

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2009 MTWCC 30**

**WCC No. 2004-1092**

---

**RAYMOND JOHNSON**

**Petitioner**

**vs.**

**LIBERTY NORTHWEST INSURANCE CORPORATION**

**Respondent/Insurer.**

---

**ORDER ON COSTS**

**Summary:** Liberty Northwest Insurance Corporation objected to Raymond Johnson's application of costs for the fees associated with the preparation of two exhibits (\$660.00); counsel for Johnson's expenses associated with travel to trial (\$1,165.73); and Johnson's costs associated with obtaining trial transcripts (\$1,265.50).

**Held:** Liberty's objection to the costs associated with the preparation of the exhibits is denied. Liberty's objection to the costs associated with travel to trial by Johnson's counsel is sustained. Liberty's objection to the costs associate with Johnson obtaining trial transcripts is sustained.

**Topics:**

**Costs: WCC Costs.** Where the Petitioner employed the services of a nurse to prepare to prepare two exhibits that were admitted into evidence without objection and included a thirty-year medical chronology of the Petitioner's chest x-rays and CT scans and an eight-year chronology of the Petitioner's multiple pulmonary function tests which documented the medical provider who conducted the test and the specific results of each test, the court held that, given the nature of these two exhibits, it was not unreasonable that a person with a medical background would be employed to prepare them and the nurse's charge is a recoverable cost.

**Costs: WCC Costs.** Where the location of trial would have been in Kalispell pursuant to ARM 24.5.310(3)(a), the Petitioner's counsel would have incurred no travel expenses had the Respondent pressed to have the case heard exclusively in Kalispell, and the trial was held over the course of eight separate days in four different locations almost exclusively to accommodate the Petitioner's witnesses, the Court held that the Petitioner is not entitled to the costs of attorney travel expenses.

**Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana : 24.5.310.** Where the location of trial would have been in Kalispell pursuant to ARM 24.5.310(3)(a), the Petitioner's counsel would have incurred no travel expenses had the Respondent pressed to have the case heard exclusively in Kalispell, and the trial was held over the course of eight separate days in four different locations almost exclusively to accommodate the Petitioner's witnesses, the Court held that the Petitioner is not entitled to the costs of attorney travel expenses.

**Costs: WCC Costs.** Trial transcripts are generally not found to be reasonable under ARM 24.5.342(5)(a) and the Petitioner offered no reason justifying its costs request for obtaining trial transcripts. The Respondent has not appealed the judgment in this case and has notified opposing counsel that there will be no appeal. The transcript costs are not recoverable.

¶ 1 After the Court issued its Findings of Fact, Conclusions of Law and Judgment in this case, Petitioner Raymond Johnson (Johnson) submitted an affidavit in support of his costs pursuant to ARM 24.5.342.<sup>1</sup> Respondent Liberty Northwest Insurance Corporation (Liberty) objected to a number of the costs Johnson submitted.<sup>2</sup> In response to Liberty's objections, Johnson submitted an amended affidavit,<sup>3</sup> after which I convened a conference call with the parties to determine which costs remained in dispute. By letter dated August 17, 2009, Johnson's counsel informed the Court that the parties have stipulated to costs in the amount of \$38,432.53, but costs totaling \$3,091.23 remained in dispute.<sup>4</sup> This Order addresses the costs that remain in dispute.

¶ 2 The costs that remain in dispute are as follows:

---

<sup>1</sup> Affidavit In Support of Costs, Docket Item No. 191.

<sup>2</sup> Liberty's Objection to Costs, Docket Item No. 192.

<sup>3</sup> Exhibit 1 to Petitioner's Response to Respondent's Objection to Costs (Petitioner's Response), Docket Item No. 193.

<sup>4</sup> August 17, 2009, Letter from Laurie Wallace to Judge Shea, Docket Item No. 195.

1. Robin Carlisle (Nurse Case Services) . . . . .	\$660.00
2. Travel Expenses; MHS&M; <sup>5</sup> Trial in Libby . . . . .	104.80
3. Travel Expenses; B&L; <sup>6</sup> Trial in Libby . . . . .	109.59
4. Travel Expenses; B&L; Trial in Helena . . . . .	88.85
5. Travel Expenses; MHS&M; Trial in Helena . . . . .	207.56
6. Travel Expenses; MHS&M; Trial in Helena/Spokane . . . . .	654.93
7. Court Reporter; Trial Transcript . . . . .	943.50
8. Court Reporter; Trial Transcript . . . . .	322.00
<b>TOTAL . . . . .</b>	<b>\$3,091.23</b>

¶ 3 Because items 2 through 6 all deal with Johnson’s application to recover costs associated with his attorneys’ travel to trial, they will be addressed collectively. Likewise, items 7 and 8 will be addressed collectively because they both deal with Johnson’s application to recover the costs of trial transcripts.

