

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

**2015 MTWCC 13**

**WCC No. 2015-3545**

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**CAR WERKS, LLC**

**Petitioner**

**vs.**

**UNINSURED EMPLOYERS' FUND**

**Respondent/Third Party Petitioner**

**vs.**

**JAMES E. GAWRONSKI**

**Third Party Respondent.**

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**ORDER DENYING THIRD PARTY RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT**

**Summary:** Third Party Respondent moves for summary judgment on the grounds that this Court lacks jurisdiction, contending that Petitioner is only contesting the mediator's "decision" and that this Court cannot reverse a mediator's "decision," which is non-binding. Third Party Respondent also argues this Court lacks jurisdiction because the specific issue mediated in this case was Respondent/Third Party Petitioner's acceptance of liability for Petitioner's claim and not the issue in this case, which is medical causation.

**Held:** This Court has jurisdiction. Petitioner's initial pleading makes it clear that it is contesting the UEF's acceptance of liability of Third Party Respondent's claim and not just the mediator's "decision." The evidence also shows that Petitioner mediated the dispute over the UEF's acceptance of liability which includes the issue of medical causation. Petitioner has followed the procedure set forth in § 39-71-520, MCA, to contest the UEF's determination to accept liability and pay benefits.

## **Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2408.** Although couched as an appeal of the mediator's non-binding decision, it is clear from the initial pleading that the uninsured employer is really contesting the UEF's decision to accept liability for the claimant's claim.

**Mediation: General.** Although couched as an appeal of the mediator's non-binding decision, it is clear from the initial pleading that the uninsured employer is really contesting the UEF's decision to accept liability for the claimant's claim.

**Pleading: Statement of a Claim.** Although couched as an appeal of the mediator's non-binding decision, it is clear from the initial pleading that the uninsured employer is really contesting the UEF's decision to accept liability for the claimant's claim.

**Uninsured Employers' Fund: Appeal of UEF Benefit Determination.** Although couched as an appeal of the mediator's non-binding decision, it is clear from the initial pleading that the uninsured employer is really contesting the UEF's decision to accept liability for the claimant's claim.

**Uninsured Employers' Fund: Generally.** Although the initial pleading specifically contests DLI's acceptance of a claim, the allegation encompasses the UEF since the UEF is part of DLI; even the Montana Legislature refers to the UEF as "the department" in § 39-71-520, MCA.

**Department of Labor and Industry: Interpretation of Statutes and Rules.** Although the initial pleading specifically contests DLI's acceptance of a claim, the allegation encompasses the UEF since the UEF is part of DLI; even the Montana Legislature refers to the UEF as "the department" in § 39-71-520, MCA.

**Pleading: Statement of a Claim.** Montana is a notice pleading state; the allegations in the uninsured employer's initial pleading were sufficient to put the UEF on notice that the uninsured employer was contesting the UEF's acceptance of liability and the reasons why it believed the UEF's determination was incorrect.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-520.** The uninsured employer's pleadings and exhibits establish that it timely "appealed" to mediation the UEF's determination to accept liability, and, when there was no settlement at mediation, timely petitioned this Court to resolve the dispute. While claimant maintains that the uninsured employer's documents and pleadings are not sufficiently precise to qualify as a mediation petition or a petition with this Court, the claimant is elevating form over substance.

**Pleadings: Statement of a Claim.** The uninsured employer's pleadings and exhibits establish that it timely "appealed" to mediation the UEF's determination to accept liability, and, when there was no settlement at mediation, timely petitioned this Court to resolve the dispute. While claimant maintains that the uninsured employer's documents and pleadings are not sufficiently precise to qualify as a mediation petition or a petition with this Court, the claimant is elevating form over substance.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2408.** Despite the uninsured employer's claim that the specific issue of medical causation was not mediated, when a party contests the decision on initial compensability, the mediation of that issue encompasses all subjacent compensation issues whether or not they are specifically mentioned in the request for mediation. The uninsured employer's dispute with the UEF over acceptance of a claim on its theory that a previous motorcycle accident caused claimant's injuries is subjacent to the issue of whether the UEF correctly accepted liability.

**Mediation: General.** Despite the uninsured employer's claim that the specific issue of medical causation was not mediated, when a party contests the decision on initial compensability, the mediation of that issue encompasses all subjacent compensation issues whether or not they are specifically mentioned in the request for mediation. The uninsured employer's dispute with the UEF over acceptance of a claim on its theory that a previous motorcycle accident caused claimant's injuries is subjacent to the issue of whether the UEF correctly accepted liability.

