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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2010-2011

2100174

Ex parte Imerys USA

PETITION FOR THE WRIT OF MANDAMUS

(In re: Imerys USA

v.

Charles Wilson)

(Talladega Circuit Court, CV-09-900037)

THOMAS, Judge.

In 2006, Charles Wilson was employed by Imerys USA ("Imerys").[1] During the course of his employment, Wilson allegedly sustained a work-related injury to his back in November 2006. Wilson was first treated by Dr. Walter Pinson. Wilson then requested a panel of four orthopedists from which to choose, see § 25-5-77(a) Ala. Code 1975; Wilson selected Dr. Dewey Jones IV. Wilson was treated by Dr. Jones from January 2007 until April 5, 2007, when Dr. Jones placed Wilson at maximum medical improvement ("MMI"), indicated in his note that Wilson could return to see him on an as-needed basis, and recommended that Wilson be referred to a physiatrist to "overtake his oral pain management situation."

Wilson was referred to Dr. Mark Downey at Alabama Orthopedic Center for pain-management treatment. Dr. Downey treated Wilson with periodic epidural injections between May 2007 and January 2008. In January 2008, Dr. Downey referred Wilson to the Doleys Clinic/Pain and Rehabilitation Institute,

[1]The petitioner is identified inconsistently in the pleadings and other documents appended as exhibits to the petition for the writ of mandamus. On certain of the pleadings and documents, it is identified as "Imerys d/b/a E.C.C.A. Calcium Products, Inc." We have chosen to use the name that appears on the petition.

where he was treated by Dr. Thomas Ryder. In November 2008, after pain-management treatment had not resolved Wilson's pain issues, Dr. Ryder requested authorization from Imerys's third-party administrator to refer Wilson to Dr. Andrew Cordover, an orthopedist, for further evaluation of whether Wilson would benefit from surgical intervention. The third-party administrator denied authorization, stating in its response to Dr. Ryder that Wilson should be sent to see Dr. Downey, who the administrator incorrectly referred to as the "assigned orthopedist." Ultimately, however, the third-party administrator scheduled for Wilson another appointment with Dr. Jones, which Wilson refused to attend.

Imerys moved to compel Wilson to attend the appointment with Dr. Jones for the purpose of surgical evaluation. Imerys also requested in that motion that the trial court order that Imerys was not required to honor Dr. Ryder's attempted referral to Dr. Cordover. Wilson responded to Imerys's motion, requesting first that the trial court deny Imerys's motion to compel Wilson to see Dr. Jones. Wilson also sought affirmative relief, requesting that the trial court Imerys to authorize the referral to Dr. Cordover.