

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2015 MTWCC 8

WCC No. 2015-3511

SCOTT EMANUEL

Petitioner

vs.

MONTANA STATE FUND

Respondent and Third Party Petitioner

vs.

**UNINSURED EMPLOYERS' FUND and
PETE LITTLE d/b/a LITTLE ROOFING AND CONSTRUCTION**

Third Party Respondents.

**ORDER DISMISSING THIRD PARTY RESPONDENT
UNINSURED EMPLOYERS' FUND**

Summary: The UEF and Petitioner object to State Fund's third party petition. Although State Fund concedes that the UEF will not be liable to any party to this case if Petitioner prevails, State Fund maintains that the UEF is a necessary party under M.R.Civ.P. 19, for this Court to have a "full understanding of the UEF's actions concerning Emanuel's ICEC."

Held: The UEF is dismissed because it does not have any stake in the outcome of this case. If Petitioner prevails on his claim against State Fund, the UEF will not be liable to any party for benefits. Moreover, the UEF does not need to be a party to this case for this Court to have a full understanding of the positions the UEF took in denying liability for Emanuel's claim. If State Fund believes the documents from the UEF are relevant to this case, it can offer them as exhibits, as it has already done. If State Fund believes that the UEF's agents have personal knowledge of facts relevant to this case, it can call them as witnesses.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-405. In an action between an injured worker and State Fund under § 39-71-405(1), MCA, the UEF is not a proper third party; if the injured worker prevails, State Fund can only seek indemnification from the uninsured contractor. Furthermore, the statute of limitations for an appeal of the UEF's denial of liability has run, and the Court therefore lacks jurisdiction over the UEF. The UEF consequently has no stake in the outcome of the case.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.307. In an action between an injured worker and State Fund under § 39-71-405(1), MCA, the UEF is not a proper third party; if the injured worker prevails, State Fund can only seek indemnification from the uninsured contractor. Furthermore, the statute of limitations for an appeal of the UEF's denial of liability has run, and the Court therefore lacks jurisdiction over the UEF. The UEF consequently has no stake in the outcome of the case.

Uninsured Employers' Fund: Generally. In an action between an injured worker and State Fund under § 39-71-405(1), MCA, the UEF is not a proper third party; if the injured worker prevails, State Fund can only seek indemnification from the uninsured contractor. Furthermore, the statute of limitations for an appeal of the UEF's denial of liability has run, and the Court therefore lacks jurisdiction over the UEF. The UEF consequently has no stake in the outcome of the case.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure: Rule 19(a)(1)(A). Because the Court can determine whether Petitioner was an employee of an uninsured contractor, or an independent contractor working under a valid ICEC, the Court can determine the Petitioner's employment status without joinder of the UEF.

Independent Contractor: Independent Contractor Exemption. Because the Court can determine whether Petitioner was an employee of an uninsured contractor, or an independent contractor working under a valid ICEC, the Court can determine the Petitioner's employment status without joinder of the UEF.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure: 19(a)(1)(A). A party to the action can call the UEF's agents as witnesses and can offer its documents into evidence without forcing the UEF to be a party to this action merely to explain its reasons for denying liability.

Uninsured Employers' Fund: Generally. A party to the action can call the UEF's agents as witnesses and can offer its documents into evidence without forcing the UEF to be a party to this action merely to explain its reasons for denying liability.

¶ 1 Respondent Montana State Fund (State Fund) has filed a third party petition against the Uninsured Employers' Fund (UEF) and Pete Little d/b/a Little Roofing and Construction (Little).¹ The UEF objects to being joined.² Petitioner Scott Emanuel also contends that it is unnecessary to join the UEF.³ The Court deems the UEF's objection to joinder as a motion to dismiss, even though the parties have submitted matters outside the pleadings.⁴

Facts

¶ 2 On August 13, 2013, the Department of Labor & Industry issued Emanuel an Independent Contractor Exemption Certificate (ICEC) for the occupations of roofing and general construction. The ICEC was effective from August 13, 2013, through August 12, 2015.⁵

¶ 3 Emanuel contends that documents submitted to the Department of Labor & Industry in support of his application for his ICEC were fraudulent.⁶

¶ 4 Emanuel was injured on December 10, 2013, while performing work for Little, which had contracted with Nistler Homes, LLC (Nistler Homes).⁷

¹ Montana State Fund's Third Party Petition and Request for Amended Caption (Third Party Petition), Docket Item No. 5.

