

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 32

WCC No. 2011-2844

LIBERTY INSURANCE CORP.

Petitioner

vs.

TRAVELERS INDEMNITY CO. OF AMERICA

Respondent

IN RE: TIA KURAN

Claimant.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent moves for summary judgment, arguing that, as between two insurers with the same employer, Petitioner is liable for the claimant's occupational disease since Petitioner provided coverage either at the time of diagnosis of claimant's neck condition or at the time claimant knew or should have known that her neck complaints were an occupational disease. Petitioner counters that the claim filed with Petitioner was a natural progression of the claim filed with and accepted by Respondent.

Held: The cause of Petitioner's neck complaints remains a disputed issue of fact, precluding summary judgment.

Topics:

Summary Judgment: Disputed Facts. Where the cause of claimant's neck condition remains in dispute between two insurers, the Court concluded the matter was not susceptible to summary disposition since an issue of material fact exists. Respondent's motion is denied.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.329. Where the cause of claimant's neck condition remains in dispute between two insurers, the Court concluded the matter was not susceptible to summary disposition since an issue of material fact exists. Respondent's motion is denied.

¶ 1 Petitioner Liberty Insurance Corp. (Liberty) filed this action against Travelers Indemnity Co. of America (Travelers), maintaining that Travelers was the insurer responsible for claimant Tia Kuran's "second injury claim."¹ Travelers answers by alleging that Kuran's current medical condition and wage loss is Liberty's responsibility since it is unrelated to the claim filed with Travelers.²

¶ 2 Travelers now moves this Court for summary judgment in its favor, arguing that either: 1) Kuran's current neck condition was first diagnosed while Liberty was providing workers' compensation coverage; or 2) Liberty was providing coverage at the time Kuran knew or should have known that her neck condition was the result of an occupational disease (OD), therefore entitling Travelers to judgment as a matter of law.³

¶ 3 Liberty opposes the motion, arguing that the key issue in this case is the cause for Kuran's complaints of neck pain, alleging that Kuran's neck condition is the natural progression of her 2007 OD for which Travelers accepted liability.⁴

¶ 4 For the reasons set forth below, Traveler's motion is denied.

STATEMENT OF UNDISPUTED FACTS⁵

¶ 5 On February 1, 2007, Kuran was employed by DirecTV, Inc. in Missoula, when she sustained an OD. At the time of Kuran's claim, Travelers was the workers' compensation insurer for her employer.

¶ 6 In January 2008, Liberty began providing workers' compensation coverage for DirecTV in Missoula, where Kuran was still employed.

¶ 7 On December 1, 2008, Kuran filed a second workers' compensation/OD claim with DirecTV, which was insured by Liberty.

¹ Petition for Hearing (Petition) at 1, ¶ 3, Docket Item No. 1.

² Response to Petition for Hearing (Response) at 2, ¶¶ 14, 15, Docket Item No. 4.

³ Motion for Summary Judgment and Brief in Support (Motion) at 3-4, Docket Item No. 5.

⁴ Brief in Opposition to Travelers' Summary Judgment (Opposition Brief) at 2, 4, Docket Item No. 20.

⁵ Petition at 1-2, ¶¶ 1-13; Response at 1-2, ¶¶ 1-13.

¶ 8 On January 14, 2009, Kuran made additional complaints that her left shoulder had continued pain and up into her neck, attributable to the repetitive nature of her work.

¶ 9 A February 20, 2009, MRI revealed post-surgical changes to Kuran's shoulder and no onset of a new injury.

DISCUSSION

¶ 10 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.⁶

¶ 11 ARM 24.5.329, states, in pertinent part:

[(1)](b) Because cases in the workers' compensation court are heard on an expedited basis, a motion for summary judgment may delay trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, summary judgment motions typically will be disfavored. The court may decline to consider individual summary judgment motions where it concludes that the issues may be resolved as expeditiously by trial as by motion.

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(2) Subject to the other provisions of this rule, summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for production, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

¶ 12 In support of its motion, Travelers submits neither affidavits nor discovery responses but rather attaches a multitude of medical reports and other documents. It remains unclear to me which, if any, of these documents advance Travelers' argument.

¶ 13 The origin of Kuran's current neck pain is the key to this case.⁷ This pain allegedly arose while Liberty insured Kuran's employer. While Travelers contends that this requires a finding that Liberty is responsible for Kuran's claim, Liberty counters that

⁶ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁷ Opposition Brief at 2, 4.

Kuran's treating physician, C. R. Price, M.D., opined that Kuran's neck complaints were a natural progression of her shoulder OD accepted by Travelers.

¶ 14 Both Liberty⁸ and Travelers⁹ attach Dr. Price's hand-written responses to a March 4, 2009, inquiry from Liberty's Claims Case Manager. I am not convinced Dr. Price's responses are beneficial to either party. While the doctor expresses the apparent opinion that Kuran's current diagnosis of "neck/shoulder strain" was a natural progression of her February 1, 2007 claim, the letter requesting his opinion mistakenly refers to the original shoulder OD as also including Kuran's neck, a fact disputed by Travelers.

¶ 15 Travelers argues that liability for Kuran's neck condition rests with Liberty, the insurer at risk when Kuran's neck condition was first manifested, was first treated, and was first reported as a claim. In support of its position, Travelers cites § 39-71-407(11), MCA,¹⁰ which states:

(11) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

¶ 16 Liberty argues that Kuran's two claims are interrelated, the latter claim being "a natural progression"¹¹ of the first. From the record presented, I am unable to conclude whether Kuran's neck condition is a natural progression of her 2007 claim or vests liability with Liberty pursuant to § 39-71-407(11), MCA. Because this material fact remains in dispute, this matter is not presently susceptible to summary disposition.

JUDGMENT

¶ 17 Respondent's motion for summary judgment is **DENIED**.

⁸ Opposition Brief.

⁹ Reply Brief in Support of Travelers Motion for Summary Judgment (Reply Brief), Docket Item No. 23.

¹⁰ This subsection of § 39-71-407, MCA, is identical under both the 2005 and 2007 Workers' Compensation Acts.

¹¹ *Burglund v. Liberty Mut. Fire Ins. Co.*, 286 Mont. 134, 136, 950 P.2d 1371, 1372 (1997).

DATED in Helena, Montana, this 28th day of August, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Larry W. Jones [Liberty Ins. Corp.]
Steven W. Jennings
Submitted: July 27, 2012