

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 51

WCC No. 9707-7778

DWIGHT E. DAHL, d/b/a BIG SKY CONCRETE

Appellant

vs.

UNINSURED EMPLOYERS' FUND

Respondent.

ORDER DENYING REQUEST FOR RECONSIDERATION

¶1 On May 12, 1998, this Court entered its Order on Appeal reversing a determination that held, in effect, that appellant, Dwight E. Dahl, was an uninsured employer. Since Dahl had procured and paid for workers' compensation insurance through Olsten's Temporary Services, I found that he met the requirement that he provide insurance coverage for his employees.

¶2 The Uninsured Employers Fund (UEF) requests that I reconsider my Order. The request is denied.

¶3 The UEF initially agrees with my "rationale that a particular methodology of securing insurance is not mandated by the statute [§ 39-71-401, MCA]." (Respondent's Request for Amendment or Reconsideration and Supporting Brief at 2.) However, it argues that the statute requires the Court to determine who is the employer. (Id.) It further argues that "public policy reasons" require a different result. (Id.) Specifically, it argues that if an employer can use a temporary employment agency to procure workers' compensation for its employees, then it can evade higher premiums based on its loss experience, thus passing costs onto other employers, whose premiums will increase. Finally, it argues that Olsten's insurance policy did not in fact provide coverage for Dahl's workers because they were not temporary employees.

¶4 I reiterate here what I said in the original Order. Section 39-71-401, MCA, does not require that workers' compensation insurance be procured in the employer's name; it requires only that the employer secure a policy of insurance which protects its employees.

Irrespective of public policy considerations, the Court cannot amend the statute. See *Russette v. Chippewa Cree House. Auth.*, 265 Mont. 90, 93-94, 874 P.2d 1217, 1219 (1994).

¶5 Moreover, it is not at all clear that this Court's Decision will unjustifiably increase premiums of other employers. Compensable injuries suffered by workers laboring for Dahl would presumably increase Olsten's experience rating and result in increased premiums charged to Olsten's, which would then be passed on to Dahl.

¶6 The UEF's contention that Olsten's insurance policy did not cover the workers furnished to Dahl is unsupported by the record presented to the Court. In Finding of Fact 11, the Department's hearing examiner specifically held:

In fact, all workers supplied to the petitioner [Dahl] by Olsten's were at all times covered by workers' compensation insurance through Hartford Insurance Company, the policy for which was in the name of and the premiums for which were paid by Olsten's.

The UEF did not appeal that finding, and it is binding on the Court. Furthermore, Hartford was paid premiums for its coverage of those workers. It is unlikely, short of fraud, that Hartford can evade liability for the covered workers.

¶7 The UEF's request for amendment or reconsideration is denied.

DATED in Helena, Montana, this 16th day of June, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Stephen A. Doherty

Mr. Daniel M. McGregor

Date Submitted: June 10, 1998