² Uninsured Employers Fund Objection to Joinder, Docket Item No. 10.

³ Petitioner's Objection to Montana State Fund's Third Party Petition and Request for Amended Caption, Docket Item No. 11.

⁴ See *Emanuel v. Montana State Fund*, 2015 MTWCC 6, ¶ 2 (stating that this Court will rule upon a motion to dismiss even though the parties submitted exhibits outside the pleadings because they at least tacitly agreed that the exhibits were authentic).

⁵ [Respondent's] Motion to Dismiss Petition for Hearing and Brief in Support (Respondent's Motion), Ex. A, Docket Item No. 14.

⁶ Petitioner's Brief in Opposition to Respondent's Motion to Dismiss (Petitioner's Brief) at 4, Docket Item No. 22.

¶ 5 Little did not have workers' compensation coverage.⁸ State Fund insured Nistler Homes at the time of Emanuel's injury.⁹

¶ 6 On July 30, 2014, the UEF denied liability for Emanuel's claim and submitted Emanuel's claim to State Fund pursuant to § 39-71-405, MCA.¹⁰ The UEF explained:

It appears James "Pete" Little d/b/a Little Roofing & Construction, did not have a workers' compensation policy in effect at the time of Emanuel's December 10, 2013, injury. Furthermore, the Department has determined to exercise its discretion pursuant to Section 39-71-418 and 39-71-419, MCA, to revoke the Independent Contractor Exemption Certificate of Mr. Emanuel retroactively to the date of application as a result of the misrepresentations made at the direction of his employer. Additionally, pursuant to its authority under 24.33.142, ARM, and 39-9-201, MCA, the Department has determined to exercise its discretion to suspend the Contractor Registration of Mr. Little retroactively to the date of application as a result of misrepresentations made in his application. Both of these revocations result from information obtained from the depositions of Little and Emanuel in a separate suiting [sic] in District Court.¹¹

¶ 7 On August 29, 2014, State Fund advised Emanuel and the UEF that it was denying liability for Emanuel's claim. State Fund explained the reason for its denial as follows:

As you are aware, Mr. Emanuel had a current independent contractor exemption certificate on the date of injury. He was working within the scope of the exemption at the time of injury. While the Department's ability to revoke Mr. Emanuel's exemption is not disputed, it is equally clear that, pursuant to 39-71-418(3), the revocation "takes effect on the issuance of the decision." In this case the decision to revoke Mr. Emanuel's independent contractor exemption certificate appears, based on correspondence from [the] Department's Independent Contractor Central Unit to Mr. Emanuel, to have occurred on July 30, 2014. As such, on the date of Injury, Mr. Emanuel was working under an independent contractor exemption certificate and not eligible for coverage

⁷ Petition for Hearing (Industrial Injury) (Petition) at 1, Docket Item No. 1.

⁸ Respondent's Motion, Ex. B.

⁹ Respondent's Motion at 2.

¹⁰ *Id.*

¹¹ Respondent's Motion, Ex. B at 1.

under any other employer's policy. Section 39-71-405 is inapplicable in this instance.¹²

¶ 8 The UEF then paid Emanuel temporary total disability (TTD) benefits under § 39-71-608, MCA.¹³

¶ 9 In the fall of 2014, Emanuel, State Fund, and the UEF completed the mandatory mediation process over the dispute concerning State Fund's and the UEF's denials of liability for Emanuel's claim. Emanuel's position was that either the UEF was liable for his claim because Little was an uninsured employer or State Fund was liable under § 39-71-405, MCA.¹⁴

