

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 27

WCC No. 9502-7233

PETE MAVITY

Petitioner

vs.

CHAMPION INTERNATIONAL

Respondent.

ORDER REGARDING EXPERT WITNESSES

Summary: With trial set for less than two weeks away, and in the context of ongoing disputes over expert witness disclosure, respondent filed motion to allow expert testimony.

Held: Any issues regarding experts that remain at trial will be sorted out at that time. The parties are directed to list their experts in the pretrial order, along with any objection to opposing experts, supported with reasons. Counsel are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. With the Court's impatience with pretrial games well known, it is prepared to impose sanctions for abuses.

Topics:

Attorneys: Conduct and Tactics. Trial counsel embroiled in expert witness dispute are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. With the Court's impatience with pretrial games well known, it is prepared to impose sanctions for abuses.

Discovery: Experts. Trial counsel embroiled in expert witness dispute are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. With the Court's impatience with pretrial games well known, it is prepared to impose sanctions for abuses.

Discovery: Experts. In the context of ongoing disputes regarding the timeliness and adequacy of expert witness disclosure, respondent filed a motion to allow expert testimony. Where trial is set within two weeks, any issues regarding experts that remain at trial will be sorted out at that time. The parties are directed to list their experts in the pretrial order, along with any objection to opposing experts, supported with reasons.

Discovery: Generally. Trial counsel embroiled in expert witness dispute are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. With the Court's impatience with pretrial games well known, it is prepared to impose sanctions for abuses.

Discovery: Sanctions. Trial counsel embroiled in expert witness dispute are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. With the Court's impatience with pretrial games well known, it is prepared to impose sanctions for abuses.

The Court has received from respondent a Motion to Allow Expert Testimony. That motion requests the Court to rule on the admissibility of certain expert testimony in advance of trial. The motion is made in the face of possible objections petitioner may have to the timeliness and adequacy of expert witness disclosure. Respondent on its part alleges that its ability to make disclosure concerning its expert witnesses has been impeded by the lateness of information received from petitioner.

This case is set for trial during the week of April 24, 1995. Whether petitioner will raise objections to any of respondent's proffered expert testimony is unknown at this time and his response to the motion is not due until the eve of trial. While the Court could order an earlier response, it declines to do so since it believes that the issues, should they present themselves, can be sorted out at trial.

In the meantime, if there are objections to any expert being listed and called as a witness, the expert shall nonetheless be listed in the pretrial order and the party objecting to the witness shall set forth a statement identifying the witness to whose testimony he objects and the specific grounds of his objection. If either party anticipates objections to the scope or subject matters of an expert's proposed testimony, then those objections should similarly be set forth in the pretrial order.

The parties should also be prepared to present their expert testimony in full at trial or through pretrial depositions. Objections may be pursued at trial and will be ruled on at that time.

Both parties are admonished that the Court takes a dim view of gamesmanship in the discovery process. Attorneys are expected to make full and fair disclosure and to cooperate with each other. The Court has on prior occasions made known its impatience with pretrial games. In light of its prior warnings, it is now fully prepared to impose sanctions for abuses.

Dated in Helena, Montana, this 13th day of April, 1995.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Rex Palmer
Mr. Bradley J. Luck