

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 52

WCC No. 2006-1625

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BARRY SHELLEY

Petitioner

vs.

AMERICAN HOME ASSURANCE COMPANY

Respondent/Insurer.

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ORDER GRANTING RESPONDENT/INSURER'S MOTION TO DISMISS

**Summary:** Respondent moves for dismissal of the petition in this case because it alleges that Petitioner failed to file a written claim for benefits within a year of when he knew or should have known that he suffered from an occupational disease and therefore Petitioner's claim is untimely pursuant to § 39-71-601, MCA (2005). Petitioner responds that he did not need treatment for his condition until 2005, and therefore the statute of limitations did not begin to run until that point.

**Held:** Respondent's motion is granted. Petitioner filed a district court action in 2001 alleging that he suffered from an asbestos-related condition as a result of his employment with Respondent's insured. However, he did not file an occupational disease claim until January 2006. The fact that Petitioner alleged he did not exhibit symptoms or require treatment for his condition until December 2005 does not negate the fact that he knew at least as early as the time when he filed the district court action that he suffered from a work-related occupational disease.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-601.** Where Petitioner argued that under *Corcoran v. Montana Schools Group Ins. Authority*, 2000 MTWCC 30, the one year statute of limitation period was not triggered until he required treatment, the Court held that § 39-71-601, MCA, does not require the presence of symptoms to commence the statute of limitations. Petitioner's complaint filed

in district court in 2001 alleging that he suffered from an asbestos-related condition as a result of his employment with Respondent's insured triggered the statute of limitations because this establishes that Petitioner knew he suffered from an occupational disease as of that date.

**Limitations Periods: Claim Filing: Occupational Disease.** Where Petitioner argued that under *Corcoran v. Montana Schools Group Ins. Authority*, 2000 MTWCC 30, the one year statute of limitation period was not triggered until he required treatment, the Court held that § 39-71-601, MCA, does not require the presence of symptoms to commence the statute of limitations. Petitioner's complaint filed in district court in 2001 alleging that he suffered from an asbestos-related condition as a result of his employment with Respondent's insured triggered the statute of limitations because this establishes that Petitioner knew he suffered from an occupational disease as of that date.

**Limitations Periods: Occupational Disease.** Where Petitioner argued that under *Corcoran v. Montana Schools Group Ins. Authority*, 2000 MTWCC 30, the one year statute of limitation period was not triggered until he required treatment, the Court held that § 39-71-601, MCA, does not require the presence of symptoms to commence the statute of limitations. Petitioner's complaint filed in district court in 2001 alleging that he suffered from an asbestos-related condition as a result of his employment with Respondent's insured triggered the statute of limitations because this establishes that Petitioner knew he suffered from an occupational disease as of that date.

¶ 1 Respondent American Home Assurance Company moves the Court to dismiss Petitioner's Petition for Hearing in this matter.<sup>1</sup> Petitioner Barry Shelley responds, arguing that the Court should not dismiss his Petition for Hearing.<sup>2</sup> The parties presented oral arguments before this Court, at which time I orally ruled that Respondent's motion to dismiss would be granted and explained my grounds for so ruling. The following Order sets forth my reasoning for that decision.

¶ 2 Respondent alleges that Petitioner's claim for occupational disease benefits was untimely as it was not filed until January 30, 2006, while Petitioner unequivocally knew as

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<sup>1</sup> Respondent/Insurer's Motion to Dismiss Petition for Hearing with Prejudice and Supporting Brief ("Motion" to Dismiss), Docket Item No. 9.

<sup>2</sup> Petitioner's Response to Respondent's Motion to Dismiss ("Response"), Docket Item No. 12.

early as 2001 that he was suffering from a lung disease caused by his employment.<sup>3</sup> Respondent points to the requirements of § 39-71-601(3), MCA (2005), which states, in pertinent part:

When a claimant seeks benefits for an occupational disease, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant's condition resulted from an occupational disease.

