

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 41

WCC No. 2003-0762

TRAVELERS INDEMNITY COMPANY OF CONNECTICUT

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer

and

MONTANA STATE FUND

Third-Party Petitioner

vs.

TIMOTHY L. FELLER

Third-Party Respondent.

ORDER DENYING MOTION TO JOIN

Summary: Insurer which alleges it erroneously accepted liability for a claim which is the responsibility of the Montana State Fund, seeks to join the employer, alleging that the employer is guilty of negligent misrepresentation.

Held: Motion denied. The Workers' Compensation Court does not have jurisdiction over tort actions. Moreover, the insurer has an adequate remedy in district court.

Topics:

Jurisdiction: Subject Matter Jurisdiction. The Workers' Compensation Court lacks subject matter jurisdiction over tort actions. [Liberty Northwest v. State Compensation Ins. Fund](#), 1998 MT 169, ¶ 10, 289 Mont. 475, 962 P.2d 1167.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: Section 39-71-2905, MCA (2001). The Workers' Compensation Court lacks subject matter jurisdiction over tort actions. [Liberty Northwest v. State Compensation Ins. Fund](#), 1998 MT 169, ¶ 10, 289 Mont. 475, 962 P.2d 1167.

¶1 Before the Court is the motion of petitioner, Travelers Indemnity Company of Connecticut (Travelers), to join Elliott Valve Limited (Elliott Valve) as a party to this proceeding. Elliott Valve is the alleged employer of Timothy L. Feller, who was injured at work on December 31, 2001. Travelers was notified of the injury, accepted liability for it, and paid benefits to Feller. According to its petition it subsequently determined that it did not insure Elliott Valve in Montana, rather the State Fund did.

Discussion

¶2 Travelers' motion to join Elliott Valve is based on the factual allegation that

Bob Walter, an agent of Elliott Valve Limited, notified Travelers of Timothy L. Feller's claim. However, Mr. Walter should have informed the Montana State Fund which provided workers' compensation coverage to Elliott Valve Limited for the State of Montana.

(Motion for Joinder and Supporting Memorandum at 2, ¶ 6; Travelers Indemnity Company of Connecticut's Third Party [Proposed] Petition for Relief, ¶¶ 6, 7.) The legal relief sought appears based on the legal theory of "negligent misrepresentation." The motion and proposed third-party petition state:

As the original notification of the claim to Travelers was made by an Elliott Valve agent, if Travelers is not successful in obtaining reimbursement from the proper insurer, State Fund, for the benefits that it had paid out to Mr. Feller based upon that mis-notification, then Travelers would seek reimbursement for those amounts from Elliott Valve Limited for its negligent misrepresentation.

(Motion for Joinder and Supporting Memorandum at 3, ¶ 10; Travelers Indemnity Company of Connecticut's Third Party [Proposed] Petition for Relief, ¶ 10.)

¶3 Travelers argues for joinder because it believes complete relief cannot be accorded among the current parties without the presence of Elliott Valve. Travelers cites Workers' Compensation Court Rule 24.5.308(1), which provides that "joinder of parties shall be governed **where appropriate** by the considerations set forth in Rules 14, 19, 20, and 21 of the Mont. R. Civ. P." (Emphasis added.) Relying on Mont. R. Civ. P. 19, Travelers claims that Elliott Valve is interested in the subject of this action and that "Travelers could be subjected to a substantial risk of having to pay for an obligation which is inconsistent with the principles of insurance law and contract law (if the State Fund is successful in denying liability for the benefits paid by Travelers)." (Motion for Joinder and Supporting Memorandum at 3.) Citing Mont. R. Civ. P. 20, Travelers also argues that "Elliott Valve should be made a party to this action, as there are questions of law and fact common to all parties arising from this series of events." (*Id.*)

¶4 Travelers' arguments are without merit. If its allegations state any claim for relief at all against the employer, that claim lies in tort. The claim is for "negligent misrepresentation," a

tort in Montana. See, e.g., *Yellowstone Development Group, Inc. v. First American Title Ins. Co.*, 2001 MT 41, ¶ 78, 304 Mont. 223, 247, 20 P.3d 755, 772 (2001) and *May v. ERA Landmark Real Estate of Bozeman*, 2000 MT 299, ¶ 60, 302 Mont. 326, 342, 15 P.3d 1179, 1188 ("This Court has long recognized the common law tort of negligent misrepresentation."). The Workers' Compensation Court does not have subject matter jurisdiction over tort claims. *Liberty Northwest v. State Compensation Ins. Fund*, 1998 MT 169, ¶ 10, 289 Mont. 475, 962 P.2d 1167. Moreover, contrary to Travelers' assertions, failure to join Travelers does not impair any cause of action it may have against Elliott Valve. If its request for indemnification from the Montana State Fund is denied, it still may pursue its tort claim in district court.

ORDER

¶5 The motion to join Elliott Valve is **denied**. Travelers Indemnity Company of Connecticut's Third Party Petition for Relief submitted by Travelers and lodged with the Clerk of this Court shall be returned to Travelers.

¶6 SO ORDERED.

Dated in Helena, Montana, this 11th day of June, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Thomas A. Marra/Ms. Sara R. Sexe (w/enclosure)

Mr. Curtis E. Larsen

Mr. Rick Herrman

Mr. Timothy L. Feller

Submitted: June 3, 2003