

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 45

WCC No. 2007-2021

MATTHEW R. RAYMOND

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

**FOOTHILLS RESEARCH INSTITUTE, LLC, MARKET RESEARCH GROUP,
and JOSEPH SEIPEL**

Uninsured Employers.

ORDER DISMISSING UNINSURED EMPLOYERS, DENYING ALL PENDING
MOTIONS, AND AMENDING CAPTION

Summary: Various motions have been submitted and are pending in this case. This order resolves underlying issues concerning which parties are properly named in this action at this time.

Held: Upon consideration of the motions and the applicable statutes, the Court concludes that the procedural posture of this case is such that the alleged uninsured employers are not proper parties to this action at this time. They are dismissed from this case and all pending motions are denied. The caption shall be amended to reflect only Petitioner and Respondent as named parties.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-520. Section 39-71-520, MCA, provides that a dispute concerning UEF benefits must be appealed to mediation within 90 days.

Since the uninsured employer is not paying UEF benefits, it follows that a dispute concerning UEF benefits which is brought by an injured worker can only be a dispute between the worker and the UEF. A dispute between the UEF and an alleged uninsured employer follows a different procedure to get to the WCC.

Jurisdiction: Workers' Compensation Court. Section 39-71-520, MCA, provides that a dispute concerning UEF benefits must be appealed to mediation within 90 days. Since the uninsured employer is not paying UEF benefits, it follows that a dispute concerning UEF benefits which is brought by an injured worker can only be a dispute between the worker and the UEF. A dispute between the UEF and an alleged uninsured employer follows a different procedure to get to the WCC.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-506. Section 39-71-506, MCA, sets forth the procedure by which the UEF would assert a claim for reimbursement against an uninsured employer. This statute mandates that the due process requirements of § 39-71-2401(2)-(3), MCA, must first be met. Section 39-71-2401(2), MCA, requires the dispute to be brought before the Department of Labor and Industry, and § 39-71-2401(3), MCA, provides that an appeal from the departmental decision may be made to this Court.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2401. Section 39-71-506, MCA, sets forth the procedure by which the UEF would assert a claim for reimbursement against an uninsured employer. This statute mandates that the due process requirements of § 39-71-2401(2)-(3), MCA, must first be met. Section 39-71-2401(2), MCA, requires the dispute to be brought before the Department of Labor and Industry, and § 39-71-2401(3), MCA, provides that an appeal from the departmental decision may be made to this Court.

Administrative Procedure: Contested Case Hearing: DLI Jurisdiction. Section 39-71-506, MCA, sets forth the procedure by which the UEF would assert a claim for reimbursement against an uninsured employer. This statute mandates that the due process requirements of § 39-71-2401(2)-(3), MCA, must first be met. Section 39-71-2401(2), MCA, requires the dispute to be brought before the Department of Labor and Industry, and § 39-71-2401(3), MCA, provides that an appeal from the departmental decision may be made to this Court.

Uninsured Employers' Fund: Procedure. Section 39-71-506, MCA, sets forth the procedure by which the UEF would assert a claim for reimbursement against an uninsured employer. This statute mandates that the due process requirements of § 39-71-2401(2)-(3), MCA, must first be met. Section 39-71-2401(2), MCA, requires the dispute to be brought before the Department of Labor and Industry, and § 39-71-2401(3), MCA, provides that an appeal from the departmental decision may be made to this Court.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-506. Until a departmental order is issued pursuant to § 39-71-2401(2), MCA, and appealed to this Court pursuant to § 39-71-2401(3), MCA, the due process requirements of § 39-71-506, MCA, have not been met as it pertains to a claim for reimbursement made by the UEF against an uninsured employer.

Administrative Procedure: Contested Case Hearing: DLI Jurisdiction. Until a departmental order is issued pursuant to § 39-71-2401(2), MCA, and appealed to this Court pursuant to § 39-71-2401(3), MCA, the due process requirements of § 39-71-506, MCA, have not been met as it pertains to a claim for reimbursement made by the UEF against an uninsured employer.

Uninsured Employers' Fund: Indemnification. Until a departmental order is issued pursuant to § 39-71-2401(2), MCA, and appealed to this Court pursuant to § 39-71-2401(3), MCA, the due process requirements of § 39-71-506, MCA, have not been met as it pertains to a claim for reimbursement made by the UEF against an uninsured employer.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.307A. Although ARM 24.5.307A purports to give a claimant the right to name an uninsured employer as a party to an action, an employee cannot bring an action for benefits directly against an uninsured employer in this Court. Such an action can only be brought in District Court pursuant to §§ 39-71-515, -516, MCA.

