IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2020 MTWCC 11

WCC No. 2019-4756

KAREN MONROE, Individually and as Personal Representative of the Estate of Dwane Monroe, and FRANCIS McGOVERN, Trustee of the Libby Medical Plan Trust

Petitioners

vs.

MACO WORKERS COMP TRUST

Respondent/Insurer.

ORDER DENYING PETITIONERS' MOTION FOR SUMMARY JUDGMENT

Summary: Petitioners move for summary judgment, asserting that Respondent is obligated to pay $55,457.83 in medical benefits. Petitioners assert that W.R. Grace's Libby Medical Program had the right to be reimbursed for medical bills it paid for those whose asbestos-related disease was thereafter determined to be a compensable occupational disease. Petitioners also assert that W.R. Grace transferred that right to the Libby Medical Plan Trust (LMP Trust) in the settlement of the tort claims against W.R. Grace. Because the LMP Trust now seeks to recover payment of the amounts that the Libby Medical Program paid for medical bills, Petitioners argue that Respondent is liable for the medical benefits as a matter of law.

Held: Petitioners' summary judgment motion is denied because they did not meet their burden of establishing the absence of issues of material fact and entitlement to judgment as a matter of law. They have not established that W.R. Grace had the right to be reimbursed for medical bills the Libby Medical Program paid for treatment of those with an asbestos-related disease caused by an exposure to Libby asbestos who were thereafter determined to have a compensable occupational disease nor that, if it did, it transferred that right to the LMP Trust in the settlement of the tort claims against it.

¶ 1 Petitioner Karen Monroe, Individually and as Personal Representative of the Estate of Dwane Monroe (Monroe) and Petitioner Francis McGovern, as Trustee of the Libby Medical Plan Trust (LMP Trust), together assert entitlement to $55,457.83 in medical benefits under § 39-71-704, MCA, from Respondent MACO Workers Comp Trust (MACO). The $55,457.83 is the amount that W.R. Grace's (Grace) Libby Medical Program paid for treatment of Dwane Monroe's (Dwane) asbestos-related disease, which this Court thereafter ruled was a compensable occupational disease for which MACO is liable. The LMP Trust asserts that it is the "indisputable successor-in-interest" of the Libby Medical Program and that it acquired the Libby Medical Program's right to be reimbursed for "wrongly paid benefits" in the settlement of the tort claims against Grace. Monroe and the LMP Trust argue that the LMP Trust has the right to recover directly from MACO the amounts that the Libby Medical Program paid for Dwane's medical care to treat his asbestos-related disease. In the alternative, because the LMP Trust has demanded that Monroe pay it the amounts that the Libby Medical Program paid for Dwane's medical care, Monroe and the LMP Trust argue that MACO must pay the medical benefits to her, so she can pay the LMP Trust.

¶ 2 For many reasons, MACO asserts that it is not liable for the medical benefits.

¶ 3 The parties have filed cross motions for summary judgment. This Court has considered all of the evidence that the parties submitted and all of their arguments, regardless of the title of the brief to which the evidence was attached or in which the argument was made. However, this Court has evaluated each party's motion on its own merits, as this Court is required to do under Montana law.[1]

¶ 4 As set forth below, this Court denies Petitioners' summary judgment motion. This Court will issue a separate order on MACO's summary judgment motion.

FACTS

¶ 5 Dwane worked for Grace from 1967 to 1990. In 1991, Dwane filed an occupational disease claim, asserting that he had lung disease "caused by years of exposure to tremolite asbestos dust."[2] He settled his claim on a disputed liability basis.[3]

¶ 6 Dwane worked for the Lincoln County Road Department from 1997 to 2008. He was exposed to Libby asbestos in the course of his employment with Lincoln County.

---

[1] *See Putnam v. Cent. Mont. Med. Ctr.*, 2020 MT 65, ¶ 12, 399 Mont. 241, 460 P.3d 419 (citation omitted) ("On cross-motions for summary judgment, the district court . . . must evaluate each party's motion on its own merits.").

[2] *Monroe v. MACO Workers Comp. Trust (Monroe I)*, 2014 MTWCC 7, ¶ 5.

[3] *Monroe I*, 2014 MTWCC 7, ¶ 5.

