

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 95

WCC No. 9504-7268

JAMES KELLY COAKLEY

Petitioner

vs.

**ITT HARTFORD INSURANCE COMPANY and
STATE COMPENSATION INSURANCE FUND**

Respondents/Insurers for

OLSTEN STAFFING and McCALL POOLS

Employers.

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

Summary: State Fund moved for judgment on pleadings, arguing claimant was not seeking relief against it.

Held: Motion denied where ITT Hartford and claimant allege that if ITT Hartford is not liable to claimant, State Fund may be. The Court will not adopt a hyper-technical approach to pleading.

Topics:

Pleading: Statement of a Claim. State Fund's motion for judgment on pleading, arguing that claimant had not articulated a claim for relief against it, was denied where another insurer/respondent and claimant both maintain that if other insurer is not liable to claimant, State Fund is. Court will not adopt a hyper-technical approach to pleading.

The State Fund has moved for judgment on the pleadings, arguing that petitioner seeks no relief against it. Certainly, the petition is aimed at ITT Hartford Insurance Company, but ITT has alleged in its response that the State Fund may be liable for benefits if petitioner proves his case. Answer of Respondent/insurer Itt-hartford to Amended

Petition for Trial, ¶ 7.d. In his brief opposing the present motion, petitioner agrees that the State Fund, rather than ITT, may be liable if he proves his case.

While the Amended Petition for Trial may not set forth any specific request for relief against the State Fund, this Court declines to adopt a hyper-technical approach to pleading. It is sufficient that one or more of the documents served on the adverse party give fair notice regarding the issue or claim. Allegations that the State Fund may be liable to petitioner are contained in ITT's response and petitioner's brief. Since the issue of the State Fund's liability is raised, albeit in a roundabout way, the motion is **denied**.

Dated in Helena, Montana, this 16th day of November, 1995.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Paul E. Toennis
Mr. William O. Bronson
Mr. Charles G. Adams
Submitted Date: November 8, 1995