

2012 MTWCC 33

WCC No. 2011-2770

JACOBSEN RANCH CO.

Petitioner

vs.

CHRIS DIX

and

MONTANA STATE FUND

and

UNINSURED EMPLOYERS' FUND

Respondents.

ORDER GRANTING MONTANA STATE FUND'S MOTION TO DISMISS

Summary: Respondent Montana State Fund moved for dismissal or in the alternative, summary judgment, arguing that Petitioner was not entitled to contribution or indemnification from Montana State Fund, which was the insurer on a prior claim brought by the claimant. Montana State Fund argues that because Petitioner is an uninsured employer, it is not entitled to such relief.

Held: Petitioner, an uninsured employer, lacks standing to seek indemnification or contribution from a third-party insurer. Montana State Fund's motion to dismiss is granted.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: Montana: 39-71-407. Petitioner is neither a self-insured employer nor an insurer but an uninsured employer; therefore, the remedy it seeks of reimbursement or indemnification is not available to it under § 39-71-407(5), MCA, as that remedy applies only between insurers.

Indemnification: Uninsured Employers. Petitioner is neither a self-insured employer nor an insurer but an uninsured employer; therefore, the remedy it seeks of reimbursement or indemnification is not available to it under § 39-71-407(5), MCA, as that remedy applies only between insurers.

Remedies: Uninsured Employers. Neither common law nor the WCA provide Petitioner with the remedy of indemnification, since an uninsured employer's remedies are limited to those found in Part 5 of the WCA.

Procedure: Motion to Dismiss. A motion to dismiss must be granted where neither common law nor the WCA provide an uninsured employer with the remedy of indemnification against a third-party insurer.

¶ 1 Petitioner Jacobsen Ranch Co. (Jacobsen) filed a Petition for Hearing,¹ requesting a determination of liability regarding Respondent Chris Dix's (Dix) total left knee replacement. Jacobsen contends that Montana State Fund (State Fund), the insurer responsible for three prior claims brought by Dix, should be held liable rather than the Uninsured Employers' Fund (UEF), the entity on risk for Dix's January 29, 2008, claim, and Jacobsen, Dix's employer at the time of the January 29, 2008, claim.

¶ 2 On December 9, 2011, the Court initiated a telephonic conference, with all parties participating, in response to an e-mail from State Fund's counsel questioning jurisdiction in light of the settlement between Dix, Jacobsen, and the UEF in WCC No. 2011-2742.² State Fund argued that this Court lacked jurisdiction over Jacobsen's claim because although Jacobsen may contest the UEF's benefit payments to Dix, Dix has made no claim against State Fund, and the UEF has not claimed that State Fund should have paid benefits. Following argument of counsel raising issues which required briefing, I vacated the Scheduling Order. I granted the UEF 20 days to either file a motion to amend the petition or file a new petition as a first-party petitioner seeking indemnification from State Fund. I also ordered that Jacobsen could intervene if the UEF filed a new petition. The 20 days passed without the UEF filing either a motion to amend or a new petition.

¹ Petition for Hearing (Petition), Docket Item No. 1.

² Minute Book Hearing No. 4354, Docket Item No. 18.

¶ 3 On April 30, 2012, State Fund filed Respondent's Brief in Support of Motion to Dismiss or in the Alternative Motion for Summary Judgment. State Fund argues that because Jacobsen seeks payment from State Fund for Dix's left knee replacement, the Court lacks jurisdiction, Jacobsen lacks standing to bring the claim, Jacobsen is without privity of contract as to the settlement of Dix's old claims with State Fund, and Dix's knee replacement was due to a new injury suffered by Dix for which Jacobsen and the UEF are solely liable.³

¶ 4 Jacobsen opposed State Fund's motion, arguing that there are contested issues of fact and law that preclude dismissal or summary judgment.⁴ The UEF responded to State Fund's motion, joining in Jacobsen's uncontested facts and legal arguments. The UEF also argued that this Court has jurisdiction to determine Jacobsen's right to reimbursement from State Fund, and that material issues of fact preclude summary judgment.⁵

¶ 5 After reviewing the briefs of the parties and all pleadings in this matter, and following oral argument on State Fund's motion held telephonically on Tuesday, May 22, 2012, I orally granted State Fund's motion to dismiss.⁶ This Order formalizes my ruling.

BACKGROUND

¶ 6 On January 29, 2008, Dix allegedly suffered an industrial injury to both knees arising out of and in the course and scope of his employment with Jacobsen.⁷

¶ 7 At the time of Dix's alleged injury of January 29, 2008, Jacobsen was an uninsured employer.⁸

³ Docket Item No. 26.

⁴ Petitioner's Brief in Opposition to Motion to Dismiss or in the Alternative Motion for Summary Judgment (Petitioner's Brief), Docket Item No. 29.

⁵ Uninsured Employers' Fund's Response to Montana State Fund's Motion to Dismiss or in the Alternative Motion for Summary Judgment, Docket Item No. 28.

⁶ Minute Book Hearing No. 4396, Docket Item No. 34.