Jurisdiction: District Court. Although ARM 24.5.307A purports to give a claimant the right to name an uninsured employer as a party to an action, an employee cannot bring an action for benefits directly against an uninsured employer in this Court. Such an action can only be brought in District Court pursuant to §§ 39-71-515, -516, MCA.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.307A. Although the procedure set forth in ARM 24.5.307A

fosters judicial economy, it is the legislature's province to determine the process by which a dispute between an uninsured employer and the UEF is resolved and it has explicitly set forth that process in § 39-71-506, MCA. Notwithstanding the practical procedure that this Court adopted in ARM 24.5.307A, the Court's rule cannot supercede the statutory process the legislature established by automatically deeming the uninsured employer a party to the action.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-506. An uninsured employer who was joined as a party via ARM 24.5.307A is properly dismissed where the UEF has not followed the procedure to seek reimbursement set forth in § 39-71-506, MCA.

Employers: Joinder. An uninsured employer who was joined as a party via ARM 24.5.307A is properly dismissed where the UEF has not followed the procedure to seek reimbursement set forth in § 39-71-506, MCA.

Employers: Uninsured Employers. An uninsured employer who was joined as a party via ARM 24.5.307A is properly dismissed where the UEF has not followed the procedure to seek reimbursement set forth in § 39-71-506, MCA.

¶ 1 Various motions have been submitted and are pending in this case, all of which concern disputes between the alleged uninsured employers Foothills Research Institute, LLC, Market Research Group, and Joseph Seipel in his individual capacity (herein collectively referred to as "Seipel"), and Petitioner Matthew R. Raymond and/or Respondent Uninsured Employers' Fund (UEF). Upon consideration of these motions and the applicable statutes, I have concluded that Seipel is not properly a party to this action at this time for the reasons set forth below.

¶ 2 Seipel, as the alleged uninsured employer, was named as a party to this action pursuant to ARM 24.5.307A, which states that the uninsured employer shall be deemed a party to any action involving entitlement to benefits from the UEF. Neither Petitioner nor the UEF have made a claim against Seipel at this juncture in the proceedings.

¶ 3 Seipel previously moved this Court to dismiss Petitioner's action on the grounds that Petitioner did not timely request mediation concerning the named uninsured employers.¹ Although there is no dispute that Petitioner timely requested mediation as this dispute pertained to Petitioner and the UEF, Seipel contends that the mediation that was conducted did not include the correct alleged uninsured employers. On May 14, 2008, I stayed

¹ Uninsured Employer's Motion to Dismiss and Memorandum in Support, Docket Item No. 50.

proceedings and ordered the parties to mediate the case to afford Seipel the opportunity to participate in the same capacities as he was named in the caption.² The parties apparently did subsequently mediate the case. However, Seipel also moved for reconsideration of this order, reiterating that Petitioner did not properly mediate the case pursuant to § 39-71-520(1), MCA.³

¶ 4 Section 39-71-520(1), MCA, states, “A dispute concerning uninsured employers’ fund benefits must be appealed to mediation within 90 days from the date of the determination or the date that the determination is considered final.” In considering the merits of Seipel’s motion for reconsideration, I noted that § 39-71-520, MCA, specifically provides that a dispute **concerning UEF benefits** must be appealed to mediation within 90 days. By definition, the uninsured employer himself is not paying “UEF benefits.” It therefore follows that a dispute “concerning UEF benefits” brought by an injured worker can only be a dispute between the worker and the UEF. Although the alleged uninsured employer may ultimately be held liable to the UEF for reimbursement of any benefits paid, that dispute follows a different path to the Workers’ Compensation Court.

¶ 5 In light of my reexamination of the language of § 39-71-520(1), MCA, I now conclude that my Order Requiring Mediation and Staying Proceedings was erroneous since the uninsured employer was not a necessary party to the mediation. The UEF has not admitted liability and no determination of liability has yet been made in this case. Accordingly, the UEF has not asserted a claim against Seipel for reimbursement of benefits paid.⁴ Indeed, if the UEF is ultimately found not to be liable for benefits to Petitioner, it would have no basis to seek reimbursement from Seipel. Since the UEF has not been determined to be liable for benefits to Petitioner, the UEF and Seipel do not have a dispute that is ripe for adjudication in this Court.

¶ 6 Moreover, if the UEF is ultimately determined to be liable to Petitioner for benefits, its entitlement to reimbursement from Seipel for the benefits paid is set forth in § 39-71-504, MCA. The procedure by which the UEF would assert such a claim is set forth in § 39-71-506, MCA. Most pertinent to the issue at hand, § 39-71-506, MCA, provides:

After the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the

² Order Requiring Mediation and Staying Proceedings, Docket Item No. 70.

³ Alleged Uninsured Employer’s Motion for Reconsideration and Supporting Brief/Memorandum, Docket Item No. 71.

