

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

**2011 MTWCC 17**

**WCC No. 2011-2657**

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**SCOTT McLAUGHLIN**

**Petitioner**

**vs.**

**NORTHWESTERN CORPORATION, d/b/a NORTHWESTERN ENERGY**

**Respondent/Insurer.**

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**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

**Summary:** Respondent moved for summary judgment on Petitioner's claim to a rehiring preference pursuant to § 39-71-317(2), MCA. Respondent claims Petitioner is equitably estopped from claiming a rehiring preference because Petitioner's former attorney represented in a settlement letter that Petitioner would give up his entitlement to a rehiring preference if he settled his claim on a disputed liability basis. Petitioner contends that Respondent rejected his initial settlement offer and the rehiring preference was never addressed again. Petitioner contends that when the case settled two and half months later, the settlement agreement unambiguously settled only his claim for benefits and not the rehiring preference. Petitioner contends that language which may have been construed as encompassing the rehiring preference was removed from the Petition for Settlement at Petitioner's request and with Respondent's assent.

**Held:** Respondent's motion is denied. To prevail on a claim of equitable estoppel, a party must establish all six elements by clear and convincing evidence. Respondent has not established all the elements of equitable estoppel.

**Topics:**

**Equity: Equitable Estoppel.** An attorney's opinion regarding the legal ramifications of settlement agreement language is an opinion and not a fact and therefore cannot be considered a material fact for fulfillment of the first element of equitable estoppel.

¶ 1 Respondent Northwestern Corporation, d/b/a Northwestern Energy (Northwestern) moves for summary judgment requesting that Petitioner Scott McLaughlin be estopped from asserting his claim to a rehiring preference pursuant to § 39-71-317(2), MCA. Northwestern argues that because McLaughlin's former attorney, William P. Joyce, stated in a letter during settlement negotiations that McLaughlin would be giving up his entitlement to a rehiring preference if he settled on a disputed liability basis, McLaughlin is now equitably estopped from asserting the preference.

¶ 2 McLaughlin advances three arguments as to why Northwestern's equitable estoppel argument should be rejected. First, McLaughlin argues that the settlement agreement ultimately executed by the parties settled only his claim for benefits and was silent as to his claim to a rehiring preference. McLaughlin argues that the settlement agreement is unambiguous and it is clear from the plain language of the agreement that the parties settled only McLaughlin's claim for benefits and not his rehiring preference. Since the settlement agreement is clear, McLaughlin argues that the Court cannot consider statements made during settlement negotiations. Second, McLaughlin argues that even if Joyce's letter is admissible, the statement regarding the effect of a disputed liability settlement cannot be considered a representation of fact, but rather an argument as to the legal ramifications of a disputed liability settlement. Therefore, McLaughlin contends that the elements of equitable estoppel are not satisfied. Third, McLaughlin argues that when the Petition for Settlement was finalized, Joyce expressly removed the language inserted in Northwestern's draft: "The settlement resolves all issues on the claim."<sup>1</sup> McLaughlin argues that because the settlement was already settling all of his compensation, rehabilitation, and medical benefits, the removal of the "resolves all issues" language belies Northwestern's contention that McLaughlin was settling his right to an employment preference.

### MATERIAL FACTS

¶ 3 On or about December 12, 2008, Petitioner Scott McLaughlin filed a claim for an industrial injury/occupational disease arising out of and in the course and scope of his employment with Respondent, Northwestern Corporation d/b/a Northwestern Energy.<sup>2</sup>

¶ 4 Northwestern denied liability for McLaughlin's injury/occupational disease.<sup>3</sup>

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<sup>1</sup> Affidavit of William P. Joyce (Joyce Affidavit), ¶ 5; See Joyce Affidavit, Exhibit A.

<sup>2</sup> Petition for Trial, Docket Item No. 1, ¶ 1.

<sup>3</sup> *Id.*, ¶ 4.

