

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2005 MTWCC 49**

**WCC No. 2005-1227**

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**MONTANA STATE FUND**

**Petitioner/Insurer**

**vs.**

**LIBERTY NORTHWEST INSURANCE CORPORATION**

**Respondent**

**IN RE: ANNETTA LAUNDRY**

**Claimant.**

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**ORDER DENYING SUMMARY JUDGMENT**

**Summary:** The claimant filed two occupational disease claims with respect to her shoulders, one in 2000 with Liberty Northwest Insurance Corporation and the second in 2002 with the Montana State Fund. Liberty initially denied the claim in 2000 but then agreed to pay medical bills pursuant to section 39-71-615, MCA (1999). The Montana State Fund has been paying benefits under a reservation of rights and brought a petition for indemnification, asking that Liberty be determined liable for benefits for the claimant's shoulder condition. Citing the two-year limitations period in section 39-71-2905(2), MCA (1997-2003), Liberty moved for summary judgment, arguing that the petition is barred on account of the State Fund's and the claimant's failure to petition the Court within two years of Liberty's denial. It also urged that the claim is barred by the claimant's failure to file a written claim with Liberty within one year as required in section 39-72-403, MCA (1999).

**Held:** Liberty has not shown as an uncontroverted matter that more than one year prior to her filing her claim the claimant was aware that her condition was work related; therefore, Liberty is not entitled to summary judgment on that ground. Moreover, where an insurer initially denies a claim but thereafter agrees to pay medical bills under section 39-71-615, MCA (1999), the subsequent agreement supercedes the original denial, in effect rescinding it, and places the claim in a status of being neither accepted nor denied. Therefore, until there is a second denial pursuant to section 39-71-615(3), MCA (1999), the two-year limitations period for filing a petition in the Workers' Compensation Court does not commence running.

## Topics:

**Limitations Periods: Occupational Disease.** Section 39-72-403, MCA (1999), required a claimant to file a claim for an occupational disease “within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.” Under the plain language of the provision, the limitations period begins running only when the claimant is not only aware of her condition but is aware that the condition resulted from her work. The fact that the claimant received care for her condition more than one year prior to the filing of her claim does not start the running of the limitations period unless more than one year prior to filing the claim she was also aware that her condition was work related.

**Limitations Periods: Workers’ Compensation Court Petitions.** Where an insurer initially denies a claim but thereafter agrees to pay medical bills under section 39-71-615, MCA (1999), the subsequent agreement supercedes the original denial, in effect rescinding it, and places the claim in a status of being neither accepted nor denied. Therefore, until there is a second denial pursuant to section 39-71-615(3), MCA (1999), the two-year limitations period for filing a petition in the Workers’ Compensation Court does not commence running.

¶1 Through its petition in this case, the Montana State Fund (State Fund) seeks indemnification from Liberty Northwest Insurance Corporation (Liberty) for benefits it has paid and is continuing to pay Annetta Laundry (claimant) on account of an alleged work-related bilateral shoulder condition. The claimant has filed a response to the petition alleging that either Liberty or State Fund is liable for her shoulder condition.

¶2 Liberty moves for summary judgment,<sup>1</sup> urging that any claim for indemnification or benefits is barred by the two-year statute of limitations set out section 39-71-2905(2), MCA (1997-2003), and by the claimant’s failure to file her claim within one year of learning of her occupational disease, § 39-72-403, MCA (1999).

### Uncontroverted Facts

¶3 The following facts are uncontroverted:

¶3a On or about August 10, 2000, SLC Investments Cost Cutters (Cost Cutters) filed a First Report of Occupational Injury or Occupational Disease on

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<sup>1</sup>Liberty entitled its motion “Motion for Judgment on the Pleadings.” However, it later noted that it had set forth facts outside the pleadings and had mislabeled its motion. It requested that the motion be treated as one for summary judgment. (Liberty’s Reply Brief filed March 15, 2005.)

behalf of the claimant. (Affidavit of Chris Helmer, Ex. 1.) The report states, “Employee is having problems with bursitis in her arms . . . Dr visits reveal this is work related.” The report went on to list the shoulders as the affected body part and the cause of the condition as “continuous hair cutting.”

¶3b The first report stated that the claimant had been employed by Cost Cutters since February 1994. (*Id.*)

¶3c Cost Cutters was insured by Liberty from April 1, 1997, to April 1, 2002. (*Id.* at Ex. 2.)

¶3d By letter dated September 12, 2000, Liberty denied the claim as time-barred under section 39-72-403, MCA (1999), which required the claimant to file a claim “within 1 year from the date the claimant knew or should have known the claimant’s condition resulted in an occupational disease.” The letter stated, “[w]e are basing this denial on the fact that you have been having recurring symptoms to both shoulders for the past 2 years and the medical records we obtained . . . indicate that you first sought medical treatment in 1998.” (*Id.* at Ex. 3.)

¶3e The claimant thereafter retained an attorney to represent her. The attorney and Liberty agreed to an accident/occupational disease date of August 14, 1998. (*Id.* at Ex. 5.)

¶3f The claimant requested mediation, which took place on or about November 13, 2000. (*Id.*, ¶ 3.)

¶3g Following the mediation, by letter dated November 30, 2000, to the claimant’s attorney, Liberty agreed to pay certain of the claimant’s “medical bills under a reservation of rights after they have been audited under the relative fee schedule.” (*Id.* at Ex. 6.) There is no evidence proffered to the Court showing that any medical bills related to the claimant’s condition were not included in Liberty’s list of medical bills it agreed to pay.

