IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 2

WCC No. 2001-0424

LAUNE BAUER

Petitioner

vs.

C.N.A. COMMERCIAL INSURANCE

Respondent/Insurer for

ANDERSON STEEL

Employer.

APPEALED 3/8/02 DISMISSED BY STIPULATION OF THE PARTIES 6/4/02

SUMMARY JUDGMENT

Summary: Claimant entered into a lump-sum settlement with the insurer but thereafter brought the present petition seeking payment of past medical bills in addition to the amounts paid pursuant to the settlement. The insurer moves for summary judgment.

Held: Summary judgment granted. The settlement agreement is plain on its face and closes the claim and releases the insurer of further liability. Even if the agreement were deemed ambiguous, the parties' negotiations show that they intended the past medical expenses to be encompassed in the lump sum.

Topics:

Settlements: Interpretation. A settlement agreement is a contract and must be construed in accordance with ordinary rules governing the interpretation of contracts.

Settlements: Interpretation. A settlement agreement which is plain on its face must be applied as written.

Settlements: Interpretation. A settlement agreement which closes the claim and releases the insurer from further liability bars any further claim for past medical benefits.

¶1 The matter at issue involves interpretation of a settlement agreement reached by the parties in March 2001 and approved by the Department of Labor and Industry on March 7, 2001.

¶2 The agreement in question, entitled PETITION FOR SETTLEMENT Permanent Partial Disability, is attached to Respondent's Brief in Support of Its Motion for Summary Judgment as Exhibit F. It is short and I therefore reproduce it below in its entirety:

BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY

EMPLOYMENT RELATIONS DIVISION

P.O. BOX 8011

HELENA, MT 59604-8011

PETITION FOR SETTLEMENT

Permanent Partial Disability

Laune Bauer

Claimant

Anderson Steel

Employer Insurer Claim #: 19-802909W3 & 19-802877W3

C.N.A. Commercial Insurance Claimant's SS #: xxx-xx-xxxx

Insurer

The claimant suffered a work-related injuries occurring on June 6, 2000 and June 13, 2000 to his left shoulder and right elbow. The insurer initially accepted liability for his shoulder condition, but has since disputed the entire claim. The claimant and the insurer have agreed to settle this dispute for the sum of THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS and NO/100's ($37,500.00) of new money. This settlement shall be paid in a lump sum and in addition to all previously paid benefits.

The claimant and insurer petition the Department of Labor & Industry for approval of this settlement allowing the claim to be fully and finally closed. **Further medical and hospital benefits are expressly hereby closed. Further rehabilitation benefits are hereby closed.** The **claimant understands** that by entering into a settlement, both the insurer and claimant agree to assume the risk that the condition of the claimant, as indicated by reasonable investigation to date, may be other than it appears, or may change in the future. The **claimant**, in signing and submitting this Petition to the Department of Labor & Industry, **further understands** that if this Petition is approved, the insurer is forever released from payment of compensation under the Workers' Compensation Act for the injury specified

above. The **claimant understands** that this petition represents a settlement and, if approved, may not be reopened by the Department.
***Special Provisions: Further medical and hospital benefits are hereby closed.**
*** Rehabilitation Provisions: Further rehabilitation benefits are hereby closed.**

\s\ Laune Bauer 3-1-01 \s\ Mel

Claimant's Signature Date Witness Signature

Address: 86 Woodland Estates Rd

Great Falls MT 59404

The insurer concurs and joins in the Petition for Settlement.

\s\ Todd A. Hammer 3-6-01

Authorized Representative Date Signed

ORDER

The Department of Labor and Industry hereby orders that the above settlement is approved.

Dated the 15th day of March, 2001.

\s\ Barb Gullickson
Signature of Authorized Department Representative

The claimant signed the petition on March 1, 2001, and the insurer signed it March 6, 2001. The Department approved it on March 15, 2001.

¶3 Petitioner claims that under the terms of the settlement agreement, and in addition to the lump-sum payment, he is entitled to payment of unpaid medical expenses incurred prior to its execution. Respondent moves for summary judgment, asserting that the past medical bills are encompassed in and barred by the agreement.

¶4 Summary judgment will be granted where the uncontroverted material facts require judgment as a matter of law. ARM 24.5.329; *Schelske v. Creative Nail Design, Inc.*, 280 Mont. 476, 482, 933 P.2d 799, 802 (1997). It may even be granted to the party opposing the motion. A formal cross-motion is not required for the Court to grant summary judgment to the non-moving party, as long as "the original movant had a full and fair opportunity to meet the proposition" and the other party is entitled to judgment as a matter of law. *Hereford v. Hereford*, 183 Mont. 104, 107-8, 598 P.2d 600, 602 (1979).

¶5 Analysis of the issue presented begins by examining the face of the settlement agreement. The agreement is a contract between the parties. *Kienas v. Peterson,* 191 Mont. 325, 328, 624 P.2d 1, 3 (1980). The claimant correctly points out that where a contract is

reduced to writing it supercedes any prior oral negotiations. As set forth in section 28-2-904, MCA, "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." Thus, if the agreement is unambiguous, the Court must apply the agreement written, *Peterson v. Hopkins,* 210 Mont. 429, 434, 684 P.2d 1061, 1063 (1984), and cannot consider parol evidence contradicting or modifying the agreement. *Bunke, Inc. v. Johnson,* 205 Mont. 125, 137, 666 P.2d 1234, 1240 (1983). On the other hand, if the contract is ambiguous, the Court must determine the parties' intent. In doing so it may look at the extrinsic circumstances surrounding the execution of the contract, including contemporaneous and prior oral agreements between the parties. *Carelli v. Hall*, 279 Mont. 202, 209, 926 P.2d 756, 761 (1996).

¶6 Petitioner alleges that the closure of "future medical and hospital benefits" plainly shows that the parties intended that respondent pay for all past medical care. That provision, however, says nothing about past medical care, or any other past benefits for that matter, and cannot be read in isolation of other provisions of the agreement. The agreement also provides that in return for payment of $37,500, the "insurer is forever released from payment of compensation under the Workers' Compensation Act" and further requests the Department of Labor to approve "this settlement allowing the claim to be fully and finally closed." On its face, this language is unequivocal and comprehensive, precluding any further claim for benefits of any sort. Thus, claimant is on the wrong end of the sword in arguing that the Court should look only to the agreement.

¶7 Even if I were to give special significance to the closure of future medical benefits as opening the door to a possible claim for an extra-contractual claim for past medical benefits, such interpretation would only create ambiguity in light of the other provisions finally closing the claim and comprehensively releasing the claimant. Any such ambiguity must be resolved against petitioner. Respondent has provided the Court with uncontroverted affidavits and documents showing that the lump sum payment was intended to cover the past medical expenses which the petitioner is now seeking. Indeed the medical expenses encompassed within the lump-sum payment were expressly set out in the initial settlement offer. (Ex. A to Affidavit of Todd A. Hammer.)

ORDER AND JUDGMENT

¶8 Based upon the uncontroverted material facts presented to the Court, the respondent is entitled to judgment as a matter of law. According, it is ordered and adjudged that the petition be and is hereby **dismissed with prejudice**.

DATED in Helena, Montana, this 7th day of January, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Todd A. Hammer
Submitted: December 20, 2001