⁴ The procedure by which the UEF pursues indemnification from an uninsured employer is set forth in §§ 39-71-504, -506, MCA.

state to enter the certificate as a judgment on the docket pursuant to 25-9-301.⁵

¶ 7 Section 39-71-2401(2), MCA, provides that a dispute arising under this chapter for which a specific provision of the chapter gives jurisdiction to the Department of Labor and Industry (“Department”), **must** be brought before the Department. Section 39-71-2401(3), MCA, provides that an appeal from the Department’s order may be made to the Workers’ Compensation Court. In the present case, the UEF has not yet made a claim for reimbursement from Seipel. Therefore, there is no dispute between the UEF and Seipel to bring before the Department as mandated by § 39-71-2401(2), MCA. Accordingly, there is no Department order to appeal to this Court pursuant to § 39-71-2401(3), MCA. These are the due process requirements which § 39-71-506(1), MCA, expressly requires for the UEF to successfully assert a claim for reimbursement from an uninsured employer. Until these due process requirements are satisfied, this Court cannot consider a reimbursement dispute between the UEF and Seipel.

¶ 8 As for Petitioner’s right to name Seipel as a party to the present action, notwithstanding the language of ARM 24.5.307A, an employee cannot bring an action for benefits directly against an uninsured employer in this Court. Such an action can only be brought in District Court pursuant to §§ 39-71-515 and -516, MCA.⁶ This Court has

⁵ § 39-71-506, MCA. (Emphasis added.)

⁶ Section 39-71-515(1), MCA, states, “An injured employee or the employee’s beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.” Section 39-71-516, MCA, states, in pertinent part, “An injured employee or an employee’s beneficiaries

previously acknowledged its lack of jurisdiction over a dispute between an injured worker and an uninsured employer in *Johnson v. MMIA and UEF*, in which it stated, “Petitioner does not seek any relief against [the uninsured employer]. In any event the [Workers’ Compensation Court] would not have jurisdiction over such a request. § 39-71-516, MCA.”⁷

¶ 9 In *Johnson*, this Court recognized that judicial economy is best served by deeming the employer a party to the initial action.⁸ The procedure which was subsequently set forth in ARM 24.5.307A serves judicial economy in a logical fashion. Nevertheless, it is the Legislature’s province to determine the process by which a dispute between an uninsured employer and the UEF is resolved and it has explicitly set forth that process in § 39-71-506, MCA. Notwithstanding the practical procedure that this Court adopted in ARM 24.5.307A, the Court’s rule cannot effectively supercede the statutory process which the Legislature established by automatically deeming the employer a party to the action.

¶ 10 Seipel is properly dismissed from this case because this Court has no jurisdiction over a dispute between Petitioner and Seipel pursuant to § 39-71-516, MCA, and any dispute between the UEF and Seipel must follow the procedure mandated by § 39-71-506, MCA.

¶ 11 Notwithstanding Seipel’s dismissal from this action as a putative Respondent, it bears noting that § 39-71-517, MCA, requires all pleadings and papers to be served on the Department and any alleged uninsured employers whether or not they are parties to the litigation. The parties are ordered to serve all pleadings on Seipel. In light of the potential liability that Seipel may ultimately incur, Seipel may wish to be heard in the pending dispute as an intervenor. I see nothing in the statutory scheme that would preclude such involvement. The Court will entertain a motion to intervene if Seipel chooses to participate in the pending dispute between Petitioner and the UEF in that capacity.

¶ 12 Among the pending motions which this Order resolves are Seipel’s motion to quash subpoenas served by Petitioner, and Petitioner’s motion to compel Seipel’s compliance with the subpoenas. While these motions are now denied, nothing in this Order precludes Petitioner from serving those subpoenas against Seipel as a private party. Furthermore, the issues which precipitated the stay of proceedings issued in this case are now rendered moot, and therefore, the stay is lifted.

pursuing an independent cause of action pursuant to 39-71-515 shall bring the action in the district court The court may request the workers’ compensation judge to determine the amount of recoverable damages due to the employee.”

⁷ 1998 MTWCC 50, ¶ 6.

⁸ 1998 MTWCC 50.

ORDER

¶ 13 The Court's May 14, 2008, stay of proceedings in this matter is **LIFTED**.

¶ 14 Foothills Research Institute, LLC, Market Research Group, and Joseph Seipel are **DISMISSED** from this case.

¶ 15 All pending motions in this case are **DENIED**.

¶ 16 All discovery disputes concerning Seipel are vacated as moot since Seipel is not a party to this action.

¶ 17 The caption is hereby amended to reflect the parties as: Matthew R. Raymond, Petitioner, vs. Uninsured Employers' Fund, Respondent.

¶ 18 Pursuant to § 39-71-517, MCA, Petitioner and Respondent shall continue to serve all pleadings and all other litigation papers upon any alleged uninsured employers.

¶ 19 The alleged uninsured employers may move to intervene in this matter within 10 days from the issuance of this Order.

¶ 20 Petitioner and Respondent will confer regarding a special trial setting date and this matter will be specially set in Great Falls. A new scheduling order will then issue.

DATED in Helena, Montana, this 19th day of September, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA

JUDGE

c: J. Kim Schulke
Arthur M. Gorov
Joseph Seipel
Submitted: June 20, 2008