¶3h The claimant continued working after filing her claim. (Response to Petition for Hearing and Motion for Judgment on the Pleadings, ¶ 5 and Affidavit of Greg Overturf, Ex. 1 at 110 - 111.) After November of 2000, the claimant received no treatment for her shoulder condition until January 2003. (*Id.*)

¶3i After its November 30, 2000 letter agreeing to pay medical bills, Liberty neither accepted liability for the claimant’s claim nor reiterated its earlier denial. (Affidavit of Chris Helmer, ¶ 4; Affidavit of Greg Overturf, ¶ 3.)

¶3j On or about December 20, 2002, the claimant filed a second claim for compensation with the State Fund. As with the first claim, the condition with

respect to which the claim was filed involved both of the claimant's shoulders. (Affidavit of Chris Helmer, Ex. 7.)

¶3k On January 21, 2003, the State Fund placed the claim under section 39-71-608, MCA (2001). (*Id.*, Ex. 8.) In a second letter on the same date, the State Fund advised the claimant that it was "unable to accept" her claim. (*Id.*, Ex. 9.) It reiterated its determination on March 11, 2003. (*Id.*, Ex. 11.)

¶3l On January 31, 2003, the claimant's attorney wrote to Liberty and requested Liberty to "accept liability for Annetta's new date of injury 12/20/02." (*Id.*, Ex. 10.)

¶3m Following mediation of her claim, on July 8, 2003, the State Fund agreed to pay the claimant's shoulder-related medical bills pursuant to section 39-71-615, MCA (1999), without accepting liability and under a reservation of rights. (*Id.*, Ex. 12.)

¶3n Thereafter, on April 22, 2004, the State Fund initiated temporary total disability benefits under a reservation of rights and with the proviso that its doing so did not constitute an acceptance of liability. (*Id.*, Ex. 13.)

¶3o State Fund then demanded indemnification from Liberty. (*Id.*, Ex. 14.) When that demand was refused, on January 25, 2005, it petitioned the Workers' Compensation Court for indemnification.

¶3p In her response to the petition filed February 24, 2005, the claimant requested that liability for her current shoulder condition be resolved as between Liberty and the State Fund. (Response to Petition for Hearing and Motion for Judgment on the Pleadings at 3.<sup>2</sup>)

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<sup>2</sup>In her response, the claimant states:

One of these two insurance companies has to pay for treatment to Annetta's shoulders. . . . It is extremely important for her that liability be determined so that she can go forward with her surgeries. . . .

(Response to Petition for Hearing and Motion for Judgment on the Pleadings at 3.) While the statement could have been more artfully phrased, the Court treats the statement as a request for relief, i.e., a request that either Liberty or the State Fund be determined liable for her shoulder condition. Her response therefore states a claim against Liberty.

## DISCUSSION

¶4 Liberty urges that the claimant's claim against it is untimely. (Liberty's Reply to Montana State Fund's Response and Request for Hearing at 2.) Liberty's argument is without merit. The fact that it denied the claim on the ground that it was untimely does not prove that the claim was in fact untimely. Section 39-72-403, MCA (1999), required that any occupational disease claim be filed "within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease." Under the plain language of the provision, the limitations period begins running when the claimant is not only aware of her shoulder condition but is also aware that the condition resulted from her work. The fact, as set forth in Liberty's denial letter, that the claimant had received care for her shoulders more than one year prior to her filing a claim did not start the running of the limitations period **unless** it can also be shown that more than a year prior to the filing of the claim the claimant was also aware that her condition was work related. On its face, Liberty's September 12, 2000 letter does not demonstrate as an uncontroverted matter that at the time of the claimant's initial care she was aware her condition was work related, or that she learned it was work related more than a year prior to her submission of a claim. Liberty proffers no other evidence which would permit the Court to conclude on an uncontroverted basis that her claim against Liberty is time-barred.

¶5 Liberty further argues that any claim against it is time-barred under section 39-71-2905(2), MCA (1997-2003), which provides that "[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." If Liberty's original, September 12, 2000 denial letter stands, then this action is time-barred since both the original petition by the State Fund and the response by the claimant were filed more than two years after the denial.

¶6 However, the September 12, 2000 denial was superceded by Liberty's subsequent, November 30, 2000 agreement to pay the claimant's medical bills under a reservation of rights. Section 39-71-615, MCA (1999), governs Liberty's payments, providing:

**39-71-615. Payment of medical claims without acceptance of liability.** (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

On its face, this section places the claim in a status of being neither accepted nor denied. This is clear from the language of subsection (1), which states that the insurer's payment of medical

bills does not constitute an acceptance of liability, and subsection (3), which requires an insurer to investigate and make a liability determination, i.e., either accept or deny, if after payment of the medical bills the claimant requests that it do so. Thus, the section required further investigation by Liberty before it could again deny the claim. Many claims result in medical expenses but no lost time from work and no disability. Payment of medical bills without complete investigation and without either denying or accepting the claim may end the matter. Indeed, the claimant in this case notes that payment of her medical bills left her with nothing to pursue since at the time of the payment she was not losing time from work. The section preserves the claimant's right to insist on further investigation and a new determination of liability in the event the claimant suffers a disability.

¶7 I therefore conclude that Liberty is not entitled to summary judgment.

ORDER

¶8 Liberty's motion for summary judgment is **denied**.

¶9 A new scheduling order **resetting** this matter for trial on the next Billings trial calendar shall be issued.

DATED in Helena, Montana, this 12th day of August, 2005.

(SEAL)

MIKE McCARTER  
JUDGE

c: Mr. Greg E. Overturf  
Ms. Carrie L. Garber  
Mr. R. Russell Plath  
Submitted: May 5, 2005