

IN THE WORKERS= COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 8

WCC No. 2009-2227

LIBERTY NORTHWEST INSURANCE CORP.

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer

IN RE: JAMES P. ELLIS

Claimant.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND
DENYING PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT

Summary: Respondent paid workers' compensation benefits to and on behalf of Claimant under a reservation of rights. Petitioner later admitted liability for Claimant's claim, but refused to indemnify Respondent for funds paid, arguing that the Workers' Compensation Act does not require it to indemnify another insurer for benefits paid under a reservation of rights. Respondent moved for summary judgment in its favor, and Petitioner cross-motined.

Held: Respondent is entitled to indemnification from Petitioner for funds it paid to and on behalf of Claimant. Petitioner is the party who is properly and primarily obligated to pay those benefits.

Topics:

Constitutions, Statutes, Regulations, and Rules: **Montana Code Annotated: 39-71-2905.** Indemnification sought by one insurer against another falls within the Court's jurisdiction under § 39-71-2905, MCA, because the dispute involves an insurer who has a dispute concerning benefits under the WCA.

Jurisdiction: Workers' Compensation Court. Indemnification sought by one insurer against another falls within the Court's jurisdiction under § 39-71-2905, MCA, because the dispute involves an insurer who has a dispute concerning benefits under the WCA.

Indemnification: Between Insurers. An insurer who paid benefits on a workers' compensation claim where the benefits were properly and primarily owed by another insurer is entitled to indemnification from the liable insurer.

¶ 1 Respondent Montana State Fund (State Fund) moves this Court for summary judgment pursuant to ARM 24.5.329. State Fund alleges that Petitioner Liberty Northwest Insurance Corp. (Liberty) must indemnify it for benefits State Fund paid to or on behalf of Claimant James P. Ellis.¹ Liberty opposes State Fund's motion and argues that the Workers' Compensation Court lacks jurisdiction to grant the remedy State Fund seeks.²

Undisputed Facts³

¶ 2 On November 13, 2006, Ellis filed a workers' compensation claim for an injury/occupational disease allegedly occurring in the course and scope of his employment with Eden Construction in Ravalli County, Montana. At the time of the alleged injury/occupational disease, Eden Construction was insured under Plan II by Liberty.

¶ 3 On January 4, 2007, Liberty denied liability for Ellis' claim on the basis that "your injury did not occur during the course and scope of your employment with (sic) Edens Construction, but was a pre-existing condition."

¶ 4 On March 6, 2007, Ellis filed a workers' compensation claim for injury/occupational disease alleged to have taken place on May 8, 2006, while acting in the course and scope of his employment with B & O [sic] Builders. At all times relevant hereto, B & O [sic] Builders was insured under Plan III by State Fund.

¹ Respondent State Fund's Motion for Summary Judgment with Supporting Brief (Opening Brief), Docket Item No. 44.

² Liberty's Combined Motion for Summary Judgment, Supporting Brief and Reply Brief to State Fund's Motion for Summary Judgment (Response Brief), Docket Item No. 45.

³ As set forth in Statement of Uncontested Facts filed jointly by State Fund and Liberty, Docket Item No. 41.

¶ 5 On April 4, 2007, State Fund initially denied Ellis' claim for failure to submit any supporting medical information. The documentation was subsequently provided and State Fund began paying indemnity benefits under a reservation of rights pending completion of an independent medical examination (IME) on October 7, 2007.⁴

¶ 6 On April 17, 2008, State Fund denied liability for Ellis' claim because Dr. Capps concluded after an IME that the condition of Ellis' right arm was related to his employment with Eden Construction and not to his employment with B & D Builders.

¶ 7 On May 30, 2008, State Fund sent Liberty a demand seeking reimbursement for \$13,835 in benefits it paid on Ellis' claim.

¶ 8 On June 6, 2008, Liberty notified State Fund that it was paying benefits to Ellis "under a reservation of rights from the date of your termination forward." However, Liberty maintained that State Fund was liable for the claim and litigated the claim in the Workers' Compensation Court. After the Montana Supreme Court issued its decision in *Liberty Northwest Ins. Corp. v. Montana State Fund*,⁵ Liberty reversed its position and stipulated that the compensability issue be dismissed with prejudice in this Court because it had accepted liability for Ellis' claim.

¶ 9 On December 4, 2009, the Workers' Compensation Court issued an Order of Dismissal with Prejudice with respect to the compensability issue after Liberty accepted liability for Ellis' claim.

