

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

**2010 MTWCC 32**

**WCC No. 2005-1500 and WCC No. 2009-2412**

---

**DELANO DRURY**

**Petitioner**

**vs.**

**INTERNATIONAL PAPER CO.; as successor-in-interest to  
CHAMPION INTERNATIONAL CO.**

**Respondent/Insurer**

**AND**

**LOUIE O'BRIEN**

**Petitioner**

**vs.**

**INTERNATIONAL PAPER CO.; as successor-in-interest to  
CHAMPION INTERNATIONAL CO.**

**Respondent/Insurer.**

---

**ORDER DENYING PETITIONERS' MOTIONS TO ENFORCE SETTLEMENT AND  
GRANTING PETITIONERS' ALTERNATIVE MOTIONS FOR TRIAL**

**Summary:** Petitioners agreed to settle their respective claims with Respondent. The agreement was reflected in an e-mail exchange between Petitioners' counsel and Respondent's counsel. The e-mail specifically reserved medical benefits but was silent as to whether the settlement included potential death benefit claims. When Petitioners' counsel forwarded proposed stipulations for judgment to Respondent's counsel which specifically reserved death benefits, Respondent's counsel objected, contending that he had never agreed to reserve death benefits. Petitioners move to enforce the settlements. Respondent argues that the settlement agreements should not be

enforced because the parties never reached a meeting of the minds regarding resolution of potential death benefit claims.

**Held:** Petitioners' motions to enforce the settlements are denied. Petitioners' counsel's e-mail to Respondent's counsel was silent as to the resolution of death benefits. It would be no more reasonable to infer that death benefits were excluded from the settlement, as Petitioners suggest, than to infer that they were included in the settlement, as Respondent believed. There was no meeting of the minds as to this material term. Petitioners' motions for trial are granted.

¶1 Petitioners Delano Drury and Louie O'Brien have filed separate, nearly identical, motions to enforce settlement or alternatively motions for trial. Since the motions are nearly identical, the cases have been consolidated for the purpose of ruling on the parties' respective motions and this Order resolves these motions. Respondent International Paper Co. opposes Drury's and O'Brien's motions to enforce settlement but does not oppose placing these cases on the next Workers' Compensation Court Kalispell docket.<sup>1</sup>

#### FACTS

¶2 On July 30, 2010, Drury and O'Brien agreed to settle their respective claims with International Paper. The agreement was reflected in an August 3, 2010, e-mail exchange between Drury's and O'Brien's counsel, Jon Heberling, and International Paper's out-of-state co-counsel, W.G. Watkins. Heberling's e-mail to Watkins read as follows:

Dear WG, This confirms our agreement of 7/30/10. The two cases before the Workers' Compensation Court are settled for the 90% impairment amount, which is \$52,920 in O'Brien and \$56,915 in Drury. Liability is accepted. Medical payments are left open. In reliance upon the agreement we have cancelled the pre trial conferences. Laurie Wallace and Leo Ward will finalize settlement documents. If the proposed global settlement is approved, then the amounts of the O'Brien and Drury settlements will be subtracted from the total for the global settlement. Please confirm.

---

<sup>1</sup> International Paper Company's Consolidated Brief in Opposition to Enforcement of Settlement (Respondent's Brief) at 2.

Best regards, Jon<sup>2</sup>

¶3 Watkins responded to Heberling's e-mail:

That is correct. Thanks.<sup>3</sup>

¶4 Shortly after Heberling and Watkins' e-mail exchange, Laurie Wallace, co-counsel for Drury and O'Brien, e-mailed draft stipulations for judgment to Leo Ward, co-counsel for International Paper. The draft stipulations included a provision which stated, "The Claimant expressly reserves the right to pursue death benefits should he die from his occupational disease."<sup>4</sup>

¶5 On August 18, 2010, Watkins sent the following e-mail to Heberling:

Jon,

I am sorry I have been unable to call you, but trial preparation is taking all of my time. I don't know what you were calling about, but I wanted to alert you to a problem in Drury and O'Brien. It is my understanding that Laurie Wallace sent Leo a draft Stipulation for Judgment in these cases which reserves the right of the spouse to pursue death benefits should either of these gentlemen ultimately die from an occupational disease. While we certainly agreed to leave the medicals open in these cases, we never discussed reserving death benefits. It is also my understanding that Ms. Wallace said that her understanding of the overall settlement we have been discussing is that the death benefits were being reserved in all OD claims.