¶ 7 In 2000, Grace established and funded the Libby Medical Program to pay the medical expenses of those who were injured by exposure to Libby asbestos.[4] In 2005, Grace published a booklet to set the terms of the Libby Medical Program starting on July 1, 2005. It states, in relevant part:

> This booklet describes the Libby Medical Program and is the plan document of the Libby Medical Program. This document is also the summary plan description of the Libby Medical Program.

The Libby Medical Program's booklet also provides that the Libby Medical Program was the "primary" payor for medical bills for treatment of an asbestos-related disease caused by an exposure to Libby asbestos. In a section titled, "If you Receive Other Benefits," the booklet states:

> If a Covered Individual is covered under Medicare, Medicaid, or any other governmental, group, or individual health care plan or program, in addition to being covered under the Libby Medical Program, the Libby Medical Program will always be the primary plan for Eligible Medical Expenses that are related to a condition or illness due to previous asbestos exposure. Because the Libby Medical Program is always primary in these cases, claims for Eligible Medical Expenses should be filed first under the Libby Medical Program following the procedures under "Claims for Benefits" . . . .

¶ 8 The booklet provides that "once you are covered by the Libby Medical Program, your coverage under the Program continues for your lifetime . . . ." However, the booklet provides that Grace could terminate the Libby Medical Program if it became subject to court supervision. And, the booklet provides that a person was not eligible for coverage if the person made an asbestos-related claim against Grace and received either a settlement or a payment as a result of a judgment that included compensation for future medical expenses.

¶ 9 In *Moreau v. Transportation Ins. Co. (Moreau II)*, the Montana Supreme Court stated that the undisputed testimony in that case established that Grace did not intend to be reimbursed for medical bills paid by the Libby Medical Program for those with an asbestos-related disease caused by an exposure to Libby asbestos; the court stated that based on the undisputed testimony, this Court found as follows:

> Grace created the LMP to assist residents of Libby, Montana, in paying for medical costs arising from asbestos exposure from vermiculite mining. The

---

[4] *See Moreau v. Transp. Ins. Co*. (*Moreau II*), 2018 MT 1, ¶ 4, 390 Mont. 102, 408 P.3d 538 (although the Montana Supreme Court stated that the Libby Medical Program was to pay the medical expenses of Grace's employees, a person could enroll in the Libby Medical Program if they "lived or worked within a 20-mile radius of the Libby Mine or Mill at least 5 years before" their diagnosis of an asbestos-related disease). In court decisions, the Libby Medical Program is sometimes called the "Libby Medical Plan" and is oftentimes shortened to "LMP."

> LMP medical payments were made with "no strings attached" and LMP did not demand or expect any reimbursement from any source. Grace's establishment of the LMP was "voluntary with no conditions" and Grace disclaimed any intention to seek reimbursement for any payments made by the LMP.[5]

¶ 10 The Libby Medical Program paid $55,457.83 in medical bills for Dwane's asbestos-related disease.

¶ 11 Dwane's last day of work for Lincoln County was in March 2008.

¶ 12 Dwane died from his asbestos-related disease on September 20, 2010.

¶ 13 In 2012, Grace was in Chapter 11 bankruptcy.

¶ 14 In January 2012, the Libby Claimants – in general, those who had brought tort claims against Grace for their asbestos-related diseases caused by exposure to Libby asbestos – and Grace agreed to a settlement, which was conditioned upon Bankruptcy Court approval and a Trust Approval Order from the Montana Nineteenth Judicial District Court. The "Settlement Effective Date" was the third business day after the Bankruptcy Court's and Montana Nineteenth Judicial District Court's approvals. As part of the settlement, the Libby Medical Program was to be "transitioned" to the LMP Trust, which was funded with a payment from Grace. The Term Sheet for the settlement provides, in relevant part:

> On the Settlement Effective Date, (a) all rights, and duties whatsoever of Grace . . . under the [Libby Medical Program] from and after the Settlement Effective Date shall be transferred to and assumed by the LMP Trustee . . . ., <u>provided, however</u>, that Grace shall be responsible for any ongoing payment obligations of the Libby Medical Program incurred prior to the Settlement Effective Date, (b) in lieu of continued annual contributions to the LMP, Grace shall fund the LMP Trust with a one-time payment of $19.5 million in immediately available funds to the LMP Trustee, (c) upon such payment, Grace shall have no further liabilities, duties, or role whatsoever in the LMP . . . , and (d) the LMP Trustee shall begin administration of the LMP in accordance with the terms of the LMP Trust Instrument.[6]

---

[5] *Moreau II*, 2018 MT 1, ¶ 8. *See also Moreau v. Transp. Ins. Co*., 2017 MTWCC 7, ¶¶ 9-10 (noting (1) that Jay Flynn, MD, the medical director of the Libby Medical Program, testified that the Libby Medical Program paid bills with "no strings attached" and that the Libby Medical Program "never made any demand for reimbursement nor did it expect reimbursement"; (2) that an executive from Grace testified that the money deposited into the Libby Medical Program was "voluntary with no conditions"; and (3) that an attorney representing Grace in its bankruptcy "informed the parties that W.R. Grace would not seek reimbursement.").

