

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

**2007 MTWCC 6**

**WCC No. 2005-1450**

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**FRANCES BAKER,  
as Personal Representative of the Estate of Bruce Baker**

**Petitioner**

**vs.**

**TRANSPORTATION INSURANCE COMPANY**

**Respondent/Insurer.**

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**ORDER ON RESPONDENT'S MOTION IN LIMINE**

**Summary:** Respondent moved in limine to preclude Petitioner from presenting (1) evidence regarding Bruce Baker's medical expenses, and (2) a letter from Dr. Alan Whitehouse assigning various impairment ratings to Mr. Baker.

**Held:** Respondent's motion to preclude Petitioner from using the letter from Dr. Whitehouse at trial is moot in light of the Court's earlier ruling that Petitioner is not entitled to benefits in the form of an impairment rating. Respondent's motion to preclude Petitioner from presenting evidence regarding Mr. Baker's medical expenses based on this Court's lack of jurisdiction is denied. Under the 1985 Occupational Disease Act, jurisdiction of a claim is conferred on this Court when a dispute over benefits exists. In a letter dated August 8, 2002, Respondent denied Petitioner's claim in its entirety based on the ostensible running of the statute of limitations. Therefore, a dispute exists and this Court has jurisdiction of the claim.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905 (1985).** Although the matter was not mediated and Petitioner did not file a statement that the parties had attempted to resolve the dispute, this Court has jurisdiction of a pre-1987 claim because an attempt to resolve the dispute at the time would have been futile since Petitioner's claim for benefits was denied on the basis of a statute of limitation.

**Jurisdiction: Workers' Compensation Court: Mediation Requirement.**

Before 1987, no mandatory mediation provision existed under either the Workers' Compensation Act or the Occupational Disease Act. Therefore, Petitioner was not required to attempt to mediate any dispute prior to petitioning the Court.

**Mediation: General.** Before 1987, no mandatory mediation provision existed under either the Workers' Compensation Act or the Occupational Disease Act. Therefore, Petitioner was not required to attempt to mediate any dispute prior to petitioning the Court.

**Constitutions, Statutes, Regulations, and Rules: ARM 24.5.301 Petition For Trial.** It would make little sense for this Court to require Petitioner to attempt to resolve a dispute concerning medical benefits when the *entire claim* was denied based on an ostensible running of the statute of limitations. It would have been futile for Petitioner to attempt any further piecemeal resolution of the claim after the claim was denied in its entirety based on a statute of limitations. Courts do not require exhaustion of administrative remedies when doing so would be futile. *Mountain Water Co. v. Montana Dept. of Pub. Serv. Regulation*, 2005 MT 84, 326 Mont. 416, 420, 110 P.3d 20, 22.

**Administrative Procedure: Failure To Exhaust Administrative Remedies.** It would make little sense for this Court to require Petitioner to attempt to resolve a dispute concerning medical benefits when the *entire claim* was denied based on an ostensible running of the statute of limitations. It would have been futile for Petitioner to attempt any further piecemeal resolution of the claim after the claim was denied in its entirety based on a statute of limitations. Courts do not require exhaustion of administrative remedies when doing so would be futile. *Mountain Water Co. v. Montana Dept. of Pub. Serv. Regulation*, 2005 MT 84, 326 Mont. 416, 420, 110 P.3d 20, 22.

**Limitations Periods: Petition Filing.** It would make little sense for this Court to require Petitioner to attempt to resolve a dispute concerning medical benefits when the *entire claim* was denied based on an ostensible running of the statute of limitations. It would have been futile for Petitioner to attempt any further piecemeal resolution of the claim after the claim was denied in its entirety based on a statute of limitations. Courts do not require exhaustion of administrative remedies when doing so would be futile. *Mountain Water Co. v. Montana Dept. of Pub. Serv. Regulation*, 2005 MT 84, 326 Mont. 416, 420, 110 P.3d 20, 22.

¶ 1 Respondent Transportation Insurance Company moves this Court in limine to preclude Petitioner Frances Baker, widow of Bruce Baker and Personal Representative of the Estate of Bruce Baker, from presenting (1) evidence of Mr. Baker's medical expenses, and (2) a letter from Dr. Alan Whitehouse dated January 26, 2006, assigning Mr. Baker various impairment ratings.