⁷ Petition at 2-3, ¶ 5.

⁸ Petition at 3, ¶ 6; Uninsured Employers' Fund's Response to Petition for Hearing at 2, ¶¶ 2, 3, Docket Item No. 6.

¶ 8 Prior to January 29, 2008, Dix had three prior left knee claims with State Fund. After reaching maximum medical improvement for all three prior injuries, Dix settled his three claims with State Fund in May 1993, leaving future medical benefits open.⁹

¶ 9 Following his January 29, 2008, alleged injury while working for Jacobsen, Dix underwent left knee replacement surgery on or about March 11, 2009.¹⁰

¶ 10 On August 30, 2011, the Court approved Dix's settlement of his alleged injury claim with Jacobsen and the UEF, specifically without affecting this current case.¹¹

¶ 11 The present petition before the Court is a claim for reimbursement by Jacobsen against State Fund for the medical expenses related to Dix's total knee replacement.¹²

DISCUSSION

¶ 12 This case is governed by the 2007 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect at the time of Dix's alleged injury with Jacobsen and the UEF.¹³

¶ 13 When considering a motion to dismiss, all well pleaded facts are deemed admitted, and the complaint should not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle him or her to relief."¹⁴ "Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort . . . or discloses an 'insuperable bar' to recovery."¹⁵

⁹ Petition at 2, ¶ 4; Montana State Fund's Response to Petition for Hearing at 2, ¶¶ 1a., b., Docket Item No. 5; Petitioner's Brief at 3, ¶¶ 3, 4.

¹⁰ Petitioner's Brief at 5, ¶ 11.

¹¹ Joint Stipulation for Judgment and Order, WCC No. 2011-2742, Docket Item No. 32 at 3, ¶ 11; Order and Judgment Dismissing with Prejudice, WCC No. 2011-2742, Docket Item No. 33 at 2, ¶ 8.

¹² Petitioner's Brief at 5, ¶ 11; Petition at 3, ¶ 7.

¹³ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). The parties have also briefed the 2009 version of § 39-71-2905, MCA, because of its retroactivity provision. However, this statute has no bearing on my ruling on this motion.

¹⁴ *Farris v. Hutchinson*, 254 Mont. 334, 336, 838 P.2d 374, 375 (1992).

¹⁵ *Fleming v. Int'l Paper Co.*, 2005 MTWCC 35, ¶ 4 (citations omitted).

¶ 14 Jacobsen’s petition requests a determination of liability for Chris Dix’s left knee arthroplasty.¹⁶ More specifically, “Jacobsen Ranch’s petition concerns a claim for reimbursement [from State Fund] for workers’ compensation benefits paid for [Dix’s] total left knee replacement.”¹⁷

¶ 15 It is well-established that an insurer may seek indemnification from another insurer for benefits paid to an injured worker.¹⁸ However, this is not the situation in the case at bar. Jacobsen is an uninsured employer; it is neither an insurer nor a self-insured employer. Therefore, the remedy of reimbursement it seeks from State Fund is not available to it under § 39-71-407(5), MCA, as that remedy applies only between insurers. As an uninsured employer, Jacobsen’s remedies are limited to those found in Part 5 of the WCA.

¶ 16 In *State Farm Fire and Casualty Co. v. Bush Hog, LLC*,¹⁹ the Montana Supreme Court unambiguously held that an uninsured employer is prohibited from bringing either a contribution claim or an indemnity claim against a third party, reasoning:

The objective of the WCA is to provide no-fault, wage-loss benefits to the worker who suffers work-related injuries. Section 39-71-105, MCA. This system fails to the extent that the employer refuses to provide workers’ compensation insurance for his employee in accordance with the WCA. And, if this employer is then allowed to seek indemnity or contribution from a third party in order to reduce the damages he owes to the injured employee, the employer has no incentive to comply with the WCA in the first instance. Cost/benefit should not inform, much less justify, the employer’s decision to not purchase workers’ compensation insurance. Indeed, if the employer chooses to roll the dice and loses, then his recompense should be a financially painful experience.²⁰

¶ 17 In the present case, there is no dispute that Jacobsen is an uninsured employer and State Fund is a third party from which Jacobsen seeks indemnification. Neither common law nor the WCA provide Jacobsen with a remedy in this instance. Accordingly, State Fund’s motion to dismiss must be granted.

¹⁶ Petition at 3, ¶ 7.

¹⁷ Petitioner’s Brief at 16.

¹⁸ *Belton v. Carlson Transport*, 202 Mont. 384, 658 P.2d 405 (1983); § 39-71-407(5), MCA.

¹⁹ *State Farm Fire and Cas. Co. v. Bush Hog, LLC*, 2009 MT 349, 353 Mont. 173, 219 P.3d 1249.

²⁰ *Bush Hog*, 2009 MT 349, ¶ 23.

ORDER

¶ 18 Montana State Fund's motion to dismiss is **GRANTED**.

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

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Matthew B. Thiel
Owen D. Thilly/Thomas Bulman
Thomas E. Martello
Leanora O. Coles
Submitted: May 22, 2012