[6] Emphasis in original.

¶ 15 On May 14, 2012, the Montana Nineteenth Judicial District Court approved the establishment of the LMP Trust.[7]

¶ 16 McGovern was appointed the initial trustee of the LMP Trust and remains trustee.

¶ 17 On June 6, 2012, the Bankruptcy Court approved the settlement. In a paragraph labeled, "Transition of the Libby Medical Program," the Bankruptcy Court ruled:

> On the Libby Settlement Effective Date, all rights and duties whatsoever of Grace . . . under the Libby Medical Program from and after the Libby Settlement Effective Date shall be transferred to the LMP Trustee. Grace shall remain responsible for any expenses (including covered medical expenses of the LMP Beneficiaries) of the Libby Medical Program incurred prior to the Libby Settlement Effective Date, and such expenses shall not be assumed by the LMP Trustee. Except as set forth in the preceding sentence, Grace, upon payment of the Trust Funding Amount into the LMP Trust, shall have no further liabilities, obligations, duties, or role whatsoever in the Libby Medical Program, shall have no further obligations to the LMP Trust, and shall have no responsibility or liability for any obligation that the LMP Trust might choose to assume or undertake. Likewise, the LMP Trust shall have no liabilities, obligations, duties, or role whatsoever in Grace's terminated Libby Medical Program, shall have no obligation to Grace in respect of such program (or otherwise), and shall have sole responsibility and liability for such obligations as the LMP Trust might choose to assume or undertake. Subject to the remainder of this paragraph, nothing in this Order shall be construed to require the Libby Medical Program or the LMP Trustee to assume or undertake any contractual obligation or to approve, allow, pay, or commit to pay the medical expenses or other claims of any particular claimant or group of claimants. Such matters shall be governed, prior to the Libby Settlement Effective [D]ate, solely by the terms of the Libby Medical Program, as it has been and may be amended from time to time. Such matters shall be governed, from and after the Libby Settlement Effective Date, solely by the terms of the LMP Trust, as it may be amended from time to time.[8]

¶ 18 On March 17, 2014, this Court found and concluded that Dwane's asbestos-related disease was an occupational disease for which MACO was liable.[9]

---

[7] *In Re the Libby Medical Plan Qualified Settlement Fund Trust*, No. DV 12-127 (Mont. Nineteenth Jud. Dist. Ct., Lincoln Cnty. May 14, 2012) (Order Approving the Establishment of the Libby Medical Plan Qualified Settlement Fund Trust).

[8] *In Re W.R. Grace & Co.*, No. 01-01139 (Bankr. Ct., D. Del. June 6, 2012) (Order Approving the Transition of the Libby Medical Program at 8).

[9] *Monroe I*, 2014 MTWCC 7.

¶ 19 On October 10, 2014, the LMP Trust retained one of the law firms representing Monroe to "pursue reimbursement" of the amounts the Libby Medical Program paid for treatment of those with an occupational disease under Montana law.

¶ 20 On December 4, 2014, one of Monroe's attorneys wrote to MACO's attorney demanding the payment of certain medical bills, which MACO had not paid after this Court adjudged MACO liable for Dwane's occupational disease, including the payment to Monroe of the $55,457.83 in medical bills that the Libby Medical Program had paid for treatment of Dwane's asbestos-related disease.