**Uninsured Employers' Fund: Appeal of UEF Benefit Determination.** Despite the uninsured employer's claim that the specific issue of medical causation was not mediated, when a party contests the decision on initial compensability, the mediation of that issue encompasses all subjacent compensation issues whether or not they are specifically mentioned in the

request for mediation. The uninsured employer's dispute with the UEF over acceptance of a claim on its theory that a previous motorcycle accident caused claimant's injuries is subjacent to the issue of whether the UEF correctly accepted liability.

¶ 1 Third Party Respondent James E. Gawronski moves for summary judgment,<sup>1</sup> with supporting brief,<sup>2</sup> on the grounds that Petitioner Car Werks, LLC (Car Werks) is appealing the non-binding "decision" of the Department of Labor & Industry's (DLI) mediator, and this Court lacks jurisdiction to reverse the mediator's decision. Gawronski also claims this Court lacks jurisdiction because the issue mediated was Respondent/Third Party Petitioner Uninsured Employers' Fund's (UEF) determination to accept liability and not the issue before this Court, which is medical causation.

#### Procedural Matter

¶ 2 Gawronski did not set forth a statement of undisputed facts in serial fashion, as required by ARM 24.5.329(3). Nor did he provide any authentication for what he argues are the undisputed "facts" throughout his brief.<sup>3</sup> This Court agrees with Car Werks<sup>4</sup> that such "facts" cannot be used in ruling on Gawronski's summary judgment motion.<sup>5</sup> Gawronski does, however, rely on Car Werks' initial pleading to support his arguments. In addition, Car Werks provides specific facts in serial fashion with citation to authenticated exhibits, which provide the additional facts and information necessary to rule upon Gawronski's motion. Accordingly, this Court will decide the issues raised in Gawronski's summary judgment motion based upon the authenticated evidence.

#### Uncontroverted Facts

¶ 3 Gawronski was an employee of Car Werks, an uninsured employer.<sup>6</sup>

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<sup>1</sup> Third Party Respondent's Motion for Summary Judgment, Docket Item No. 15.

<sup>2</sup> Third Party Respondent's Brief in Support of Motion for Summary Judgment, Docket Item No. 16.

<sup>3</sup> See M.R.Evid. 901(a) (Authentication, or setting forth "evidence sufficient to support a finding that the matter in question is what its proponent claims," is a "condition precedent to admissibility.").

<sup>4</sup> Petitioner Carwerks's [sic] Responses to Third Party Respondent Gawronski's Motion for Summary Judgment (Car Werks' Responses) at 4, Docket Item No. 22.

<sup>5</sup> *In re Estate of Mead*, 2014 MT 264, ¶ 14, 376 Mont. 386, 336 P.3d 362 (citation omitted) (A court's consideration of a summary judgment motion "is limited to admissible evidence; a court does not consider conclusory statements lacking specific factual support in the record.").

<sup>6</sup> See, e.g., Uninsured Employers' Fund's Response to the Petition for Hearing (UEF's Response) at 1-2, Docket Item No. 5.

¶ 4 On September 5, 2013, Gawronski was in a car accident while working.<sup>7</sup>

¶ 5 Gawronski claims he suffered injuries in this accident and filed a workers' compensation claim.<sup>8</sup>

¶ 6 The UEF accepted liability for Gawronski's claim.<sup>9</sup> Via a letter dated June 3, 2014, the UEF notified Car Werks, "In accordance with Section 39-71-504, MCA, you are required to pay an amount equal to all benefits paid or to be paid to the claimant pursuant to the Montana Workers' Compensation Act." The UEF also notified Car Werks, "Under section 39-71-520 of the Workers' Compensation Act all appeals must be filed within 90 days from the date of this letter, on or before September 1, 2014. If an appeal is not filed for mediation within ninety (90) days from the date of this letter the determination will be considered final."<sup>10</sup>

¶ 7 On June 27, 2014, Car Werks' attorney sent a letter to the UEF's claims examiner, stating in relevant part: "Car Werks, LLC, pursuant to § 39-71-520 MCA disputes the determination to accept liability for the claim of James E. Gawronski and the attendant financial obligation imposed upon Car Werks by such determination."<sup>11</sup>

¶ 8 On July 11, 2014, DLI's Mediation Unit scheduled a mediation conference. The issue to be mediated: "Car Werks, LLC disputes the determination that they are liable for Mr. Gawronski's workers' compensation claim."<sup>12</sup>

¶ 9 The mediator issued the Mediation Report and Recommendation on January 16, 2015.<sup>13</sup>

¶ 10 On March 18, 2015, Car Werks commenced this case by filing a "Notice of Appeal." Car Werks states it is appealing from the "decision issued by the Department of Labor and Industry on January 16, 2015 and served upon Appellant by mail on January 21, 2015." Car Werks further contends: "[It] is entitled to a reversal of the decision of the DLI that James E. Gawronski is entitled to benefits for injuries suffered in an accident." Car Werks explains: "[It] is entitled to this relief because the injuries for which DLI decided it

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<sup>7</sup> *Id.* at 1.

