IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 20

WCC No. 2011-2847

MICHELE BALDWIN

Petitioner

vs.

OLD REPUBLIC INS. CO.

Respondent.

ORDER RESOLVING PETITIONER'S MOTION TO COMPEL

Summary: Petitioner moved to compel Respondent to answer certain discovery requests, contending that Respondent has stated that it intends to provide most of the discovery sought, but has failed to do so in spite of having a significant amount of time to do so. Petitioner further seeks her fees and costs in bringing this motion. Respondent acknowledges that Petitioner is entitled to most of the discovery she seeks, but argues that an order to compel is unnecessary as it intends to supplement its discovery responses at some point in the future. Respondent argues that one of the interrogatories Petitioner has posed is unnecessary and unduly burdensome.

Held: Respondent shall not be compelled to answer the interrogatory it has objected to as the information sought does not appear relevant to the case before this Court. Respondent is compelled to answer the remaining interrogatories Petitioner has brought forth for this motion. Petitioner is entitled to her fees and costs in bringing this motion.

¶ 1 Petitioner Michele Baldwin moves for an order compelling Respondent Old Republic Ins. Co. (Old Republic) to answer certain discovery requests Baldwin has made.[1] Old Republic objects to Baldwin's motion, arguing that Baldwin is not entitled to one specific discovery request she has made, and further asserting that it intends to answer the remainder of Baldwin's discovery requests at some point in the future.[2]

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[1] Petitioner's Motion to Compel and Brief in Support (Opening Brief), Docket Item No. 10.

[2] Respondent's Brief in Response to Motion to Compel (Response Brief), Docket Item No. 12.

Baldwin's Interrogatories Nos. 3, 5, 11, and 12

¶ 2 Baldwin states that in December 2011, she served her first discovery requests. Old Republic responded on January 26, 2012. Baldwin contends that some of Old Republic's answers were inadequate, and Old Republic promised to later supplement these answers. However, that supplementation has not been forthcoming.[3] These interrogatories request information pertaining to Old Republic's investigation into Baldwin's claim for medical benefits, an explanation as to why Old Republic has not paid certain medical expenses, and identification of which medical expenses Old Republic has paid.[4]

¶ 3 Old Republic represents that it has no objection to Baldwin's request for more complete answers to her Interrogatories 3, 5, 11, and 12.[5] Old Republic argues that an order to compel is unnecessary. It states that it "is not refusing" to provide the information Baldwin has requested, but rather it has simply experienced "a certain amount of delay in being able to access information" because Old Republic changed adjusting companies and multiple adjusters worked on Baldwin's claim since it began. Old Republic states that the adjusting company it used sold or transferred its book of business to another adjusting company, the claim was assigned three different claims adjusters in a short time period, and the current adjuster and Old Republic's counsel have not ascertained "how much information" was transferred from the first adjusting company to the second. Old Republic contends that it has always advised Baldwin that it would supplement its responses "once we had completed a search for [the information sought] and could make it available."[6] Old Republic maintains that its efforts to gather the information Baldwin seeks is "underway" and that a court order is not necessary.[7]

¶ 4 Under § 39-71-107(1), MCA, pursuant to the public policy set forth in § 39-71-105, MCA, prompt claims handling practices are necessary to provide appropriate service to injured workers. Section 39-71-107(2), MCA, provides that all workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana, and § 39-71-107(3), MCA, requires insurers to maintain the documents related to each filed claim in

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[3] Opening Brief at 2.

[4] Opening Brief at 2-5.

[5] Response Brief at 3.

[6] Response Brief at 2.

[7] Response Brief at 3.

the office of the claims examiner examining the claim in Montana until the claim is settled.[8]

¶ 5 Under ARM 24.29.4307, all insurers must maintain their claim files. At this point, Baldwin has waited six months for Old Republic to get around to providing discovery answers which it admits she is entitled to. Although Old Republic continues to insist that it is "not refusing" to answer Baldwin, it has continued to fail to provide the information Baldwin seeks. Although Old Republic argues that a court order is unnecessary, given its failure to produce the requested discovery in the absence of such an order, I conclude that apparently, a court order is necessary in this case as Old Republic does not appear to be making any discernable effort to provide discovery in the absence of one. I therefore order Old Republic to supplement its answers to Baldwin's Interrogatories Nos. 3, 5, 11, and 12 within 10 days of the issuance date of this Order.

Baldwin's Interrogatory No. 4

¶ 6 Also at issue is Baldwin's Interrogatory No. 4, which states:

> With reference to each claim, complaint, and/or allegation made within the last three years regarding the claims handling of Specialty Risks Services (which reference to the handling of a Montana workers' compensation claim), where such claim, complaint and/or allegation is made in writing alleging some impropriety and/or insufficiency with the SRS handling, please identify each and every workers' compensation claimant, the claimant[']s attorney, the date of the allegation, and specify whether a Petition for Hearing was filed in the Workers' Compensation Court.
>
> (a) Please consider this a Request for Production for each and every Petition for Hearing filed in Montana's Workers' Compensation Court, within the last three years, making the allegations described above.[9]

¶ 7 In answer to Baldwin's Interrogatory, Old Republic responded:

> The Respondent is not certain what is meant by the use of the terms "impropriety and/or insufficiency". In the normal course of adjusting a claim, there may well be communications concerning the compensability

[8] Since the industrial injury which is the subject of Baldwin's claim occurred on July 22, 2008, the 2007 statutes apply and are used here.