¶ 21 On April 15, 2015, Monroe filed a second Petition for Hearing against MACO (*Monroe II*), asserting, *inter alia*, that she was entitled to recover the $55,457.83 in medical benefits.[10]

¶ 22 On May 15, 2017, this Court granted summary judgment in favor of MACO. This Court ruled that the case was "factually on point with *Moreau v. Transportation Ins. Co*.,"[11] a case decided at the same time in which this Court ruled that, under the Montana Supreme Court's decision in *Shepard v. Midland Foods, Inc.*,[12] Moreau was not entitled to recover medical benefits under § 39-71-704, MCA, from a workers' compensation insurer in the amount that the Libby Medical Program had paid in medical bills.[13]

¶ 23 Monroe and Moreau appealed this Court's decisions to the Montana Supreme Court.[14] Monroe and MACO agreed to stay Monroe's appeal pending the court's decision in *Moreau II*.[15]

¶ 24 On January 2, 2018, the Montana Supreme Court issued its decision in *Moreau II*, holding that *Shepard* was still good law and affirming this Court's ruling that Moreau was not entitled to recover medical benefits from Transportation Insurance in the amount that the Libby Medical Program had paid.[16]

---

[10] *Monroe v. MACO Workers Comp. Trust* (*Monroe II*), WCC No. 2015-3560.

[11] *Monroe II*, No. 2015-3560 (Mont. Workers' Compensation Ct. May 15, 2017) (Order Denying Petr's Mot. for Summ. J. and Granting Summ. J. in Favor of Resp't, ¶ 19) (citing *Moreau v. Transp. Ins. Co.*, 2017 MTWCC 7).

[12] 219 Mont. 124, 710 P.2d 1355 (1985).

[13] *Moreau v. Transp. Ins. Co*., 2017 MTWCC 7, ¶ 23.

[14] *Moreau v. Transp. Ins. Co*., Mont. Sup. Ct. Case No. DA 17-0320; *Monroe v. MACO Workers Comp. Trust,* Mont. Sup. Ct. Case No. DA 17-0319.

[15] *Monroe v. MACO Workers Comp. Trust*, No. DA 17-0319 (Mont. Sup. Ct. June 6, 2017) (Order Granting Appellant's Unopposed Mot. to Stay Appeal Proceedings).

[16] *Moreau II*, 2018 MT 1, ¶¶ 19-23.

¶ 25 On March 5, 2018, the Montana Supreme Court granted Monroe's Unopposed Motion to Dismiss her appeal.[17]

¶ 26 On February 20, 2019, McGovern sent a letter to Monroe demanding that she pay the LMP Trust the $55,457.83 that the Libby Medical Program had paid for Dwane's medical treatment.[18] The LMP Trust's attorneys, who also represent Monroe, drafted the letter for McGovern.

¶ 27 On May 31, 2019, one of Monroe's other attorneys sent MACO a copy of McGovern's letter with a cover letter "demanding that MACO pay my client $55,457.83 in medical benefits so that she can, in turn, reimburse the Trust."

¶ 28 On August 26, 2019, Monroe and the LMP Trust, represented by the same attorneys, filed their Petition for Hearing. They assert that MACO is liable for $55,457.83 in medical benefits under § 39-71-704, MCA, because the LMP Trust has the right to recover the amounts that the Libby Medical Program paid for Dwane's medical treatment and because the LMP Trust has demanded that Monroe pay it the $55,457.83 that the Libby Medical Program paid for Dwane's medical treatment.

LAW AND ANALYSIS

¶ 29 This case is governed by the 2007 version of the Montana Workers' Compensation Act because that was the law in effect on Dwane's last day of work for Lincoln County.[19]

¶ 30 To prevail on a motion for summary judgment, the moving party must meet its initial burden of showing the "absence of a genuine issue of material fact and entitlement to judgment as a matter of law."[20]

¶ 31 Section 39-71-704, MCA, states, in relevant part:

> **Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished**:**

---

[17] *Monroe v. MACO Workers Comp. Trust,* No. DA 17-0319 (Mont. Sup. Ct. Mar. 5, 2018) (Order [Dismissing Appeal]).

[18] Although McGovern's letter states that the LMP Trust had paid the $55,457.83 and seeks "repayment," it is established from the other evidence in the record and by Monroe's and the LMP Trust's statement of facts, that it was actually the Libby Medical Program that had paid the $55,457.83.

[19] *Monroe I*, 2014 MTWCC 7, ¶ 35 (citations omitted).

[20] ARM 24.5.329. *See also Begger v. Mont. Health Network WC Ins. Trust*, 2019 MTWCC 7, ¶ 15 (citation omitted).

