

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 7

WCC No. 2007-2021

MATTHEW R. RAYMOND

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent.

ORDER DENYING UNINSURED EMPLOYERS' FUND'S MOTION FOR LEAVE TO
FILE A THIRD-PARTY PETITION

Summary: In previous Orders, this Court dismissed the alleged uninsured employers as parties to this litigation because the Uninsured Employers' Fund had not fulfilled the due process requirements of § 39-71-2401, MCA, and the departmental procedure set forth in § 39-71-506, MCA. The Court then denied the UEF's motion for reconsideration. The UEF now moves the Court for leave to file a third-party petition against the alleged uninsured employers.

Held: Since the UEF has not demonstrated that it has fulfilled the requirements of §§ 39-71-506, -2401, MCA, its motion for leave to file a third-party petition against the alleged uninsured employers is denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-506. UEF's motion to file a third-party petition against the alleged uninsured employers is denied where the UEF has apparently not followed the statutory procedure set forth in § 39-71-506, MCA.

Uninsured Employers' Fund: Indemnification. UEF's motion to file a third-party petition against the alleged uninsured employers is denied where the UEF has apparently not followed the statutory procedure set forth in § 39-71-506, MCA.

Procedure: Joining Third Parties. UEF's motion to file a third-party petition against the alleged uninsured employers is denied where the UEF has apparently not followed the statutory procedure set forth in § 39-71-506, MCA.

¶ 1 Respondent Uninsured Employers' Fund (UEF) has moved this Court for leave to file a third-party petition against the alleged uninsured employers in this matter and to reschedule the trial.¹ Petitioner Matthew R. Raymond has filed a brief in opposition to the UEF's motion.² The trial in this matter has been rescheduled and therefore the UEF's motion in regard to rescheduling the trial is moot.

¶ 2 As set forth in previous Orders in this case,³ the alleged uninsured employers were dismissed from the present case after I concluded that, notwithstanding the provisions of ARM 24.5.307A, which allowed for the joinder of an uninsured employer to an action involving entitlement to UEF benefits, uninsured employers cannot be joined as a matter of course without following the statutory procedure set forth in § 39-71-506, MCA, which in turn requires that the due process requirements of § 39-71-2401(2)-(3), MCA, must be satisfied.

¶ 3 The UEF now seeks leave to file a third-party petition against the alleged uninsured employers. In its brief in support of its motion, the UEF does not assert that it has followed the statutory procedure set forth in § 39-71-506, MCA. Since the UEF has not followed the statutory procedure, its motion to file a third-party petition is denied.

ORDER

¶ 4 Respondent's motion for leave to file a third-party petition is **DENIED**.

¶ 5 Respondent's motion to reschedule the trial is **DENIED AS MOOT**.

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

¹ Uninsured Employers' Fund's Motion for Leave to File a Third Party Petition and to Reschedule Trial, Docket Item No. 117.

² Petitioner's Answer Brief in Opposition to UEF's Motion for Leave to File Third Party Petition, Docket Item No. 120.

³ See 2008 MTWCC 45 and 2008 MTWCC 52.

DATED in Helena, Montana, this 20th day of February, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: J. Kim Schulke
Arthur M. Gorov
Joe Seipel (courtesy copy)
Submitted: January 12, 2009