¶ 3 In the present case, Respondent points out that Petitioner filed an Amended Complaint and Jury Demand in the Montana Eighth Judicial District Court, Cascade County, on July 19, 2001, in which Petitioner alleged causes of actions against his former employers at the aluminum facility where he worked. Respondent's insured was one of the identified employers. In his amended complaint Petitioner alleged, among other things, that he suffered harmful exposures to asbestos, resulting in lung disease, while employed at the aluminum facility.<sup>4</sup>

¶ 4 Petitioner responds that he did not have knowledge of an occupational disease prior to December 2005, but that even if he did, the statute of limitations was not triggered until he required treatment for his condition. Petitioner points to the Court's analysis in *Corcoran v. Montana Schools Group Ins. Authority*<sup>5</sup> in which the Court held that the claimant had to have "some specific knowledge of a specific pathological condition stemming from employment and requiring diagnosis or treatment."<sup>6</sup> Petitioner alleges that in 2001, when he filed the district court action, he was not suffering any symptoms associated with his occupational disease and, since there was no "condition" needing diagnosis or treatment, the statute of limitations did not begin to run until he sought treatment in December 2005.<sup>7</sup>

¶ 5 Respondent replies that § 39-71-601, MCA, does not require that a claimant require a diagnosis or treatment for the statute of limitations to commence, especially in

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<sup>3</sup> Respondent further argued that in 1998, Petitioner was evaluated for asbestos exposure and received a report that indicated a clinical diagnosis of asbestosis. Petitioner claims he was never advised of the results of that screening. Since my decision in this matter is not based upon the 1998 report, it will not be addressed within this Order.

<sup>4</sup> Motion to Dismiss, Statement of Uncontested Facts, ¶ 3.

<sup>5</sup> *Corcoran*, 2000 MTWCC 30, ¶ 53.

<sup>6</sup> *Corcoran* was decided under § 39-72-403, MCA (1995-1999), which has been repealed and its requirements incorporated into § 39-71-601, MCA (2005), the statute which applies to the present case.

<sup>7</sup> Response at 2-3.

circumstances such as here where Petitioner already has knowledge of his claimed disease.<sup>8</sup> I agree.

¶ 6 *Corcoran* is distinguishable from the present case. In *Corcoran*, the claimant had symptoms but did not know that she had a disease because, as this Court reasoned, “Awareness of pain, and awareness that the pain is a result of work does not constitute knowledge that one suffers from an ‘occupational disease,’ as that term is defined in the Occupational Disease Act.”<sup>9</sup> This case is essentially the opposite of *Corcoran*. In the present case, Petitioner’s amended complaint unambiguously demonstrates that he knew he was suffering from an occupational disease as a result of his employment despite the fact that he was not experiencing symptoms. Section 39-71-601, MCA, does not require the presence of symptoms to commence the statute of limitations. What is required under the statute is that a claimant knows or should know that his condition is the result of an occupational disease.

¶ 7 In the 2001 amended complaint which Petitioner filed in district court, Petitioner alleged that he suffered from asbestosis, that it resulted from his employment with Respondent’s insured, and that he be awarded compensatory damages.<sup>10</sup> This establishes that Petitioner knew he was suffering from an occupational disease, thereby triggering the running of the statute of limitations under § 39-71-601, MCA. Respondent’s motion to dismiss is well-taken.

#### ORDER

¶ 8 Respondent’s motion to dismiss is **GRANTED**.

¶ 9 Petitioner’s petition is **DISMISSED WITH PREJUDICE**.

¶ 10 This ORDER is certified as final for purposes of appeal.

¶ 11 Any party to this dispute may have twenty days in which to request reconsideration of this ORDER.

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<sup>8</sup> Respondent/Insurer’s Reply Brief in Support of Motion to Dismiss Petition for Hearing with Prejudice at 3. Docket Item No. 17.

<sup>9</sup> *Corcoran*, 2000 MTWCC 30, ¶ 52.

<sup>10</sup> Amended Complaint and Jury Demand, attached as Exhibit 2 to Motion to Dismiss, ¶¶ 57, 70, 98-102.

DATED in Helena, Montana, this 6<sup>th</sup> day of December, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Laurie Wallace  
Oliver H. Goe  
Submitted: December 14, 2006