> (a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

¶ 32 This Court and the Montana Supreme Court addressed when a workers' compensation insurer must reimburse another entity for medical bills paid, or pay the claimant directly, under § 39-71-704, MCA, in *Shepard*.[21] Shepard injured his knee in an industrial accident and incurred medical bills.[22] Because the insurer initially denied liability for his claim, Medicare and private health insurance paid some of Shepard's bills.[23] This Court ruled that the workers' compensation insurer was not required to pay the value of these medical bills to Shepard, explaining: "If, at a future date, claimant is sued for medical costs which should have been paid by defendant, claimant may file a Petition asking for a ruling on the matter . . . . If the claimant is held responsible, it is clearly the insurer's obligation to pay medical benefits; thus, litigation of that issue seems unlikely."[24]

¶ 33 On appeal, Shepard argued that the workers' compensation insurer was liable either to reimburse Medicare and his private health insurer for the amounts each had paid, or to pay those amounts to him.[25] The Montana Supreme Court rejected both arguments.[26] First, the court held that since neither Medicare nor the health insurer was a party to the case, this Court did not have jurisdiction to "adjudicate any right to reimbursement which those entities had."[27] Second, the court rejected Shepard's argument that the workers' compensation insurer was liable to pay him the medical benefits under § 39-71-704, MCA.[28] The court explained:

> Contrary to appellant's assertion, this statute is not authority for ordering respondent to pay appellant for medical expenses already paid by other health care providers. The statute requires the insurer to furnish *reasonable* services, medicine and treatment. To order the insurer to pay appellant for medical expenses already paid is not furnishing services nor is it reasonable. . . .

---

[21] 219 Mont. 124, 710 P.2d 1355.

[22] *Shepard*, 219 Mont. at 125, 710 P.2d at 1356.

[23] *Shepard*, 219 Mont. at 126, 710 P.2d at 1356.

[24] *Shepard*, 219 Mont. at 127, 710 P.2d at 1357.

[25] *Shepard*, 219 Mont. at 128, 710 P.2d at 1358.

[26] *Shepard*, 219 Mont. at 128-29, 710 P.2d at 1358.

[27] *Shepard*, 219 Mont. at 128, 710 P.2d at 1358.

[28] *Shepard*, 219 Mont. at 128-29, 710 P.2d at 1358.

> Appellant Shepard is here asking for a windfall. The lower court ruled that if Shepard were sued for medical expenses, he could petition the Workers' Compensation Court for relief. That ruling is logical, equitable and can provide Shepard with prompt relief. We hold that the lower court did not err in its ruling on this issue.[29]

¶ 34 The Montana Supreme Court again addressed this issue in *Moreau II*.[30] The Libby Medical Program paid $95,846 for treatment of Edwin Moreau's asbestos-related disease.[31] Thereafter, Transportation Insurance accepted liability for Edwin's asbestos-related disease as an occupational disease.[32] Edwin's widow, as the personal representative of Edwin's estate, demanded that Transportation Insurance pay her the $95,846.[33] However, relying on *Shepard*, the court held that Transportation Insurance was not obligated to pay Edwin's widow the $95,846 under § 39-71-704, MCA, because, "Edwin was not entitled to recover the value of the medical benefits in addition to the medical services themselves."[34] The court emphasized that part of *Shepard* stating, "if Shepard were sued for medical expenses, he could petition the Workers' Compensation Court for relief."[35] The court also rejected Moreau's argument that Transportation Insurance was subrogating in contravention of the made-whole doctrine because, "[a]n employee with a work-related injury is entitled only to the benefits provided by the applicable legislation," and because Transportation Insurance was "not seeking to recover any money."[36]

¶ 35 Here, Monroe and the LMP Trust assert that this case does not fall under *Shepard* nor *Moreau II* because the LMP Trust is now seeking payment directly from MACO or, in the alternative, because it is seeking payment from Monroe in the amount that the Libby Medical Program paid for treatment of Dwane's asbestos-related disease. However, Monroe and the LMP Trust have not met their initial burden on a summary judgment motion of establishing that there are no issues of material fact and that they are entitled to judgment as a matter of law.

¶ 36 First and foremost, Monroe and the LMP Trust have not established that the Libby Medical Program had the right to be reimbursed for the amounts it paid for treatment of an asbestos-related disease caused by an exposure to Libby asbestos. Monroe and the LMP Trust did not submit any evidence establishing that Grace intended to reserve for

---

[29] *Shepard*, 219 Mont. at 128-29, 710 P.2d at 1358 (emphasis in original).

