

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 5

WCC No. 2006-1531

ALAN RUSSELL

Petitioner

vs.

WATKINS & SHEPARD TRUCKING COMPANY

Respondent/Insurer.

ORDER REGARDING RESPONDENT'S MOTION IN LIMINE

Summary: Respondent moved in limine to exclude an Addendum report and medical opinions because the report was not provided to Respondent in a timely manner.

Held: The Court ordered Petitioner to produce all discoverable medical records, excluding any reports or opinions not disclosed by the Court's deadline. The Court further held that Respondent would be granted leave to conduct an additional IME after it examined the records, if Respondent so desired.

¶ 1 Respondent Watkins & Shepard Trucking Company moved in limine to exclude the Addendum report and opinions of Dr. Lindell Weaver because the report was not provided in a timely manner.¹ Following briefing by the parties, the Court held a conference call on October 25, 2006, to discuss the matter. Petitioner Alan Russell was represented by James G. Edmiston and Respondent was represented by Leo S. Ward.

¶ 2 After hearing the parties' arguments, the Court vacated the trial date of November 3, 2006, and scheduled a further conference call for October 27, 2006, to allow the Court additional time to review the file prior to issuing a ruling on Respondent's motion. The follow-up conference call was held on October 27, 2006, at which time the Court issued an oral ruling regarding Respondent's motion in limine. This formal Order setting forth the ruling is issued consistent with the Court's oral ruling.

¹ Docket Item No. 19.

¶ 3 The Court ordered that by Friday, November 3, 2006, Petitioner shall produce to Respondent all discoverable medical records, including, but not limited to, all records from Drs. Lindell Weaver, Erin Bigler, and John Foley. Any records or reports which are not produced by that date will be excluded, as will any opinions contained in those records.

¶ 4 After receipt of the above records, Respondent will be granted leave for another independent medical examination (IME) if Respondent so requests. Irrespective of whether Respondent requests another IME, Respondent may submit a supplemental IME or records review report which will not necessarily be limited to Dr. Emil J. Bardana, Respondent's original IME physician. Respondent's IME, if requested, is subject to § 39-71-605, MCA. Drs. Weaver, Bigler, and Foley shall be made available by Petitioner for deposition.

¶ 5 It is **so ordered**.

DATED in Helena, Montana, this 1st day of February, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: James G. Edmiston
Leo S. Ward
Submitted: October 23, 2006.