[9] Opening Brief at 3.

> of a claim or some aspect of a claim. The Respondent is not aware of any claims made against SRS during the past three years with allegations similar to or identical to the allegations made in this case, involving a workers' compensation claim as well as a related third party claim.[10]

¶ 8 Baldwin argues that Old Republic's response is evasive and that she is entitled to a more complete answer. Baldwin argues that her interrogatory is proper and that "it may reveal a very probative pattern of Respondent delaying payments and delaying discovery."[11] Old Republic responds that it should not be required to supplement its answer because the scope of discovery Baldwin requests is unnecessary and unduly burdensome. Old Republic argues that if Baldwin wishes to litigate the issue of unreasonableness in a workers' compensation case, discovery does not require insurers or adjusters to review every case file in their custody, but only requires review of the case at issue. Old Republic argues that the present case is simply about expenses which it agreed to pay, but has not done so, and that this interrogatory "blow[s] this case well out of proportion to the circumstances . . . ."[12]

¶ 9 Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, or which is reasonably calculated to lead to the discovery of admissible evidence.[13]

¶ 10 Clearly, Baldwin seeks information regarding delay in her pursuit of her claims for attorney fees and a penalty under §§ 39-71-611, -612, and -2907, MCA. Under the relevant statutes, Baldwin may be entitled to attorney fees and/or a penalty if Old Republic unreasonably delayed or denied her claim. How Old Republic handled other claims is not relevant to these issues. Old Republic may have handled every other claim in an exemplary manner, yet still unreasonably delayed or denied Baldwin her benefits, and Old Republic would not be able to escape liability by demonstrating that it usually adjusts claims correctly. Conversely, Old Republic may have had unreasonable delay or denial in other claims, and yet this would not make it liable for attorney fees and a penalty to Baldwin unless it had done so in her particular case. Therefore, I do not see how Baldwin's request for information regarding other, unrelated claims is relevant, nor could it lead to the discovery of admissible evidence relevant to her claim before this Court. Therefore, I am denying Baldwin's motion to compel Old Republic to more fully answer Baldwin's Interrogatory No. 4.

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[10] Opening Brief at 3.

[11] Opening Brief at 4.

[12] Response Brief at 5.

[13] Mont. R. Civ. P. 26(b)(1).

Baldwin's Request for Fees and Costs

¶ 11 Baldwin argues that Old Republic has demonstrated a pattern of refusing to provide information and refusing to respond in a timely manner. Baldwin argues that although Old Republic agreed to pay certain medical expenses in September 2008, Old Republic's failure to respond has left Baldwin unaware if Old Republic has actually paid the medical expenses it agreed to pay.[14] For example, Baldwin points out that in her Interrogatory No. 11, she asks Old Republic to identify which medical expenses it has paid regarding her claim. When Old Republic provided its response in January 2012, it provided only expenses paid through August 31, 2010, promising to supplement at a later date with information on expenses paid from September 1, 2010, to the present. As of the filing of this motion, Baldwin had yet to receive any supplementation to this interrogatory and has no information on what medical expenses Old Republic has paid since September 1, 2010.[15] Baldwin argues that questions such as "What have you paid?" are basic and straightforward requests and therefore Old Republic has no excuse for failing to answer them. She contends that she is entitled to her fees and costs in bringing this motion to compel due to Old Republic's failure to answer discovery.

¶ 12 In its response, Old Republic offers in its defense that it has "not refused" to provide information, and that its failure to provide information is not due to "recalcitrance," but rather it has experienced "a certain amount of delay" in its attempts to access the information Baldwin seeks.[16] Old Republic's difficulties with the third-party adjusters it has chosen to work with are, frankly, Old Republic's problem. However, Old Republic, in failing to provide complete responses to Baldwin's interrogatories – interrogatories which should be easy to answer by looking at the claim file – has made it Baldwin's problem. For that reason, Baldwin is entitled to her reasonable attorney fees and costs incurred in pursuing this motion to compel.

Order

¶ 13 Petitioner's motion to compel is **GRANTED** regarding Interrogatories Nos. 3, 5, 11, and 12.

¶ 14 Respondent shall supplement its answers to Petitioner's Interrogatories Nos. 3, 5, 11, and 12 within 10 days of the date of this Order.

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[14] Opening Brief at 6.

[15] Opening Brief at 4-5.

[16] Response Brief at 1-3.

¶ 15 Petitioner's motion to compel is **DENIED** regarding Interrogatory No. 4.

¶ 16 Petitioner is entitled to her attorney fees and costs incurred in bringing this motion to compel.

¶ 17 Petitioner shall have 10 days from the date of the issuance of this Order to submit a bill of fees and costs.

DATED in Helena, Montana, this 21st day of June, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Chris J. Ragar
William O. Bronson
Submitted: May 16, 2012