[30] 2018 MT 1, 390 Mont. 102, 408 P.3d 538.

[31] *Moreau II*, 2018 MT 1, ¶ 9.

[32] *Moreau II*, 2018 MT 1, ¶¶ 3, 9.

[33] *Moreau II*, 2018 MT 1, ¶ 10.

[34] *Moreau II*, 2018 MT 1, ¶ 19.

[35] *Moreau II*, 2018 MT 1, ¶ 21 (quoting *Shepard*, 219 Mont. at 128-29, 710 P.2d at 1358).

[36] *Moreau II*, 2018 MT 1, ¶¶ 17-19.

itself a right to be reimbursed for amounts the Libby Medical Program paid for those with an asbestos-related disease which was thereafter determined to be an occupational disease. In contrast, MACO submitted evidence indicating that Grace did not intend to be reimbursed in these circumstances. MACO points out that there is no express language in the booklet with the terms of the Libby Medical Program stating that the Libby Medical Program had the right to be reimbursed for medical benefits paid to treat an asbestos-related disease caused by an exposure to Libby asbestos. Moreover, the booklet states that the Libby Medical Program was the "primary" payor of medical bills for treatment of asbestos-related disease caused by exposure to Libby asbestos, which creates an issue of material fact as to whether Grace intended to have a right to be reimbursed if the person for whom medical bills were paid was thereafter determined to have a compensable occupational disease. MACO also points out that in *Moreau II*, a case in which the Libby Medical Program paid medical bills for a person whose asbestos-related disease was thereafter determined to be an occupational disease, the Montana Supreme Court noted that this Court had found, based on the uncontroverted testimony, that Grace did not intend to have the right to reimbursement for medical bills paid for those with an asbestos-related disease caused by an exposure to Libby asbestos.[37]

¶ 37 In response in this case, Monroe and the LMP Trust counter that this Court should not give any weight to this finding on the grounds that the testimony on which it was based was "self-serving" because Grace had agreed to reimburse Transportation Insurance if Transportation Insurance had to pay the medical benefits. Thus, they assert that this Court should find that Grace intended to have the right to be reimbursed. However, "[a]t the summary judgment stage, the court does not make findings of fact, weigh the evidence, choose one disputed fact over another, or assess the credibility of witnesses."[38] Monroe and the LMP Trust have not established the absence of an issue of fact on the issue of Grace's intent to reserve the right to be reimbursed.

¶ 38 Monroe and the LMP Trust argue that regardless of Grace's intent, it had the right to be reimbursed for the amounts paid for Dwane's medical bills as a matter of law because they were "wrongly paid benefits." However, they do not set forth any authority under which this Court could rule that the Libby Medical Program "wrongly paid" Dwane's medical bills under Montana law. Monroe and the LMP Trust contend that Grace created the Libby Medical Program because of its clear tort liability to victims such as Dwane and, citing cases in which Grace was found liable for tort claims, that "there is substantial evidence on the record here that these payments were made pursuant to Grace's recognized tort liability in regard to the Libby claimants." Nevertheless, it is obviously not "wrongful" for a tortfeasor to pay damages when it is clearly liable for such damages. And, Monroe and the LMP Trust do not cite any authority supporting their contention that a tortfeasor has the right to be reimbursed for the damages paid to a victim for which it is clearly liable when the victim is also entitled to occupational disease benefits. Thus,

---

[37] *Supra* note 5.

[38] *See, e.g.*, *Kirk v. Mont. Contractors Comp. Fund*, 2016 MTWCC 9, ¶ 21 (citation omitted).

Monroe and the LMP Trust have not shown that they are entitled to judgment as a matter of law.

¶ 39 Monroe and the LMP Trust also argue that the Libby Medical Program had the right to be reimbursed as a matter of law because it paid Dwane's medical bills under a mistake of fact. They contend that the Libby Medical Program would not have paid Dwane's medical bills if it had known that Dwane's asbestos-related disease was an occupational disease. However, Monroe and the LMP Trust did not meet their burden of establishing the absence of a material issue of fact because they did not submit any evidence supporting their contention, such as evidence indicating that the Libby Medical Program refused to pay medical bills for any person on the grounds that his asbestos-related disease was a compensable occupational disease or that the Libby Medical Program sought reimbursement and was reimbursed for medical bills it paid for those whose asbestos-related disease was thereafter determined to be an occupational disease. Moreover, the findings in *Moreau II* that the Libby Medical Program paid medical bills with "no strings attached" and without the intent to be reimbursed[39] counters Monroe's and the LMP Trust's argument that the Libby Medical Program paid Dwane's medical bills under a mistake of fact. Here again, Monroe and the LMP Trust did not meet their burden of establishing the absence of an issue of material fact.

