

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 39

WCC No. 2012-2934

ROBERT CHIPPEWA

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Third Party Petitioner

vs.

**MONTANA STATE FUND and
MARTIN STEINER d/b/a CROSS COUNTRY CONSTRUCTION**

Third Party Respondents.

**ORDER GRANTING PETITIONER'S MOTION TO DISMISS COUNTER-CLAIM AND
REQUEST FOR INDEMNITY AND DENYING PETITIONER'S MOTION FOR
SANCTIONS**

Summary: Petitioner moved to dismiss Third-Party Respondent's counter-claim and request for indemnity. Petitioner also moved for sanctions, arguing that the counter-claim was clearly outside this Court's jurisdiction. Third-Party Respondent responds that this Court has the jurisdiction to consider his counter-claim and it should therefore not be dismissed nor should the Court order sanctions against him.

Held: Petitioner's motion to dismiss the counter-claim and request for indemnity is granted. This Court does not have the subject matter jurisdiction to hear the tort claims Third-Party Respondent set forth. Petitioner's motion for sanctions is denied. While Third-Party Respondent's counsel could have better familiarized herself with the jurisdictional bounds of this Court, filing the counter-claim and request for indemnity did not rise to a sanctionable level under § 39-71-2914, MCA.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-613. Contrary to the third-party respondent's interpretation, nothing in § 39-71-613, MCA, provides a mechanism by which an employer might recover his attorney fees in this Court.

Attorney Fees: Cases Denied. Contrary to the third-party respondent's interpretation, nothing in § 39-71-613, MCA, provides a mechanism by which an employer might recover his attorney fees in this Court.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905. The third-party respondent's counter-claims and request for indemnity are dismissed, since the Workers' Compensation Court lacks subject matter jurisdiction over tort claims.

Jurisdiction: Subject Matter Jurisdiction. The third-party respondent's counter-claims and request for indemnity are dismissed, since the Workers' Compensation Court lacks subject matter jurisdiction over tort claims.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2914. Although the Court did not find the third-party respondent's counter-claims and request for indemnity well-founded, it did not believe they were filed for the purpose of causing unnecessary delay or needless increase in the cost of litigation. While his counsel could have better researched the bounds of the Court's jurisdiction, counsel did not lack diligence to the extent that sanctions would be warranted.

¶ 1 On September 7, 2012, Third-Party Respondent Martin Steiner, d/b/a Cross Country Construction (Steiner), filed a document captioned Response to Amended and Third Party Petition and Counter-Claim and Request for Indemnity.¹ On September 14, 2012, Petitioner Robert Chippewa moved to dismiss Steiner's counter-claim and request for indemnity and further moved for sanctions against Steiner.² The Uninsured

¹ Docket Item No. 25 (Counter-Claim).

² Petitioner's Motion to Dismiss "Counter Claims" and "Request for Indemnity", and Motion for Sanctions (Chippewa's Motions), Docket Item No. 27.

Employers' Fund (UEF) responded to Chippewa's motions on September 18, 2012.³ Chippewa replied to the UEF's response on September 20, 2012.⁴ On September 24, 2012, Third-Party Respondent Montana State Fund filed a "notice" regarding Chippewa's motions in which it stated it would take no position on Chippewa's motions.⁵ On October 3, 2012, Steiner filed a response to Chippewa's motions.⁶

¶ 2 Steiner made a request for indemnity as follows:

Third Party Respondent asserts that in the event that this Court finds that Petitioner did not meet the criteria for an ICEC, and the ICEC was invalid, the Third Party Respondent Steiner was not responsible for his reliance on same and indemnify him from any damages herein.⁷

¶ 3 In his counter-claim, Steiner contends that Chippewa committed fraud pursuant to § 28-2-405, MCA, as well as a "detriment" under § 27-1-201, MCA.⁸ He contends that he is therefore entitled to recover punitive damages and attorney fees pursuant to §§ 27-1-202, -220, -221, 25-10-303, and 53-9-106, MCA.⁹ Steiner alleges six additional counter-claims: breach of the covenant of good faith and fair dealing; fraudulent inducement; unjust enrichment; unlawful, deceptive, and unfair business practices; negligent misrepresentation; and breach of fiduciary duty.¹⁰ Steiner alleges that he has suffered damages in an amount as yet unascertained and states that he will ask leave of Court to amend his counter-claim "when the true nature and extent of his damages have been ascertained."¹¹ In his prayer for relief, Steiner asks for his attorney fees and costs, and "other and further relief as the Court deems just."¹²

³ Uninsured Employers' Fund Response to Petitioner's Motion to Dismiss "Counter Claims" and "Request for Indemnity", and Motion for Sanctions (UEF's Response Brief), Docket Item No. 29.

