

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 30

WCC No. 9503-7254

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OSCAR M. JOHNSON

Petitioner

vs.

THE TRAVELERS INSURANCE COMPANY

Respondent.

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ORDER DENYING MOTION TO BIFURCATE

**Summary:** Respondent moves to bifurcate penalty issue from pending trial.

**Held:** Though the Workers' Compensation Court has sometimes bifurcated penalty issues from trial on the merits, this is appropriate only where disputes regarding the penalty threaten to overshadow, if not swallow up, the underlying dispute. Motion to bifurcate denied.

**Topics:**

**Penalties: Insurers.** Though the Workers' Compensation Court has sometimes bifurcated penalty issues from trial on the merits, this is appropriate only where disputes regarding the penalty threaten to overshadow, if not swallow up, the underlying dispute. Motion to bifurcate denied.

**Procedure: Trial: Bifurcation.** Though the Workers' Compensation Court has sometimes bifurcated penalty issues from trial on the merits, this is appropriate only where disputes regarding the penalty threaten to overshadow, if not swallow up, the underlying dispute. Motion to bifurcate denied.

The respondent has moved to bifurcate the penalty issue, citing this Court's prior bifurcation orders in ***Adels v. CIGNA Ins. Co.***, WCC No. 9307-6831 and ***Bobi Jo Cary v. Lumbermens Mutual Casualty Co.***, WCC No. 9407-7090. While bifurcation was granted in the two cited cases, those cases should not be read as precedent for *routine* bifurcation.

The Court will bifurcate the penalty issue only where pretrial disputes involving the penalty threaten to overshadow, if not swallow up, the underlying dispute.

In this case counsel for respondent has not established any unusual circumstances which would move the Court to bifurcate the penalty issue. The Court also notes that over the past year and a half it has issued numerous decisions regarding attorney-client and attorney work-product protections. Counsel should have a fair idea of what is protected and what is not, and should be able to get along in completing discovery regarding all issues involved in the case.

ACCORDINGLY, IT IS HEREBY ORDERED that the Respondent's Motion to Bifurcate [the] Penalty Issue is **denied**.

Dated in Helena, Montana, this 28th day of April, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Tom L. Lewis  
Mr. Thomas A. Marra