

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 6

WCC No. 9311-6933

MICHAEL S. BOHMER

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Insurer for

RAY LYBECK, individually, and LYBECK'S DAIRY,
a/k/a LYBECK FARM, Uninsured Employer

Respondent.

ORDER DISMISSING PETITION

The petitioner (Bohmer) is or was an employee of respondent (Lybeck's). Bohmer was injured at work on February 5, 1992. Lybeck's did not have workers' compensation insurance, so Bohmer thereafter commenced an action for damages in the Eleventh Judicial District Court for Flathead County. On October 18, 1993, the action was stayed "pending determination by the Worker's Compensation Court of the extent of the Plaintiff's injury and the damages to which he would be entitled under Section 39-71-515, MCA." Bohmer then petitioned this Court, asking that it determine what is due him. Lybeck's responded by filing a motion to dismiss, asserting that the Workers' Compensation Court lacks jurisdiction over the subject matter.

The District Court did not determine the jurisdictional issue. On November 18, 1993, Judge Ted O. Lympus entered an Order expressly reserving that issue for this Court. The Order reads in relevant part:

[T]he Court will stay the proceedings and vacate the trial pending determination of the Workermans' [sic] Compensation Court of the extent of the Plaintiff's injury and damages to which he would have been entitled under Section 39-71-515 M.C.A. **or determination that the Workermans' [sic] Compensation does not have jurisdiction to act in this matter.** [Emphasis added.]

The motion to dismiss is therefore properly considered at this time.

The Montana Workers' Compensation Act requires employers to maintain workers' compensation insurance coverage for employees, section 39-71-401, MCA, and authorizes the Workers' Compensation Court to adjudicate disputes relating to benefits under the Act, section 39-71-2905, MCA. In *State v. Hunt*, 191 Mont. 514, 625 P.2d 539 (1981), the Montana Supreme Court held that the Workers' Compensation Court has exclusive jurisdiction over disputes concerning benefits, even where they involve allegedly uninsured employers. In that case the alleged uninsured employer (Walker) petitioned this Court for a determination that the claimant (Beebe) was either an independent contractor or an employee of someone else. The Uninsured Employers' Fund, which had accepted Beebe's claim, brought an action in District Court against Walker for reimbursement of the amounts it had paid Beebe, and then petitioned the Supreme Court for a writ of prohibition against the Workers' Compensation Court judge, arguing that he had no jurisdiction to determine Walker's status. The writ was denied and the matter remanded to the Workers' Compensation Court for it to determine liability and benefits.

Hunt was decided in 1981. At that time employees of uninsured employers could elect to either receive benefits from the Uninsured Employers' Fund or pursue a tort action against the employer. See *Boehm v. Alanon Club*, 222 Mont. 373, 376, 722 P.2d 1160 (1986). If the employee chose to sue the employer, she/he was required to prove that some fault or breach of duty by the employer proximately caused his or her injury; the failure to provide insurance coverage was not a basis for imposing liability on the employer. *Id.*

In 1985 the legislature enacted section 39-71-515, MCA. Section 39-71-515 created a new cause of action against the employer, "imposing liability simply on the basis of the failure of the employer to be enrolled in a workers' compensation plan on the date of injury." *Boehm*, 222 Mont. at 377. The damages recoverable in such an action "is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3." Section 39-71-515 (4), MCA. Thus, the section permits the injured worker to recover his workers' compensation benefits directly from the uninsured employer.

The 1985 Legislature enacted a companion section which provides that the action "must" be brought "in the district court in the district where the claimant resides or where the alleged violation occurred." Section 39-71-516, MCA. It also amended section 39-71-2905, MCA, to exempt cases brought in District Court under section 39-71-516 from the Workers' Compensation Court's exclusive jurisdiction. As amended, section 39-71-2905 provides in relevant part:

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute **the workers' compensation judge has exclusive jurisdiction to make**

determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. . . . [Emphasis added.]

On its face section 39-71-2905 does not preclude this Court from exercising jurisdiction over disputes concerning benefits due a claimant from an uninsured employer; it only states that the Court does not have "exclusive" jurisdiction when an independent action has been brought by the claimant in District Court. I must therefore determine whether there is concurrent jurisdiction which would allow me to determine the benefits due in the case which is pending in District Court.

In making that determination I am guided by the principle that all provisions of a statute must be coordinated and harmonized, if possible. *McClanathan v. Smith*, 186 Mont. 56 61, 606 P.2d 507 (1980). I must therefore consider and harmonize section 39-71-516, which provides in full:

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 **must bring such action in the district court** in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. [Emphasis added.]

The plain words of this section preclude a claimant from bringing an independent action anywhere other than the District Court. "Must" in its ordinary sense is mandatory, and nothing in the statute suggests that the term is meant in any other sense.

The only prerequisites to the District Court's exercise of jurisdiction under section 39-74-516, MCA, are set forth in section 39-71-515(2), MCA, which provides:

39-71-515. Independent cause of action. . . .

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

- (a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and
- (b) the employer was not so enrolled on the date of the injury or death.

In its response filed with this Court, Lybeck's admits that it was an uninsured employer at the time of the alleged injury and it claims no exemption from the insurance requirements. Thus, it is clear that the District Court has jurisdiction to adjudicate Bohmer's action.

Having acquired jurisdiction over this dispute, the District Court has exclusive jurisdiction because of the rule which provides that the court first acquiring jurisdiction "retains jurisdiction for the purpose of disposing of the whole controversy, and no court of co-

ordinate power is at liberty to interfere with its action." *State ex rel Swanson v. District Court*, 107 Mont. 203, 206, 82 P.2d 779 (1938). The extent of Bohmer's injuries and entitlement to benefits are an integral part of his action. The District Court must therefore determine their amount.

There are compelling reasons for conferring jurisdiction on this Court to determine the benefits due Bohmer. This is a specialized Court with expertise in making such determinations. *Cf. Profitt v. J.G. Watts Construction Co.*, 140 Mont. 265, 273, 370 P.2d 878 (1962). With the exception of independent actions commenced pursuant to sections 39-71-515 and 516, its authority to determine the amount of benefits, and to resolve issues concerning uninsured employers, is unaffected. However, the legislature has spoken and its mandate must be followed.

IT IS HEREBY ORDERED THAT Lybeck's motion to dismiss is therefore granted and the petition is dismissed.

DATED in Helena, Montana, this 21st day of January, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Laurie Wallace

Mr. Daniel B. McGregor

Mr. Richard DeJana

Judge Ted O. Lympus - Courtesy Copy