¶ 2 The parties agree to the basic facts of the case. Mr. Baker was employed by W.R. Grace & Co. between 1969 and 1985. W.R. Grace was insured by Respondent during Mr. Baker's employment. Mr. Baker died on February 4, 2002, and Frances Baker brought the present claim as Personal Representative of his estate.

### **I. Dr. Whitehouse's Letter.**

¶ 3 In a previous ruling in this case, this Court granted Respondent's Motion for [Partial] Summary Judgment regarding Petitioner's entitlement to an impairment award.<sup>1</sup> Specifically, the Court held that § 39-72-703, MCA (1985), prohibited Petitioner from receiving an impairment award in the present case. The substance of Dr. Whitehouse's letter that is the subject of Respondent's current motion in limine deals with the assignment of various impairment ratings to Mr. Baker by Dr. Whitehouse. In light of this Court's ruling that Petitioner is barred from receiving an impairment award, Respondent's motion to exclude Dr. Whitehouse's January 26, 2006, letter is now moot. The motion is therefore denied on those grounds.

### **II. Evidence of Mr. Baker's Medical Expenses.**

¶ 4 Regarding evidence of Mr. Baker's medical expenses, Respondent argues that this Court lacks jurisdiction over the issue of the medical expenses because Petitioner failed to attempt to resolve any dispute regarding payment of medical expenses prior to filing suit in the Workers' Compensation Court. Respondent asserts that this was a jurisdictional prerequisite which Petitioner failed to meet. Therefore, Respondent contends, because this Court lacks jurisdiction, Petitioner is precluded from presenting evidence of Mr. Baker's medical expenses.

¶ 5 Section 39-71-2905, MCA (1985), sets forth the jurisdictional requirements in this case. It provides, in relevant part:

A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. . . .

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<sup>1</sup> 2006 MTWCC 42.

¶ 6 In 1987, the Legislature enacted legislation requiring mandatory mediation of a benefit dispute prior to filing a petition in this Court.<sup>2</sup> Before 1987, no mandatory mediation provision existed under either the Workers' Compensation Act or the Occupational Disease Act.<sup>3</sup> Therefore, Petitioner was not required to attempt to mediate any dispute prior to petitioning the Court. However, Respondent argues that ARM 24.5.301(d) requires claimants with accidents occurring prior to July 1, 1987, to file a statement that the parties have attempted to resolve their dispute but have been unable to do so. Respondent contends that Petitioner failed to attempt to resolve the dispute regarding medical expenses prior to filing her Petition for Hearing in this case. Respondent therefore argues that this Court lacks jurisdiction over this issue. Respondent's argument is not well taken.

¶ 7 Respondent denied Petitioner's claim in this case by letter dated August 8, 2002. In this letter, Respondent stated: "The reason for the denial of the claim is because the statute of limitations has expired."<sup>4</sup> It would make little sense for this Court to require Petitioner to attempt to resolve a dispute concerning medical benefits when the **entire claim** was denied based on an ostensible running of the statute of limitations. It would have been futile for Petitioner to attempt any further piecemeal resolution of the claim after the claim was denied in its entirety based on a statute of limitations. Courts do not require exhaustion of administrative remedies when doing so would be futile.<sup>5</sup> At the time Respondent denied the claim on August 8, 2002, a dispute concerning all benefits arose and jurisdiction of the matter was conferred on this Court. Respondent's motion to exclude evidence of Mr. Baker's medical expenses is therefore denied.

### JUDGMENT

¶ 8 The motion to preclude Petitioner from presenting Dr. Whitehouse's letter is **DENIED** as moot.

¶ 9 The motion to preclude Petitioner from presenting evidence of Mr. Baker's medical expenses is **DENIED**.

¶ 10 Any party to this dispute may have twenty days in which to request reconsideration of this JUDGMENT.

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<sup>2</sup> See § 39-71-2401, MCA (1987).

<sup>3</sup> *Carmichael v. Workers' Compensation Court of State of Mont.*, 234 Mont. 410, 763 P.2d 1122 (1988).

<sup>4</sup> Ex. 1 to Petitioner's Response to Respondent's Motion In Limine.

<sup>5</sup> *Mountain Water Co. v. Montana Dept. of Pub. Serv. Regulation*, 2005 MT 84, 326 Mont. 416, 420, 110 P.3d 20, 22.

DATED in Helena, Montana, this 1<sup>st</sup> day of February, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Laurie Wallace/Jon L. Heberling  
Todd A. Hammer/Angela K. Jacobs  
Submitted: March 1, 2006