¶ 5 During settlement negotiations, McLaughlin's attorney at the time, William P. Joyce, sent a letter to Northwestern's attorney on September 3, 2009. Joyce made a settlement demand of \$115,000. Pertinent to this motion, Joyce's letter stated:

Further, [McLaughlin's] entitlement to the preference in rehire under workers' compensation law is also a valuable asset which he would be giving up if he settled the case on a disputed liability basis.<sup>4</sup>

¶ 6 Northwestern rejected the September 3, 2009, settlement offer and negotiations continued. No one raised the rehiring preference issue again.<sup>5</sup>

¶ 7 McLaughlin and Northwestern settled the claim on a disputed liability basis in November 2009 for a lump sum payment of \$100,000. The settlement closed all benefits.<sup>6</sup> Northwestern prepared the settlement documents on November 11, 2009.<sup>7</sup> The original draft of the settlement petition included the language: "The settlement resolves all issues on the claim."<sup>8</sup> Joyce deleted this language.<sup>9</sup> The final settlement petition agreed to by the parties and submitted to the Department for approval did not include this language.<sup>10</sup>

### ANALYSIS AND DECISION

¶ 8 This case is governed by the 2007 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's industrial accident.<sup>11</sup>

¶ 9 For summary judgment to be granted, 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.<sup>12</sup> Summary judgment is disfavored. Summary judgment is an extreme remedy which should not be a substitute for a trial on the merits if a material factual

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<sup>4</sup> Respondent's Motion for Summary Judgment Based Upon Estoppel and Supporting Memorandum (Opening Brief), ¶ 8.

<sup>5</sup> Joyce Affidavit, ¶ 3.

<sup>6</sup> Opening Brief, Exhibit A.

<sup>7</sup> Joyce Affidavit, ¶ 4.

<sup>8</sup> Joyce Affidavit, Exhibit A.

<sup>9</sup> Joyce Affidavit, ¶ 5.

<sup>10</sup> Opening Brief, Exhibit A.

<sup>11</sup> *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>12</sup> ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

controversy exists. All reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the nonmoving party.<sup>13</sup>

¶ 10 To succeed on an equitable estoppel claim, a party must prove, by clear and convincing evidence, the following six elements:<sup>14</sup>

(1) the existence of conduct, acts, language, or silence amounting to a representation or a concealment of a material fact;

(2) these facts must be known to the party estopped at the time of his conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him;

(3) the truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel at the time it was acted upon by him;

(4) the conduct must be done with the intention, or at least the expectation, that it will be acted upon by the other party, or under circumstances both natural and probable that it will be so acted upon;

(5) the conduct must be relied upon by the other party and, thus relying, he must be led to act upon it; and

(6) he must in fact act upon it in such a manner as to change his position for the worse.

¶ 11 Northwestern bases its equitable estoppel argument on the sentence in Joyce's September 3, 2009, settlement letter: "Further, [McLaughlin's] entitlement to the preference in rehire under workers' compensation law is also a valuable asset which he would be giving up if he settled the case on a disputed liability basis."<sup>15</sup> In Joyce's affidavit, he states:

"The purpose of the letter was to set out some of the possible justifications for [McLaughlin's] \$115,000 settlement offer. That offer was rejected by North[w]estern and negotiations continued. However, at the time I wrote that letter I had had no discussions with Mr. Hammer [Northwestern's

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<sup>13</sup> *Delaware v. K-Decorators, Inc.*, 1999 MT 13, ¶ 55, 293 Mont. 97, 973 P.2d 818 (citations omitted).

<sup>14</sup> *Avanta Fed. Credit Union v. Shupak*, 2009 MT 458, ¶ 42, 354 Mont. 372, 223 P.3d 863.

<sup>15</sup> Opening Brief, ¶ 8.

counsel] regarding the rehiring preference issue, and that issue was never mentioned again in any of my communications with him.”<sup>16</sup>

¶ 12 Joyce’s statement regarding the legal ramifications of the settlement as it pertained to the rehiring preference was not a representation of material fact; it was Joyce’s opinion, set forth within the context of a settlement offer. This statement can be no more considered a representation of material fact than Joyce’s concluding statement of the same paragraph in which he declares that Northwestern has “a total wage loss exposure of \$144,716 with an additional exposure in attorney fees and penalty of \$57,886.”<sup>17</sup> Obviously, Northwestern placed no stock in Joyce’s legal omniscience since Joyce’s \$115,000 settlement offer was rejected and the case ultimately settled two and a half months later for \$100,000.

¶ 13 To prevail on a claim of equitable estoppel, a party must establish all six elements by clear and convincing evidence. Having failed to establish the first element, I do not consider the remaining five.

ORDER

¶ 14 Respondent’s motion for summary judgment is **DENIED**.

DATED in Helena, Montana, this 7<sup>th</sup> day of July, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Stephen C. Pohl  
Todd A. Hammer  
Submitted: April 13, 2011

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<sup>16</sup> Joyce Affidavit, ¶ 3.

<sup>17</sup> Opening Brief, Exhibit B at 2.