Robin Carlisle – Nurse Case Services

¶ 4 Johnson originally sought to recover \$825 for Robin Carlisle’s (Carlisle) services. Liberty objected to this cost on the grounds that this Court had previously disallowed recovery of expert fees for an expert who did not testify at trial in *Rau v. Montana State Fund*<sup>7</sup> and disallowed the fees of a nurse consultant in *Porter v. Liberty Northwest Ins. Corp.*<sup>8</sup> In response to Liberty’s objection, Johnson submitted an amended affidavit from his attorney<sup>9</sup> in which he reduced his request for costs relative to Carlisle’s services to \$660. Johnson represented in his response that the \$660 charge was for preparation of trial exhibits 127 and 128 and provided an invoice from Carlisle in support of this representation.<sup>10</sup>

¶ 5 Exhibits 127 and 128 were admitted into evidence without objection. Exhibit 127 was a thirty-year medical chronology of Johnson’s chest x-rays and CT scans. Among

---

<sup>5</sup> McGarvey, Heberling, Sullivan & McGarvey, P.C.

<sup>6</sup> Bothe & Lauridsen, P.C.

<sup>7</sup> *Rau v. Montana State Fund*, 2008 MTWCC 34, ¶¶ 3-4.

<sup>8</sup> *Porter v. Liberty Northwest Ins. Corp.*, 2008 MTWCC 12, ¶ 5.

<sup>9</sup> Petitioner’s Response, Exhibit 1.

<sup>10</sup> *Id.*, Exhibit 2.

other things, it documented which x-rays or scans reflected interstitial fibrosis, pleural thickening, presence of pleural plaques, and COPD. Exhibit 128 was an eight-year chronology of Johnson's multiple pulmonary function tests which documented the medical provider who conducted the test and the specific results of each test. Both of these exhibits were cross-referenced to the voluminous medical records which were admitted into evidence. Carlisle's invoice reflects that she billed a total of twenty-two hours at the rate of thirty dollars per hour to prepare both of these exhibits.

¶ 6 ARM 24.5.342(4)(e), provides that an example of costs that would generally be found to be reasonable are "fees and expenses necessary for perpetuation or presentation of evidence offered at trial, such as recording, videotaping or photographing exhibits." As noted above, these two exhibits were admitted into evidence without objection. Given the nature of these two exhibits, it was not unreasonable that a person with a medical background would be employed to prepare them. I therefore find the \$660 charge from Robin Carlisle to be a recoverable cost. Liberty's objection to item 1 is denied.

#### Attorney Travel Expenses

¶ 7 Items 2 through 6 are costs associated with Johnson's attorneys' travel expenses to the various locations where this case was tried. These costs total \$1,165.73. Liberty objected to these costs based on my ruling in *Porter v. Liberty Northwest Ins. Corp.* in which I held that travel expenses associated with counsel's attendance at trial were not recoverable.<sup>11</sup> Johnson responded to Liberty's objection by noting that the ruling in *Porter* did not state a blanket rule prohibiting costs related to attorney travel to trial, but rather found that the costs were not reasonable in light of the facts of that case. Johnson is correct that *Porter* did not pronounce a blanket prohibition on costs associated with attorney travel to trial. However, for much of the same reasoning articulated in *Porter*, I find these costs are not recoverable in the present case.

¶ 8 This case was tried over the course of eight separate days in four different locations. This was accomplished with minimal disruption through the cooperation of counsel for both parties. I note, however, that pursuant to ARM 24.5.310(3)(a), the location of trial would have been in Kalispell – the location of both of Johnson's counsels' offices. Had Liberty pressed to have this case heard exclusively in Kalispell, Johnson's counsel would have incurred no travel expenses. That the case was also heard in Libby, Helena, and Spokane was almost exclusively to accommodate Johnson's witnesses. Although Liberty acquiesced to this matter being heard in the various other locations, I held in *Porter* that the insurer's acquiescence to the location of trial did not justify an award of costs for Porter's

---

<sup>11</sup> *Porter, supra*, ¶ 3.

counsel's travel to trial.<sup>12</sup> Contrary to the old saw that "no good deed goes unpunished," I hold likewise in this case. Liberty's objection to items 2 through 6 is sustained.

#### Trial Transcripts

¶ 9 Items 7 and 8 are costs for obtaining trial transcripts. These costs total \$1,265.50. In its objection to this cost, Liberty noted that ARM 24.5.342(5)(a), provides that a cost generally not found to be reasonable are trial transcripts ordered by the parties prior to any appeal. Liberty noted in its objection that it has not appealed this judgment and that it has notified Johnson's counsel that there will be no appeal. Johnson has offered no reason justifying its request for these costs. Liberty's objection to items 7 and 8 is sustained.

#### ORDER

¶ 10 Liberty's objection to Johnson's application for costs regarding the fees of Robin Carlisle totaling \$660.00 is **DENIED**.

¶ 11 Liberty's objection to Johnson's application for costs regarding attorney travel expenses totaling \$1,165.73 is **SUSTAINED**.

¶ 12 Liberty's objection to Johnson's application for costs regarding trial transcripts totaling \$1,265.50 is **SUSTAINED**.

DATED in Helena, Montana, this 27<sup>th</sup> day of August, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA

JUDGE

c: Laurie Wallace  
Jon L. Heberling  
Larry W. Jones  
Submitted: August 19, 2009

---

<sup>12</sup> *Porter, supra*, ¶ 3.