<sup>8</sup> Third Party Respondent Gawronski's Answer to Uninsured Employers' Fund's Third Party Petition for Indemnity at 1, Docket Item No. 11.

<sup>9</sup> UEF's Response at 2.

<sup>10</sup> Car Werks' Responses, Ex. 1 (emphasis omitted).

<sup>11</sup> *Id.*, Ex. 2.

<sup>12</sup> *Id.*, Ex. 3 at 1.

<sup>13</sup> UEF's Response at 2.

should pay were not work related injuries, but injuries sustained in a motorcycle accident that was not work related.”<sup>14</sup>

¶ 11 It remains Car Werks’ position that Gawronski’s injuries were actually suffered in a motorcycle accident that occurred before the car accident. Car Werks has submitted a sworn statement from John Holmes, who states that Gawronski told him “he was going to sue [Car Werks’ manager] and his insurance company for injuries that he had already had from a motorcycle accident. He said it didn’t matter because the insurance would end up paying for the injury, he thought he had been let go wrongfully and didn’t care if it affected [Car Werks’ manager] and his car lot.”<sup>15</sup>

### Law and Analysis

¶ 12 The 2011 version of the Workers’ Compensation Act governs this case because that was the law in effect on the day of Gawronski’s accident.<sup>16</sup>

¶ 13 For the Court to grant summary judgment, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.<sup>17</sup>

¶ 14 Gawronski first points to the first paragraph of Car Werks’ initial pleading, where Car Werks states it is appealing the mediator’s “decision,” and maintains that Car Werks cannot appeal the mediator’s determination because, under § 39-71-2408(2), MCA, it is “without administrative or judicial authority and is not binding on the parties.” Gawronski therefore claims that this Court does not have jurisdiction to consider the mediator’s decision. Notwithstanding, it is clear from the rest of Car Werks’ initial pleading that it is contesting the UEF’s determination to accept liability for Gawronski’s claim and the UEF’s related determination that Car Werks is required to reimburse the UEF for all benefits it pays. In paragraph 2 of its initial pleading, Car Werks specifically contests the DLI’s acceptance of liability for Gawronski’s claim. While Car Werks identifies the entity that made the determination as the “DLI,” this allegation encompasses the UEF, as the UEF is part of the DLI.<sup>18</sup> This Court notes that even the Montana Legislature refers to the UEF as “the department.”<sup>19</sup> In paragraph 3 of its initial pleading, Car Werks explains that the

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<sup>14</sup> Notice of Appeal at 1, Docket Item No. 1.

<sup>15</sup> Car Werks’ Responses, Ex. 4.

<sup>16</sup> *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

<sup>17</sup> ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285 (citation omitted).

<sup>18</sup> ARM 24.1.101.

<sup>19</sup> See, e.g., § 39-71-520, MCA.

reason it contests the acceptance of liability of Gawronski's claim is that Gawronski was actually injured in a motorcycle accident.

¶ 15 Montana is a notice pleading state,<sup>20</sup> and these allegations are sufficient to put Gawronski on notice that Car Werks is contesting the UEF's acceptance of liability for his claim – for which Car Werks would be required to reimburse the UEF under § 39-71-504, MCA – and the reason why Car Werks believes the UEF's determination is incorrect.

¶ 16 Despite Gawronski's claim to the contrary, Car Werks followed the procedure established by the Legislature to contest the UEF's determination concerning benefits. Section 39-71-520(1), MCA, states, "A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final." Section 39-71-520(2)(a), MCA, in turn, states, "If the parties fail to reach a settlement through the mediation process, any party who disagrees with the department's determination may file a petition before the workers' compensation court." The exhibits attached to Car Werks' brief, and its initial pleading, establish that it "appealed" the UEF's determination to accept liability to mediation and, since there was no settlement at mediation, it then petitioned this Court to decide the dispute. While Gawronski maintains that Car Werks' documents and pleadings are not sufficiently precise to qualify as a mediation petition or a petition with this Court, this Court does not agree because Gawronski is elevating form over substance.<sup>21</sup>