¶ 10 The issue which remains for the Court to resolve is whether Liberty must indemnify State Fund for the benefits and costs State Fund incurred while investigating the occupational disease claim which Liberty ultimately accepted.

¶ 11 State Fund has consistently contended that this is not a *Belton* case.

¶ 12 Both State Fund and Liberty have individually settled Ellis' claims.

///

⁴ See also Response Brief at 1 and Respondent State Fund's Reply Brief in Support of its Motion for Summary Judgment and Response Brief in Opposition to Petitioner Liberty Northwest Insurance Company's Motion for Summary Judgment (Reply Brief) at 2, Docket Item No. 46.

⁵ *In re Mitchell*, 2009 MT 386, 353 Mont. 299, 219 P.3d 1267.

Analysis and Decision

¶ 13 The parties have stipulated that the 2005 version of the Workers' Compensation Act (WCA) applies to Ellis' claim, regardless of whether it is an industrial injury or occupational disease claim.⁶

¶ 14 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.⁷ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is appropriate for summary disposition.

¶ 15 State Fund contends that it is entitled to indemnification from Liberty for the benefits it paid to Ellis while it investigated the compensability of Ellis' workers' compensation claim. State Fund argues that this Court has the authority to order Liberty to indemnify State Fund either legally or equitably. State Fund argues that its demand for indemnification is a dispute concerning benefits and therefore falls under the jurisdiction of the Court as set forth in § 39-71-2905, MCA.⁸ The statute provides, in pertinent 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 after satisfying dispute resolution requirements otherwise provided in this chapter. . . . The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

¶ 16 Liberty responds that this Court lacks jurisdiction to grant State Fund the indemnification it seeks because § 39-71-2905, MCA, states that "[t]he penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71" and since indemnification is neither a penalty nor assessment, it cannot be awarded by this Court.⁹ Liberty further argues that

⁶ Response Brief at 1.

⁷ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁸ Opening Brief at 4-6.

⁹ Response Brief.

State Fund specifically chose not to invoke § 39-71-407(5), MCA, which contains an indemnity provision and therefore forfeited its right to indemnification under that statute. Since State Fund opted to pay under a reservation of rights, it could not avail itself of this indemnity provision.¹⁰

¶ 17 State Fund replies that the language Liberty relies upon regarding penalties and assessments means that this Court may, specifically in regard to penalties and assessments, assess only those which are expressly set forth in the WCA.¹¹ State Fund draws the Court's attention to *Daenzer v. State Compen. Ins. Fund*, in which this Court held that an uninsured employer had to indemnify State Fund for benefits it paid to and on behalf of an injured employee.¹² The Court noted, "One who is required to pay [a]n obligation properly and primarily owed by another is entitled to indemnification from the other."¹³

¶ 18 Liberty argues that *Daenzer* does not apply to the present case because it is factually distinguishable in that it involved an uninsured employer and State Fund was initially required to pay the injured worker under a theory of derivative liability – not a voluntary payment under a reservation of rights as in the present case.¹⁴

¶ 19 Liberty argues that indemnification is an equitable remedy outside the jurisdiction of this Court unless a statute in the WCA specifically permits indemnification under the particular facts of the case.¹⁵ State Fund argues that the indemnification it seeks falls within this Court's jurisdiction under § 39-71-2905, MCA, because it involves "an insurer who has a dispute concerning any benefits under chapter 71 of this title."¹⁶ The fact that Liberty is an insurer and not an uninsured employer does not change the fact that State Fund, in the language of *Daenzer*, paid "an obligation properly and primarily owed" by Liberty, nor does the reason **why** State Fund paid the obligation change the fact that the obligation was properly and primarily owed by Liberty.

¹⁰ Response Brief at 3.

¹¹ Reply Brief at 3-4.

¹² *Daenzer*, 1998 MTWCC 4, ¶ 38.

¹³ *Daenzer*, ¶ 38. (Citations omitted.)

¹⁴ Response Brief at 4.

¹⁵ Response Brief at 3-4.

¹⁶ Reply Brief at 2-3.

¶ 20 I conclude that State Fund is entitled to indemnification by Liberty for the funds State Fund paid to and on behalf of Ellis' workers' compensation claim which were properly and primarily owed by Liberty. State Fund is entitled to summary judgment as a matter of law.

ORDER

¶ 21 Respondent's motion for summary judgment is **GRANTED**.

¶ 22 Petitioner's cross-motion for summary judgment is **DENIED**.

¶ 23 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 1st day of March, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Larry W. Jones
Daniel B. McGregor
Submitted: September 14, 2010