I can tell you unequivocally that this was not my understanding of the terms of our agreement. Reserving death benefits was never discussed. I went back to look at your email confirming settlement and my agreement to the settlement (I have copied it below for your reference) and there was no mention of reserving death benefits. This may be standard practice in Montana, but I have never encountered this issue in any other jurisdiction. It may be that by saying you were reserving the future medicals, in your

---

<sup>2</sup> Petitioner[s] Motion[s] to Enforce Settlement or Alternatively Motion[s] for Trial Setting and Supporting Brief (Petitioners' Brief) at 2.

<sup>3</sup> Petitioners' Brief at 2; Ex. A.

<sup>4</sup> Respondent's Brief, Ex. 2 at 2.

mind you were including the death benefits. That is not what I meant or understood future medicals to mean. I hope this is simply a misunderstanding by Ms. Wallace. If not then this will be a major impediment to the settlement discussions. I will call as soon as I can, but I wanted to raise this with you prior to our conversations so that you would be prepared to discuss when we do talk.

WG<sup>5</sup>

¶6 On August 19, 2010, Wallace e-mailed revised stipulations for judgment to Ward. Wallace's e-mail stated:

Leo,

I've attached some revised stipulations and judgments. Please let me know if these are agreeable.

Laurie Wallace<sup>6</sup>

¶7 The revised stipulations were identical to the original drafts, except the provision expressly reserving death benefits was deleted.

### DISCUSSION

¶8 Settlement agreements are contracts and must be construed and enforced as such.<sup>7</sup> All contracts must contain four essential elements: (1) identifiable parties capable of contracting; (2) their consent; (3) a lawful object; and (4) consideration.<sup>8</sup> There must be mutual assent or a "meeting of the minds" on all essential terms to form a binding contract.<sup>9</sup>

¶9 Resolution of this issue boils down to whether there was a "meeting of the minds" as to all essential terms of the settlement agreement: specifically, whether death benefits were included in, or reserved from, the settlement agreement. It is clear from

---

<sup>5</sup> Respondent's Brief at 3; Ex. 3.

<sup>6</sup> Petitioners' Brief, Ex. B.

<sup>7</sup> *South v. Transp. Ins. Co.*, 275 Mont. 397, 401, 913 P.2d 233, 235 (1996).

<sup>8</sup> *Kortum-Managhan v. Herbergers NBGL*, 2009 MT 79, ¶ 18, 349 Mont. 475, 204 P.3d 693.

<sup>9</sup> *Keesun Partners v. Ferdig Oil Co., Inc.*, 249 Mont. 331, 337, 816 P.2d 417, 421 (1991).

the e-mail exchanges between the parties that there was not a meeting of the minds on this essential term.

¶10 Drury and O'Brien argue that Heberling and Watkins' August 3, 2010, e-mail exchange constituted an unconditional, enforceable agreement. However, Heberling's e-mail was silent as to the resolution – or lack thereof – of any potential death benefits claim. Heberling's e-mail to Watkins stated, in pertinent part:

The two cases before the Workers' Compensation Court are settled for the 90% impairment amount, which is \$52,920 in O'Brien and \$56,915 in Drury. Liability is accepted. Medical payments are left open.<sup>10</sup>

¶11 Heberling's e-mail specifically reserves only medical benefits. Heberling's e-mail is silent as to the resolution of death benefits. It would be no more reasonable to infer that death benefits were excluded from the settlement, as Drury and O'Brien suggest, than to infer that they were included in the settlement, as International Paper believed. In fact, one could infer that Drury and O'Brien recognized the ambiguity in their agreement regarding the resolution of death benefits, as evidenced by their initial draft stipulations for judgment, which included a provision expressly reserving the right to pursue death benefits.

¶12 It is self-evident that the inclusion or exclusion of the right to pursue death benefits was an essential term of the settlement agreements. If it were not, the parties would not expend so much effort advocating for their respective interpretations. It is likewise evident that the parties did not reach a meeting of the minds on this essential term. Therefore, Drury's and O'Brien's motions to enforce the settlements are denied. Their cases will therefore be placed on the next Kalispell trial docket.

### JUDGMENT

¶13 Petitioners' motions to enforce settlements are **DENIED**.

¶14 Petitioners' motions to place this matter on the next available Kalispell trial docket are **GRANTED**.

///

---

<sup>10</sup> Petitioners' Brief, Ex. A.

DATED in Helena, Montana, this 8th day of December, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

cc: Laurie Wallace/Jon Heberling  
Leo S. Ward  
Submitted: October 18, 2010