

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 32

WCC No. 9206-6487

JACK MURER, et al.

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER CLARIFYING SETTLEMENT DATE

Summary: Twenty-six claimants entered into settlement agreements with Montana State Fund before September 26, 1992, the date which this Court established as the cutoff for eligibility of benefits pursuant to *Murer v. State Fund*.¹ These settlement agreements were not approved by the Department of Labor and Industry, however, until after September 26, 1992. The issue before the Court is the date which determines whether a claimant is eligible for *Murer* benefits.

Held: Notwithstanding the condition requiring DLI approval, the date on which the parties entered into the agreement shall determine the claimants' eligibility for *Murer* benefits.

Topics:

Settlements: Generally. Notwithstanding the requirement that the settlement agreements be approved by the Department of Labor and Industry before they were enforceable, neither party could have unilaterally repudiated the agreement prior to DLI's approval or disapproval. Although DLI's determination operated as a condition precedent to enforcement of the agreement, this condition did not serve to render the agreement invalid prior to DLI's approval.

¹ See this Court's Order at 1998 MTWCC 13 for a complete analysis of the benefits issue and the establishment of the cutoff date.

Settlements: Contracts. Although the contract was not enforceable until after Department of Labor and Industry approval, it was nevertheless binding on the parties prior to DLI's determination. Therefore, the date on which the parties entered into the settlement agreement should be used to determine the party's eligibility for benefits.

¶ 1 The long and storied history of this case is unnecessary to determine the outcome of the present issue before the Court. However, a brief statement of a few past events places this issue in its proper context.

¶ 2 This Court has previously ruled that the files of claimants represented by counsel who did not reserve *Murer* benefits between September 26, 1992, and November 21, 1994, shall be deemed closed.² The Court also ruled that claimants who were represented by counsel and who entered into settlement agreements before September 26, 1992, may be eligible to receive *Murer* benefits, if they met certain other criteria. At a hearing on August 18, 1998, the Court set aside twenty-six claimant files in which the claimants and the Montana State Fund (State Fund) entered into a settlement agreement before September 26, 1992, where the agreement was not approved by the Department of Labor and Industry (DLI) until after September 26, 1992. The issue before the Court is which date constitutes the effective settlement date for determining eligibility for *Murer* benefits.

¶ 3 Settlement agreements are contracts and must be construed and enforced as such.³ None of the parties to this matter dispute this fundamental premise. However, the settlement agreements at issue also required DLI approval before they were enforceable.⁴ The present dispute turns on this issue.

¶ 4 Petitioners contend that their respective settlement agreements were effectively final when they were entered into – i.e., pre-September 26, 1992. Respondent argues that the settlement agreements could not be considered final until they were approved by DLI since, until that time, the agreements were not enforceable.

² The dates defining the different categories set out in 1998 MTWCC 13 were modified in a hearing on August 18, 1998.

³ *South v. Transportation Ins. Co.*, 275 Mont. 397, 401, 913 P.2d 233, 235 (1996).

⁴ See § 39-71-741, § 39-71-519, and § 39-72-711 (1991-2003), MCA.

¶ 5 On this issue, the Court finds useful guidance from the case of *Garcia v. Department of Labor and Industry Employment Relations Division*.⁵ In *Garcia*, the employer attempted to unilaterally repudiate an agreement with an employee after DLI rejected the agreement but before all the terms of the agreement had been followed – specifically, the right of a party to appeal DLI’s decision. In rejecting the employer’s argument, this Court stated:

The agreement in this case was expressly contingent upon the approval of the Department. Moreover, the statutory requirements for Department approval were part of the agreement. . . .

However, except for the approval of the Department, the agreement executed by Maniaci and Garcia is unconditional. The parties agreed to all terms of the settlement and to submit the agreement to the Department for its approval. The Department’s approval amounted to a condition precedent to the enforcement of the agreement. “A condition precedent is a condition which must be met before the agreement becomes effective.” *Depee v. First Citizen’s Bank of Butte*, 258 Mont. 217, 220, 852 P.2d 592, 593 (1993). The settlement agreement constitutes a contract between Garcia and Maniaci. Upon Department approval, the agreement is enforceable.⁶

¶ 6 In *Garcia*, this Court held that the employer could not repudiate the agreement until Garcia was able to appeal DLI’s determination because the right to appeal was part of the initial settlement agreement. Essentially, this Court held that the right to appeal was a component of the contract.

¶ 7 Applying the reasoning of *Garcia* to the present case, the Court concludes that, notwithstanding the requirement that the settlement agreements be approved by DLI before they were enforceable, neither the twenty-six claimants, nor the State Fund, could have unilaterally repudiated the agreement prior to DLI’s approval or disapproval. Although DLI’s determination operated as a condition precedent to enforcement of the agreement, this condition did not serve to render the agreement invalid prior to DLI’s approval.

¶ 8 For the foregoing reasons, this Court finds that a contract was formed when the parties entered into the agreement. Although the contract was not enforceable until after DLI approval, it was nevertheless binding on the parties prior to DLI’s determination. Therefore, the date on which the parties entered into the settlement agreement should be

⁵ 1997 MTWCC 59.

⁶ *Id.* at 5.

used to determine whether any of the twenty-six claimants at issue are eligible for *Murer* benefits.

¶ 9 Petitioners further argue in their brief that the twenty-six claimants at issue cannot be deemed to have knowingly waived their entitlement to *Murer* benefits because, at the time they executed their respective settlement agreements, neither claimants nor their counsel “reasonably could have known of the *Murer* mistake.”⁷ In light of this Court’s ruling on the effective settlement date for purposes of determining eligibility for *Murer* benefits, the Court views this argument as moot.

ORDER

¶ 10 With respect to the twenty-six files at issue, it is **ORDERED** that the dates on which the respective parties entered into their settlement agreements to be determinative for purposes of establishing the effective settlement date.

DATED in Helena, Montana, this 3rd day of October, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Mr. Allan M. McGarvey
Mr. Bradley J. Luck
Mr. Thomas E Martello
Submitted: December 12, 2005

⁷ Attorney McGarvey’s Brief on Behalf of 26 Claimants at 2.