⁴ Petitioner's Reply to Uninsured Employers' Fund's Response to Petitioner's Motion to Dismiss "Counter Claims" and "Request for Indemnity", and Motion for Sanctions (Chippewa's Reply to UEF), Docket Item No. 30.

⁵ Montana State Fund's Notice Regarding Petitioner's Motion to Dismiss "Counter Claims" and "Request for Indemnity", and Motion for Sanctions, Docket Item No. 31.

⁶ Martin Steiner's Reply to Petitioner's Motion to Dismiss and for Sanctions All Parties' Replies to Counter-Claim and Request for Indemnity (Steiner's Response Brief), Docket Item No. 33.

⁷ Counter-Claim at 8.

⁸ Counter-Claim at 9.

⁹ Counter-Claim at 10.

¹⁰ Counter-Claim at 10-11.

¹¹ Counter-Claim at 11-12.

¹² Counter-Claim at 12.

¶ 4 Chippewa has moved for dismissal of the counter-claim and further moves for sanctions against Steiner, pursuant to § 39-71-2914, MCA.¹³ Chippewa argues that this Court does not have the jurisdiction to entertain Steiner's request for indemnity and counter-claim.¹⁴ Chippewa further argues that Steiner and his counsel should be sanctioned under § 39-71-2914, MCA, for causing unnecessary delay and increased cost of litigation by filing claims clearly outside this Court's jurisdiction.¹⁵

¶ 5 The UEF concurs with Chippewa that this Court does not have jurisdiction to grant the request for indemnity and counter-claims set forth by Steiner. However, the UEF argues that sanctions are not warranted in this instance and points out that other parties have been confused as to whether Chippewa and Steiner could have direct claims against each other.¹⁶

¶ 6 In reply to the UEF, Chippewa argues that sanctions are warranted against Steiner because he ignored the jurisdictional limits of this Court pursuant to § 39-71-2905, MCA, and further proceeded in filing his counter-claims after his counsel was "made aware at the status conference that her counterclaims were beyond this Court's jurisdiction."¹⁷

¶ 7 Steiner responds that while some of his counter-claims appear to sound in tort, the only damages he seeks are his attorney fees and costs against Chippewa for allegedly fraudulent behavior. Steiner argues that § 39-71-613, MCA, allows him to seek attorney fees. Steiner contends that while §§ 39-71-611, -612, and -614, MCA, contemplate attorney fees to be paid by insurers, § 39-71-613, MCA, contains no such provision. Steiner argues that he is a "claimant" within the meaning of the Workers' Compensation Act (WCA) because the simple meaning of "claimant" is "one who has a claim." Steiner argues that his counter-claim therefore makes him a "claimant" under the WCA and he is therefore entitled to have his counter-claim heard and his claim for attorney fees considered.¹⁸ Steiner is incorrect.

¹³ Chippewa's Motions.

¹⁴ Brief in Support of Petitioner's Motion to Dismiss "Counter Claims" and "Request for Indemnity", and Motion for Sanctions (Chippewa's Opening Brief), Docket Item No. 28, at 2-4.

¹⁵ Chippewa's Opening Brief at 4.

¹⁶ UEF's Response Brief at 2.

¹⁷ Chippewa's Reply to UEF.

¹⁸ Steiner's Response Brief at 2-4.

¶ 8 Section 39-71-613(1), MCA, states:

When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

¶ 9 Section 39-71-613(1), MCA, requires an attorney representing a party in a workers' compensation claim to submit a **contract of employment** to the Department of Labor and Industry. Although Steiner appears to read into this statute some sort of mechanism by which he might recover his attorney fees from another party to this suit, nothing in this statute provides for the awarding of attorney fees.¹⁹ Therefore, § 39-71-613(1), MCA, does not support Steiner's argument that the WCA permits the possibility of his being awarded his attorney fees in the present case.

