

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2003-0771

CARL MILLER, individually and on behalf
of others similarly situated

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FILED

MAR 26 2003

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

SCHEDULING ORDER

You are hereby given notice that a Petition for Hearing has been filed in the Workers' Compensation Court.

THE PARTIES SHALL ADHERE TO THE FOLLOWING DEADLINES.

- 1) **RESPONSE:** Respondent shall serve the Court and the petitioner with a **Response to the Petition on or before April 18, 2003.** ARM 24.5.302.
- 2) **WRITTEN DISCOVERY:** All written discovery must be served on or before June 27, 2003.
- 3) **FURTHER IDENTIFICATION OF WITNESSES AND EXHIBITS:** On or before July 4, 2003, the parties shall exchange:
 - a) a list of the names of all witnesses not already identified in the pretrial statement, along with a summary of the general subject matter of their testimony;
 - b) a list of the names of all expert witnesses, along with a summary of the subject matter on which the expert is expected to testify, and the nature of the facts and opinions to which the expert is expected to testify.

c) a list of all proposed exhibits, identifying the exhibit by date, author and number of pages. Generic identification, such as "all vocational records" is **insufficient**.

d) all proposed exhibits, including medical records, which have not been previously provided to the opposing party or which are not known to be already in the opposing party's possession; and

e) a particularization of the grounds or basis for any penalty or attorney fees sought by the claimant.

Inadequate witness summaries: Summaries of the expected testimony of witnesses, including expert witnesses, may incorporate by reference depositions, report, or records of the witness. If a party considers an opposing party's summary inadequate to permit preparation for trial or evaluation of the case, the party shall contact the opposing party no later than July 11, 2003, to request additional information. If the party remains unsatisfied with the information provided, the dissatisfied party may file a motion to compel further disclosure and shall promptly arrange a conference call with the Court to resolve the motion. Unless otherwise permitted by the Court, a motion to compel further disclosure shall be filed no later than July 18, 2003. Any motion to limit witness testimony based on inadequate disclosure will be considered by the Court **only if** these procedures have been followed.

Inadequate penalty particularization: If the insurer believes the particularization regarding attorney fees and penalty are inadequate, it shall adhere to the same procedures and deadlines as provided for inadequate witness summaries.

Supplementation: Witness lists, exhibit lists, witness summaries, and penalty particularizations may not be supplemented except in response to a request by the opposing party, with respect to witnesses, exhibits, and information identified for the first time after the exchange date as a result of the exchange or discovery, and which could not have been identified earlier through reasonable diligence, or by leave of court for good cause shown. Any supplementation shall be exchanged no later than the deadline for the attorneys' conference.

4) **Do not mail the exhibits to the Court.**

5) **MEDICAL RECORDS:** As set forth in ARM 24.5.317, written objections to medical records must be served identifying the medical record and basis of objection on or before July 14, 2003.

6) PRETRIAL MOTIONS: All motions to dismiss, to amend pleadings, and for summary ruling must be filed with supporting briefs on or before July 4, 2003. Unless otherwise provided by the rules of the Court, all other pretrial motions, including motions in limine, must be **RECEIVED**, with briefs, by the Court on July 24, 2003.

7) ATTORNEYS' CONFERENCE: At least one week prior to the pretrial conference the attorney(s) and any party who is representing herself/himself shall meet or confer by telephone to discuss and determine the contents of the pretrial order.

8) PRETRIAL CONFERENCE: **The Pretrial Order shall be prepared by the Petitioner.** The pretrial conference is scheduled for the week of July 28, 2003, in Helena, Montana. At the pretrial conference the parties must:

a) File the **Final Pretrial Order** in the form set forth in ARM 24.5.318 (5). In the event of a dispute as to the content of the Final Pretrial Order, the dispute shall be presented at the pretrial conference for resolution.

b) List and file all proposed exhibits **with the hearing examiner at the time of the pretrial conference**. The list shall clearly set forth all objections a party may have to any proposed exhibit. Numbers shall be used to mark exhibits and all pages within an exhibit shall be numbered sequentially. Medical records shall be set forth in a single exhibit.

c) It is the responsibility of the **petitioner** to prepare the final exhibit packet. PRIOR to the pretrial conference, the **respondent** must provide the **petitioner** with sufficient copies for all parties of every exhibit it intends to offer for admission. These exhibits must be separated and the pages within the exhibit must be numbered. The petitioner will then identify the exhibit by number when preparing the Pretrial Order. At the time of the pretrial conference, there **must** be conformed copies of the exhibit notebook for all parties and the Court.

d) The Pretrial Order shall contain a statement indicating whether any party intends to file proposed findings of fact and conclusions of law, a trial memorandum or brief, or any other written argument relating to trial. If the Pretrial Order does not disclose such intention, the Court will not receive any such written argument absent agreement of all parties.

9) DEPOSITIONS: All depositions must be filed no later than August 7, 2003. If exhibits are attached to the deposition, the pages of each deposition exhibit must be numbered sequentially. All attachments to a deposition may be considered a single exhibit or may be divided into separate exhibits if labeled appropriately.

10) TRIAL DATE: The trial of this matter is set for the week of August 11, 2003, in Helena, Montana.

NOTICE: The public facilities the Court uses for trials comply with the provisions of the Americans with Disabilities Act. Persons with disabilities requiring special accommodations should contact the Court one week prior to the pretrial hearing.

11) PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OR TRIAL BRIEF: If the parties intend to submit proposed findings of fact and conclusions of law ("proposed findings") or a trial brief, they must do so by the Thursday preceding the trial week. (Submission by FAX is acceptable.) Submission of the proposed findings is not mandatory. However, failure to submit pretrial proposed findings will not be cause for the Court to defer a bench ruling, if appropriate, or for it to delay submission of the case for decision. Post-trial proposed findings will not be routinely allowed.

12) SETTLEMENT CONFERENCE: The parties are urged to engage in settlement discussions. If any party believes that settlement negotiations would be facilitated by a settlement conference as provided in ARM 24.5.334, that party may request the Court to order a settlement conference.

13) HEARING EXAMINER: Pursuant to prior Order of the Court, Jay Dufrechou shall act as hearing examiner to conduct the pretrial conference and to issue orders concerning pretrial discovery, scheduling, procedural and similar matters and disputes.

This schedule may be modified upon approval of the Court and written confirmation by a party. **Failure to file the Final Pretrial Order may result in the trial being vacated.** The Court will consider the imposition of sanctions on any party who fails to cooperate.

DATED in Helena, Montana, this 26th day of March, 2003.

(SEAL)

PATRICIA J. KESSNER
Clerk of Court

By: 
Deputy Clerk of Court