical therapist for the sole purpose of obtaining a translation of illegible notes, the parties may agree to a procedure for the therapist to submit a typewritten translation of the notes.

Topics:

> **Discovery: Generally.** Where an attorney agrees to a deposition or other discovery, the Court will hold the attorney to the agreement.
>
> **Discovery: Generally.** In lieu of a deposition of a physical therapist for the sole purpose of obtaining a translation of illegible notes, the parties may agree to a procedure for the therapist to submit a typewritten translation of the notes.
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> **Discovery: Compelling Discovery.** Where an attorney agrees to a deposition or other discovery, the Court will hold the attorney to the agreement.

On Friday, October 31, 1997, the Court held a telephone conference with Mr. Richard J. Pyfer, counsel for petitioner, and Mr. Donald R. Herndon, counsel for respondent, to address discovery disputes involving depositions. Mr. Pyfer scheduled a deposition of the petitioner's wife for November 5, 1997. Mr. Herndon agreed to the deposition. Mr. Pyfer then attempted to schedule a deposition of a physical therapist for the purpose of

translating unintelligible notes made by the therapist. Mr. Herndon refused to agree to the deposition and repudiated his agreement to the deposition of petitioner's wife, thereby precipitating the telephone call.

This Order confirms my rulings over the telephone, as follows:

1. Where an attorney agrees to a deposition or other discovery, the Court will hold the attorney to the agreement. The deposition of petitioner's wife shall proceed as scheduled.

2. Petitioner may obtain a translation of illegible physical therapy notes. At a recent trial, this Court sua sponte ordered the parties to obtain a translation of illegible notes of a chiropractor where it appeared from the portions that were readable that the notes may provide probative information concerning the issues raised at trial. Counsel may agree to have the medical provider submit a typewritten version of the notes. If they cannot agree to that simple procedure, then the provider may be deposed. If authenticity is disputed, then a deposition to confirm authenticity may be taken. Any deposition shall be limited to these matters.

SO ORDERED.

DATED in Helena, Montana, this 4th day of November, 1997.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Pyfer
Mr. Donald R. Herndon