¶ 10 On December 2, 2014, the UEF sent Emanuel a letter informing him that it was "amending its determination of July 30, 2014." The UEF explained, "The UEF finds that you held an Independent Contractor Exemption Certificate (ICEC), effective August 13, 2013, for the occupation of roofing. As an ICEC holder, you waived your rights to workers[] compensation benefits pursuant to Mont. Code. Ann. § 39-71-417, and authorized by Mont. Code Ann. § 39-71-409(2)." The UEF also notified Emanuel that it was terminating his TTD benefits. The UEF notified Emanuel of his appeal rights, specifically stating, "**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 March 2, 2015.**"¹⁵

¶ 11 Emanuel did not appeal the UEF's denial of liability of his claim.¹⁶

¶ 12 On January 26, 2015, Emanuel commenced this case against State Fund; he did not name the UEF as a Respondent. Emanuel contends: "That at the time of injury, Petitioner was an employee of Little and that Little was a subcontractor employed by Nistler Homes, LLC . . . to perform work which was a recurrent part of the work of Nistler's business."¹⁷ Emanuel contends he is entitled to benefits from State Fund under § 39-71-405, MCA.¹⁸

¹² Respondent's Motion, Ex. C at 1.

¹³ Respondent's Motion, Ex. C at 2.

¹⁴ See Respondent's Motion at 2, Exs. D and E.

¹⁵ Respondent's Motion, Ex. F (emphasis in original).

¹⁶ Respondent's Motion at 3.

¹⁷ Petition at 1.

¹⁸ *Id.* at 2.

¶ 13 In its Amended Response to Petition for Hearing, State Fund denies that Emanuel was an employee of Little and raises several affirmative defenses to his claim.¹⁹ In addition, State Fund has filed a Third Party Petition against the UEF and Little.²⁰ State Fund makes an indemnification claim against Little pursuant to § 39-71-405(1), MCA, which states, “Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.” State Fund does not make any claim against the UEF.²¹

Law and Analysis

¶ 14 This case is governed by the 2013 version of the Montana Workers’ Compensation Act since that was the law in effect at the time of Emanuel’s industrial accident.²²

¶ 15 ARM 24.5.307(1) states, in relevant part, “the respondent may file a third-party petition with the court naming anyone not already a party to the action who may be liable to any named party for any or all of the claims asserted in the petition.” ARM 24.5.308 states, “The joinder of parties is governed where appropriate by the considerations set forth in M. R. Civ. P. 14, 19, 20, and 21.”

¶ 16 State Fund maintains that the UEF is a necessary party under M.R.Civ.P. 19(a)(1)(A), which states that a person who is subject to service of process must be joined if “in that person’s absence, the court cannot accord complete relief among existing parties.” State Fund argues that the UEF is a necessary party “to address the legal questions raised by its December 2, 2014 determination” and “to allow the Court to accord complete relief between the existing parties, State Fund and Scott Emanuel, based on a full understanding of UEF’s actions concerning Emanuel’s ICEC.”²³

¶ 17 The UEF argues that joinder is improper for two reasons. First, the UEF argues that any claim against it is time-barred by the statutes of limitations in § 39-71-520, MCA, which provides that a dispute over UEF benefits must be appealed to mediation within 90 days and that if the dispute is not settled at mediation, then the party must file his Petition for Hearing with this Court within 60 days of the mailing of the mediator’s

¹⁹ Amended Response to Petition for Hearing (Amended Response) at 2-4, Docket Item No. 25.

²⁰ Third Party Petition.

²¹ See Third Party Petition (incorporating [Montana State Fund’s] Response to Petition for Hearing by reference); Amended Response at 3-6.

²² *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687; § 1-2-201, MCA.