¶ 40 The LMP Trust argues that this Court should grant it summary judgment on the grounds that MACO has the duty to pay it the medical benefits under § 39-71-704, MCA, because MACO is the primary payor as a matter of Montana law and because the LMP Trust has demanded that MACO "reimburse" it. The LMP Trust explains:

> The rights of the LMP and the LMP Trust, as its successor, to demand reimbursement of wrongly paid benefits arose when the WCC found MACO liable for Dwane Monroe's occupational disease . . . . The workers' compensation insurer cannot avoid [its liability to pay medical benefits under § 39-71-704, MCA] by arguing that another entity voluntarily paid the medical expenses, especially if that entity demands to be reimbursed. Contrary to MACO's argument, the WCA expressly makes the workers' compensation insurer the primary payor of all claim-related medical expenses regardless of who paid those expenses prior to the liability finding.

¶ 41 However, the LMP Trust's argument is based on a faulty premise. The entity that paid Dwane's medical bills was the Libby Medical Program, which is not demanding to be reimbursed. Rather, the LMP Trust is demanding that it be permitted to recover the amounts that the Libby Medical Program paid. Thus, the LMP Trust must first prove that the Libby Medical Program had the right to be reimbursed for the medical bills it paid for Dwane's treatment. As set forth above, at this stage of this case, the LMP Trust has not done so. The LMP Trust must then prove that it obtained that right from the Libby Medical

[39] *Supra* note 5.

Program in the settlement, which is an issue in this case given the ambiguous language in the Term Sheet and Bankruptcy Court's Order.

¶ 42 Finally, Monroe and the LMP Trust cite this Court's decision in *Monroe II* and argue that this Court has already ruled that the Libby Medical Program had a right of reimbursement, that this right transferred to the LMP Trust in the settlement, and that if the LMP Trust sought payment from Monroe, MACO would be obligated to pay the $55,457.83. However, they read far more into this Court's decision than is there. This Court did not rule that the Libby Medical Program had the right to be reimbursed nor rule that all rights of the Libby Medical Program transferred to the LMP Trust. This Court merely stated that "certain rights and duties of the [Libby Medical Program] were transferred into the Libby Medical Plan Trust . . . under the terms of a settlement agreement."[40] This Court did not rule what rights were transferred. Thus, Monroe and the LMP Trust still have the burden of proving that the Libby Medical Program had the right to be reimbursed for medical bills for those whose asbestos-related disease was an occupational disease and, if it did, that the right to be reimbursed for the amounts the Libby Medical Program paid for Dwane's medical care was one of the "certain rights" that transferred to the LMP Trust. Moreover, this Court did not give an advisory opinion that it would rule in Monroe's favor if the LMP Trust demanded payment from her. This Court merely stated, "if any of these entities seek reimbursement from Monroe, then, like Shepard – and Moreau – she could petition this Court for relief."[41] Monroe has petitioned this Court for relief because the LMP Trust has demanded payment from her, which this Court ruled she could do, but Monroe still has the burden of proving that she is entitled to the benefits she seeks.[42]

¶ 43 Because Monroe and the LMP Trust did not meet their burden of establishing that there are no issues of material fact nor that they are entitled to judgment as a matter of law, Petitioners' Motion for Summary Judgment is **denied**.

DATED this 19th day of June, 2020.

(SEAL) /s/ DAVID M. SANDLER
JUDGE

c: Laurie Wallace, Allan McGarvey, and Ethan Welder
Norman H. Grosfield
Submitted: December 20, 2019

---

[40] *Monroe II*, No. 2015-3560 (Workers' Comp. Ct. May 15, 2017) (Order Den. Petr's Mot. for Summ. J. and Granting Summ. J. in Favor of Resp't, ¶ 5).

[41] *Id*., ¶ 22.

[42] *See, e.g.*, *Allum v. Mont. State Fund*, 2020 MTWCC 1, ¶ 84 (citations omitted) (stating that, "[u]nder established Montana law," the claimant "bears the burden of proving by a preponderance of the evidence that he is entitled to the workers' compensation benefits sought.").