¶ 10 Section 39-71-2905(1), MCA, states, in pertinent part:

If a claimant, an insurer, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, it may petition the workers' compensation judge for a determination of the dispute [T]he workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter, except as provided in 39-71-317 and 39-71-516. . . .²⁰

¶ 11 In *Liberty Northwest Ins. Corp. v. State Compen. Ins. Fund*, the Montana Supreme Court held that while this Court has broad jurisdictional powers over disputes under the WCA, its jurisdiction does not encompass common law tort actions. The Montana Supreme Court agreed with the rationale this Court set forth in dismissing the tort claims for lack of subject matter jurisdiction: No known decision of this Court has held that this Court has jurisdiction over tort actions, even if the tort action may result in a judgment requiring another party to pay, as damages, the amount which an insurer has paid to a claimant under the WCA.²¹ In *Travelers Indemn. Co. of Conn. v. Montana State Fund*, this Court relied on *Liberty Northwest Ins. Corp.*, supra, and held that this

¹⁹ I note that § 39-71-613(4), MCA, discusses the return of attorney fees, but only as between a claimant's attorney and an insurer.

²⁰ Neither §§ 39-71-317 nor -516, MCA, affect the present issue.

²¹ *Liberty Northwest Ins. Corp.*, 1998 MT 169, ¶¶ 10-11, 289 Mont. 475, 962 P.2d 1167.

Court has no subject matter jurisdiction over tort claims, including the tort of “negligent misrepresentation.”²²

¶ 12 In defense of his counter-claims, Steiner cites neither of these cases nor does he offer any rationale for why he believes this Court should find his tort claims distinguishable. Steiner’s counter-claims and request for indemnity are therefore dismissed.

¶ 13 Finally, Steiner argues that sanctions are not warranted in this matter. He contends that during the July 26, 2012, conference call between the Court and the parties, the Court ordered Chippewa to amend his petition and Steiner agreed to withdraw his then-filed counter-claim, specifically reserving the right to re-file the pleading after Chippewa filed an amended petition. Steiner contends that the parties did not discuss the appropriateness of his pleading and the Court heard no argument on that matter. Steiner disputes Chippewa’s implication that his filing of the counter-claim was settled at the time of that conference call. Steiner argues that sanctions are not appropriate in this instance because he believes he has the right to have his counter-claim issues heard in this Court.²³

¶ 14 Section 39-71-2914, MCA, states, in pertinent part:

(1) Every petition, pleading, motion, or other paper of a party appearing before the workers’ compensation court and represented by an attorney must be signed by at least one attorney of record in the attorney’s individual name. . . .

. . . .

(3) The signature of an attorney or party constitutes a certificate by the attorney or party that:

. . . .

(b) to the best of the attorney’s or party’s knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

²² *Travelers Indemn. Co. of Conn.*, 2003 MTWCC 41, ¶¶ 2-4.

²³ *Id.*

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

¶ 15 I have reviewed the transcript of the July 26, 2012, conference call. Although the Court's jurisdiction over Steiner's counter-claims was discussed and Chippewa's counsel stated that he believed the counter-claims should be withdrawn, I did not rule on the issue at the time because there was no motion to dismiss pending. Rather, I stated to counsel that "we will cross that bridge when we come to it."

¶ 16 Chippewa's recollection as to my ruling regarding the counter-claim is mistaken. Therefore, his argument that Steiner ignored a Court ruling in choosing to refile his counter-claim is misplaced. However, Chippewa further argues that Steiner and/or his counsel should be sanctioned for causing unnecessary delay and expense in this proceeding. Although I did not find Steiner's counter-claim and request for indemnity well-founded, I do not believe Steiner filed it for the purpose of causing unnecessary delay or a needless increase in the cost of this litigation. While I believe Steiner's counsel could have better researched the bounds of this Court's jurisdiction and the existing case law, I do not believe she lacked diligence to the extent that sanctions would be warranted in this instance. I therefore deny Chippewa's motion for sanctions pursuant to § 39-71-2914, MCA.

¶ 17 Both Chippewa and Steiner have filed claims contrary to the parameters of this Court's jurisdiction as established by the WCA and case law.²⁴ As this case moves forward, it would behoove both Chippewa's and Steiner's counsel to better familiarize themselves with this Court's practices, statutes, case law, and rules so as to minimize unnecessary delay and expense in litigating this claim.

JUDGMENT

¶ 18 Petitioner's motion for dismissal is **GRANTED**.

¶ 19 Petitioner's motion for sanctions is **DENIED**.

²⁴ Chippewa initially filed a first-party claim against Steiner which was dismissed.

DATED in Helena, Montana, this 5th day of November, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Benjamin R. Graybill
Leanora O. Coles
Kevin Braun
Melanie Logan Rimel
Submitted: October 3, 2012