²³ Respondent Montana State Fund’s Response to Uninsured Employers Fund Objection to Joinder at 4, Docket Item No. 12.

report. The UEF notes that no party filed a Petition for Hearing with this Court within 60 days of the mailing of the mediator's report and that no party appealed its December 2, 2014, denial of liability for Emanuel's claim, which appears to be the second time the UEF denied liability. Thus, the UEF maintains that all claims against it arising out of Emanuel's claim are time-barred, irrespective of the party that makes the claim.²⁴ Second, the UEF argues that there is no basis to join it because it will not be liable to either party if Emanuel prevails and because the dispute between Emanuel and State Fund over whether State Fund is liable for benefits under § 39-71-405, MCA, can be fully decided without its involvement as a party.²⁵

¶ 18 Emanuel agrees that the UEF is not a necessary party to this case. Emanuel first notes that he is not claiming that the UEF will be liable for benefits or for indemnification if Emanuel prevails. Emanuel also argues that there are no disputes between State Fund and the UEF. Thus, Emanuel argues that this Court does not have jurisdiction over the UEF under § 39-71-2905, MCA.²⁶

¶ 19 This Court agrees with the UEF and Emanuel for two reasons:

¶ 20 First, the UEF is not a proper party under ARM 24.5.307(1), because the UEF will not be liable to either Emanuel or State Fund if Emanuel prevails on his claim against State Fund. This case is a dispute between Emanuel and State Fund as to whether Emanuel is entitled to benefits from State Fund under § 39-71-405(1), MCA, which states in relevant part:

An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act.

If Emanuel prevails, by proving that he was working as an employee, State Fund cannot seek reimbursement from the UEF, as § 39-71-405(1), MCA, also states: "Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein." State Fund has not cited any authority under which it could seek indemnification from the UEF if Emanuel prevails. Moreover, the UEF is correct that the statute of limitations

²⁴ See Uninsured Employers Fund Objection to Joinder at 2-5, Docket Item No. 10.

²⁵ *Id.* at 6-8.

²⁶ Petitioner's Objection to Montana State Fund's Third Party Petition and Request for Amended Caption at 2, Docket Item No. 11.

for Emanuel and State Fund to appeal the UEF's denial of liability and to file a case in this Court have run and that this Court does not have jurisdiction over it in this case under § 39-71-2905, MCA. Since the UEF cannot be liable to either Emanuel or State Fund, the UEF does not have any stake in the outcome of this case and therefore, it is not a proper party under ARM 24.5.307(1).²⁷

¶ 21 Second, the UEF is not a necessary party under M.R.Civ.P. 19(a)(1)(A) because this Court can provide complete relief to Emanuel and State Fund without the UEF being a party to this case. The State Fund's liability depends upon whether Emanuel was an employee of Little, in which case he will be entitled to benefits under § 39-71-405, MCA, or an independent contractor working under a valid ICEC, in which case he will not be entitled to benefits under § 39-71-417(7), MCA. This Court can make the determination of Emanuel's employment status without the UEF as a party. If State Fund believes that documents in the UEF's files are relevant to the issues in this case, it can offer those documents as exhibits. Likewise, if State Fund believes that the UEF's agents have personal knowledge of relevant facts, it can call them as witnesses. This Court cannot force the UEF to be a party in this case merely to explain the reasons it denied liability for Emanuel's claim.

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²⁷ See *Mountain W. Bank, N.A. v. Mine & Mill Hydraulics, Inc.*, 2003 MT 35, ¶ 34, 314 Mont. 248, 64 P.3d 1048 (holding that a company that was created by several members of a debtor's former board of directors was not an indispensable party because it had no interest in the property at issue, was not a party to any of the security agreements at issue, held no interest in the outcome of the action, and had no interest in the funds received from the sale of the debtor's property); and *Ethen Revocable Trust v. River Res. Outfitters, LLC*, 2011 MT 143, ¶¶ 49-52, 361 Mont. 57, 256 P.3d 913 (holding that the district court did not abuse its discretion in refusing to join neighboring landowners in a property dispute, even though the neighboring landowners may have had an interest in the court's interpretation of surveys, because the court's decision did not determine the rights of the neighboring landowners).

ORDER

¶ 22 For the foregoing reasons, Third Party Respondent UEF is **dismissed** from this action.

DATED this 1st day of May, 2015.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: William P. Joyce and Michael W. Haynes
Greg E. Overturf
Quinlan L. O'Connor
Pete Little d/b/a Little Roofing and Construction

Submitted: April 6, 2015