

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

**2006 MTWCC 12**

**WCC No. 2005-1435**

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**NITA MARLENE SHELL**

**Petitioner**

**vs.**

**VALOR INSURANCE COMPANY**

**Respondent/Insurer**

**and**

**FREMONT/WESTERN GUARANTY FUND and  
MONTANA STATE FUND**

**Third Party Respondents.**

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**ORDER GRANTING LEAVE TO FILE AMENDED PETITION**

**Summary:** Petitioner Nita Marlene Shell moved the Court for leave to file an amended petition, asserting that she was within the deadline set for amending pleadings from this Court's scheduling order, and further arguing that she is entitled to amend her pleading under Mont. R. Civ. P. 15(a). Respondent Valor Insurance Company filed a pleading captioned Response to Motion; however, Respondent did not substantively address the merits of Petitioner's motion, but rather raised arguments regarding the substance of Petitioner's petition.

**Held:** Petitioner's motion is granted. This Court has consistently held that leave to amend pleadings shall be freely given when justice so requires. Furthermore, failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken. Merely captioning a document as a "Response to Motion" but failing to substantively address the merits of that motion within the body of the brief is insufficient to constitute substantive opposition to that motion. Petitioner's motion is granted.

**Pleading: Amendments.** Rule 15(a), Mont. R. Civ. P., provides that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served and otherwise by leave of court, said leave to be freely given when justice so requires. A document captioned as a “Response to Motion” which fails to substantively address the motion within the body of the brief is insufficient to constitute substantive opposition to that motion, and thus as provided for in Rule 24.5.316 ARM, the failure of an adverse party to timely file an answer brief may be deemed an admission that the motion is well taken.

**Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure: Rule 15.** Rule 15(a), Mont. R. Civ. P., provides that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served and otherwise by leave of court, said leave to be freely given when justice so requires. A document captioned as a “Response to Motion” which fails to substantively address the motion within the body of the brief is insufficient to constitute substantive opposition to that motion, and thus as provided for in Rule 24.5.316 ARM, the failure of an adverse party to timely file an answer brief may be deemed an admission that the motion is well taken.

**Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.316.** Where a party files a document entitled “Response to Motion,” but fails to substantively address the motion within the body of the document, it is insufficient to constitute substantive opposition to that motion. Rule 24.5.316 ARM provides that the failure of an adverse party to timely file an answer brief may be deemed an admission that the motion is well taken.

¶1 Petitioner Nita Marlene Shell moved this Court for leave to file an amended petition for trial on February 24, 2006. Petitioner argued that good cause exists for amending her petition because she seeks to remove her request for appointment of a guardian *ad litem* and add a request for penalty and fees.

¶2 In her attached memorandum in support, Petitioner explains that under the current scheduling order, the deadline for amending pleadings is April 21, 2006, and thus her motion to file an amended petition falls well within the deadline. She further notes that ARM 24.5.352 allows this Court to be guided by the Montana Rules of Civil Procedure if no express provision exists in the ARMs. Rule 15(a), Mont. R. Civ. P., provides that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served and otherwise by leave of court, said leave to be freely given when justice so requires.

¶3 On March 6, 2006, Respondent Valor Insurance Company filed a document captioned Response Brief in Opposition to this Court's Jurisdiction to Adjudicate Competency and Response to Petitioner's Motion to Amend. Although Respondent argues against the substance of Petitioner's claims regarding this Court's subject matter jurisdiction to determine competency, Respondent does not put forth any arguments against granting Petitioner's motion for leave to amend her petition.

¶4 Leave to amend a petition shall be freely given when justice so requires.<sup>1</sup> Furthermore, failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken.<sup>2</sup> Merely captioning a document as a "Response to Motion" but failing to substantively address the merits of that motion within the body of the brief is insufficient to constitute substantive opposition to that motion.

¶5 Petitioner's Motion for Leave to File First Amended Petition for Trial is **GRANTED**.

¶6 With the filing of this Amended Petition for Trial, the issue of appointment of a guardian *ad litem* and this Court's jurisdiction to determine competency prerequisite to such an appointment is, for the time being, mooted. Based on a conference with counsel for the respective parties, the Court anticipates further motions may be forthcoming which will resurrect this issue. The Court will address these issues as they arise.

DATED in Helena, Montana, this 24<sup>th</sup> day of March, 2006.

(SEAL)

/s/ James Jeremiah Shea  
JUDGE

c: Ms. J. Kim Schulke  
Mr. Joe C. Maynard  
Mr. Kelly M. Wills  
Mr. Greg E. Overturf  
Submitted: March 6, 2006

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<sup>1</sup> *Higgins v. Liberty Northwest Ins. Corp.*, 2004 MTWCC 31, ¶ 6 (citing Mont. R. Civ. P. 15(a)).

<sup>2</sup> ARM 24.5.316(4).