

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2021 MTWCC 1

WCC No. 2020-5195

MICHAEL RAY

Petitioner

vs.

OHIO SECURITY INSURANCE CO.

Respondent/Insurer.

ORDER SUSTAINING RESPONDENT'S DISCOVERY OBJECTIONS

Summary: This Court reviewed documents *in camera* to determine if the information that Respondent objected to producing was protected by the attorney-client or work-product privilege, or whether it was reserve information, which is irrelevant to the issues in this case. This Court also reviewed the documents to determine whether Respondent's attorneys acted as the claims adjusters, in which case the attorney-client and work-product privileges would arguably be waived.

Held: This Court sustained Respondent's objections because the information to which it objected to producing is privileged or irrelevant reserve information. Moreover, Respondent did not waive any privilege because its attorneys did not act as claims adjusters; rather, they were acting solely within their roles as legal advisors.

¶ 1 Respondent Ohio Security Insurance Co. (Ohio Security) redacted portions of the documents it produced in discovery under ARM 24.5.324(4). Ohio Security objected to producing some of the information on the grounds that it is protected by the attorney-client or work-product privileges, and to the other information on the grounds that its

reserve information is irrelevant to the issues in this case, which are whether certain medical conditions were caused by Petitioner Michael Ray's industrial accident.¹

¶ 2 Pursuant to ARM 24.5.324(6)(c), Ray asked this Court to review the documents *in camera* and either sustain or overrule Ohio Security's objections. Ray also filed a brief in which he asked this Court to review the redacted portions to determine if Ohio Security's attorneys were acting as claims adjusters and cited cases supporting his position that when an attorney acts as a claims adjuster, the attorney-client and work-product privileges are waived.²

¶ 3 Ohio Security also filed a brief, asserting that its attorneys have not acted as claims adjusters in this case.

¶ 4 This Court has reviewed the documents that Ohio Security submitted *in camera* and **sustains** each of its objections. The information that Ohio Security redacted is protected by either the attorney-client privilege or the work-product privilege or is irrelevant reserve information. In addition, based on the unredacted documents, this Court finds that Ohio Security's attorneys were not acting as claims adjusters; rather, they were acting solely within their roles as legal advisors. Accordingly, this Court now enters the following:

ORDER

¶ 5 Ohio Security's discovery objections are **sustained**.

DATED this 21st day of January, 2021.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: J. Kim Schulke
Joe C. Maynard and Adrianna J. Potts

Submitted: December 15, 2020

¹ See, e.g., *Salazar v. Mont. State Fund*, 2011 MTWCC 28 (ruling that reserve information was not relevant to issue of whether insurer's settlement offer was reasonable).

² See, e.g., *Rose v. United Servs. Auto. Assoc.*, Mont. Thirteenth Jud. Dist. Ct., Yellowstone County Cause No. DV-19-533 (Order Granting Plaintiff's Mot. to Compel Disc. And Deposition of Unnamed Claims Handler) (Nov. 18, 2020) (citing cases in support of ruling that, "[O]nce the attorney acts as an adjuster the attorney-client privilege and work-product privilege are irretrievably lost.").