

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 24

WCC No. 2010-2740

OLIN JENSEN

Petitioner

vs.

UNINSURED EMPLOYERS' FUND and MONTANA STATE FUND

Respondents

and

UNINSURED EMPLOYERS' FUND

Third Party Petitioner

vs.

PAUL KESSLER, STEVEN KESSLER, and JEFF HUNTER d/b/a ARTISTIC EXTERIORS Jointly and Severally, and DANIEL CHRISTIANSON, Individually and/or Sole Proprietor

Third Party Respondents.

ORDER DISMISSING UNINSURED EMPLOYERS FROM FIRST-PARTY PETITION

Topics:

Employers: Uninsured Employers. An employee cannot bring an action for benefits directly against an uninsured employer in the Workers' Compensation Court, but must bring his action in District Court pursuant to §§ 39-71-515 and -516, MCA. Therefore Petitioner's first-party petition against his employer is dismissed for lack of jurisdiction by this Court.

Jurisdiction: District Court. An employee cannot bring an action for benefits directly against an uninsured employer in the Workers'

Compensation Court, but must bring his action in District Court pursuant to §§ 39-71-515 and -516, MCA. Therefore Petitioner's first-party petition against his employer is dismissed for lack of jurisdiction by this Court.

Jurisdiction: Workers' Compensation Court. An employee cannot bring an action for benefits directly against an uninsured employer in the Workers' Compensation Court, but must bring his action in District Court pursuant to §§ 39-71-515 and -516, MCA. Therefore Petitioner's first-party petition against his employer is dismissed for lack of jurisdiction by this Court.

¶ 1 During a conference call with the parties, I raised the issue of whether the Workers' Compensation Court has jurisdiction to hear an action by Jensen against Paul Kessler, Steven Kessler, and Jeff Hunter d/b/a Artistic Exteriors, and Daniel Christianson (collectively "uninsured employers").

¶ 2 An employee cannot bring an action for benefits directly against an uninsured employer in the Workers' Compensation Court. Such an action can only be brought in District Court pursuant to §§ 39-71-515 and -516, MCA. In *Raymond v. Uninsured Employers' Fund and Foothills Research Institute, LLC, Market Research Group, and Joseph Seipel*, I dismissed the uninsured employer because the Court lacked jurisdiction over a dispute between an injured worker and the uninsured employer pursuant § 39-71-516, MCA.¹

ORDER

¶ 3 Paul Kessler, Steven Kessler, and Jeff Hunter d/b/a Artistic Exteriors, and Daniel Christianson are **DISMISSED** from the first-party petition.

¶ 4 As reflected above, the caption is amended consistent with this Order.

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¹ *Raymond v. Uninsured Employers' Fund and Foothills Research Institute, LLC, Market Research Group, and Joseph Seipel*, 2008 MTWCC 45, ¶¶ 10, 14.

DATED in Helena, Montana, this 18th day of August, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Eric Rasmusson
Leanora O. Coles
William Dean Blackaby
Michelle Sievers/Jeffrey Dahood
Paul Kessler
Steven Kessler
Jeff Hunter