¶ 17 Gawronski next argues that this Court does not have jurisdiction under §§ 39-71-2401 through 2411, MCA, because the issue in this case, medical causation, was not explicitly mediated. Car Werks notes that this statement is not supported by any admissible evidence and argues that the medical causation issue was, in fact, specifically mediated. Gawronski is correct that this Court has subject matter jurisdiction only over issues that have been mediated.<sup>22</sup> However, when a party contests the decision on initial compensability, the mediation of that issue "encompasses all subjacent compensation issues whether or not they are specifically mentioned in the request for mediation."<sup>23</sup> This

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<sup>20</sup> *Cleek v. Uninsured Employers' Fund*, 2012 MTWCC 31, ¶ 17 (citation omitted); see also *Griffin v. Moseley*, 2010 MT 132, ¶ 39, 356 Mont. 393, 234 P.3d 869 (alteration in original) (citation omitted) (internal quotation marks omitted) ("[A]ll the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. . . . Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pre-trial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.").

<sup>21</sup> *Broadwater Dev., L.L.C. v. Nelson*, 2009 MT 317, ¶ 29, 352 Mont. 401, 219 P.3d 492 (rejecting argument that elevated form over substance).

<sup>22</sup> §§ 39-71-2401(1), -2408(1), and -2905(1), MCA; see also *Preston v. Transp. Ins.Co.*, 2004 MT 339, ¶ 36, 324 Mont. 225, 102 P.3d 527.

<sup>23</sup> *Dunn v. Indem. Ins. Co. of N. Am.*, 2002 MTWCC 38, ¶ 2.

Court has no way of knowing what was actually said during a mediation conference because § 39-71-2410, MCA, states as follows:

**Limitations on mediation proceedings.** (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(8)(c), mediation proceedings must be:

- (a) held in private;
- (b) informal and held without a verbatim record; and
- (c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all persons but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) The mediator's report and any of the information or recommendations contained in the report are not admissible as evidence in any action subsequently brought in any court of law.

(5) Subsections (1) through (4) do not prohibit a mediator from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

¶ 18 In *Higgins v. Liberty Northwest Insurance Corp.*, a case that involved whether a claimant could set aside a settlement, this Court ruled that the claimant need not set forth every legal theory at mediation before it could be argued.<sup>24</sup> This Court explained: "The *issue concerning benefits* in this case is whether the claimant's settlement should be set aside. There may be all sorts of *legal theories* which support claimant's request to reopen but the *issue* is claimant's entitlement to set aside the settlement, not his legal theories."<sup>25</sup> Since the parties had mediated the issue of whether the settlement should be set aside, this Court considered all of the legal theories.

¶ 19 The documents show that the issue of whether the UEF correctly accepted liability was mediated. In Car Werks' letter dated June 27, 2014, which was apparently what started the mediation process, Car Werks cited to § 39-71-520, MCA, and stated that it disputed "the determination to accept liability for the claim of James E. Gawronski and

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<sup>24</sup> *Higgins*, 2004 MTWCC 31, ¶¶ 1-4.

<sup>25</sup> *Id.*, ¶ 3 (emphasis in original).



the attendant financial obligation imposed upon Car Werks by such determination.”<sup>26</sup> Car Werks’ theory that Gawronski’s injuries were actually caused by a prior motorcycle accident is subjacent to the issue of whether the UEF correctly accepted liability for Gawronski’s claim. Gawronski did not present any admissible evidence that he was injured in the car accident in support of his summary judgment motion, and the statement under oath of John Holmes creates an issue of fact as to whether Gawronski was actually injured in the car accident.<sup>27</sup> If Car Werks is correct that Gawronski was not injured in the car accident, then the UEF should not have accepted liability for his injuries and Car Werks would not have to reimburse the UEF for benefits it paid under § 39-71-504(1)(b), MCA.

¶ 20 This Court has jurisdiction over this case under § 39-71-520, MCA, and § 39-71-2905, MCA. Accordingly, Gawronski is not entitled to judgment as a matter of law.

¶ 21 The Court deems it unnecessary to grant Car Werks’ request for oral argument.<sup>28</sup>

#### ORDER

¶ 22 Petitioner’s request for oral argument is **denied**.

¶ 23 Third Party Respondent’s motion for summary judgment is **denied**.

DATED this 12<sup>th</sup> day of June, 2015.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: Terry Wallace  
Joseph Nevin  
Thomas C. Bulman/Bradley J. Jones

Submitted: May 26, 2015

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<sup>26</sup> Car Werks’ Responses, Ex. 2.

<sup>27</sup> *Id.*, Ex. 4.

<sup>28</sup> *Id.*, ¶ 24.