

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 36

WCC No. 2000-0021

SAMUEL J. GRENZ,

Petitioner,

vs.

FIRE & CASUALTY OF CONNECTICUT,

Respondent/Insurer for

AMERICAN STUD COMPANY,

Employer.

SUMMARY JUDGMENT

Samuel Grenz v. Fire & Casualty of Connecticut aff'd 2001 MT 8.

Summary: Pro se claimant having filed numerous (at least 13) petitions in this Court, several cases in district court, and at least eight appeals in the Supreme Court, filed another case alleging insurer is liable to him relating to work injuries. Insurer moved for summary judgment on ground res judicata.

Held: Res judicata bars this petition where claimant makes the identical contentions made in previous cases.

Topics:

Samuel Grenz v. Fire & Casualty of Connecticut aff'd 2001 MT 8. **Defenses: Res Judicata.** Pro se claimant's estoppel arguments are rehashing of previously litigated claims and subject to summary judgment on ground of res judicata.

Defenses: Res Judicata. The doctrine of res judicata bars a party from relitigating a matter he or she has already had an opportunity to litigate. Once there has been a full opportunity to present an issue for judicial decision in a given proceeding, the determination of the court in that proceeding must be accorded finality as to all issues raised or which fairly could have been raised, else judgments might be attacked piecemeal without end. Res judicata has four elements: (1) the parties or their privies are the same; (2) the subject matter of the claim is the same; (3) the

issues are the same and relate to the same subject matter; (4) the capacities of the parties are the same in reference to the subject matter and the issues.

¶11 The present petition is another in the seemingly unending cases prosecuted by petitioner Grenz. The history of his prior cases is summarized most recently in *Grenz v. Fire & Casualty of Connecticut*, 1999 MTWCC 70 (November 9, 1999), as follows:

Grenz has been pursuing benefits since 1984, when he filed a claim for an elbow injury. He later alleged that his elbow injury and subsequent microtrauma caused degenerative arthritis affecting numerous parts of his body. Those claims, pursued under the Workers Compensation Act, were rejected. *Grenz v. Fire and Casualty of Connecticut*, 250 Mont. 373, 820 P.2d 742 (1991) (*Grenz I*); *Grenz v. Fire and Casualty of Connecticut*, 260 Mont. 60, 857 P.2d 730 (1993) (*Grenz III*).

Grenz also pursued an OD claim based on alleged microtrauma occurring **subsequent** to his 1984 injury. That claim was rejected as untimely. *Grenz v. Fire and Casualty of Connecticut*, 278 Mont. 268, 924 P.2d 264 (1996) (*Grenz IV*).

Grenz then pursued his present case, alleging that he is entitled to OD benefits under his original 1984 claim. The Department dismissed the claim on *res judicata* grounds. I reversed. Noting that Grenz's prior OD claim had alleged an OD arising **subsequent** to his 1984 claim, I held that the dismissal of that claim did not resolve his current claim for OD benefits under the 1984 claim. The Supreme Court affirmed in an unpublished decision. 1998 MT 35N (*Grenz V*).

(1999 MTWCC 70 at 1-2.) In each of the decisions, Grenz's demands for benefits with respect to his degenerative arthritis have been denied.⁽¹⁾

¶12 In his latest petition, Grenz alleges that the insurer is liable for benefits because it initially paid benefits with respect to his original August 27, 1984 claim for compensation. He contends that the insurer occupied a position of trust with respect to his claim and that, apparently on account of the payments, it should be estopped from denying liability.

¶13 The insurer moves for summary judgment based on statutes of limitations, prior judgments in Grenz's cases, and an oral settlement agreement reached in connection with Grenz's appeal of my 1999 decision.⁽²⁾ The motion has been briefed and is ready for decision.

¶14 Summary judgment may be granted only where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." ARM 24.5.329(2) and Rule 56(c) Mont.R.Civ.P. In this case, I need only consider the pleadings in this case and prior court decisions and judgments in reaching a decision. Those matters are not subject to factual dispute.

¶15 In *Grenz v. Fire and Casualty of Connecticut*, 250 Mont. 373, 820 P.2d 742 (1991) (*Grenz I*), Grenz argued that the insurer's payment of benefits for over five years constituted a waiver of its right to deny him benefits for his degenerative arthritis and psychological condition. The Montana Supreme Court rejected his argument:

The claimant also argues that because the insurer assumed liability in this case and paid benefits to him for over five years, the insurer waived its right to deny his claim for benefits. We disagree. Section 39-71-608, MCA (1983), provides that:

"An insurer may, after written notice to the claimant and the division, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense."

It is clear that under the particular facts of this case, the insurer accepted liability for the 1984 right elbow injury and paid workers' compensation benefits to the claimant. However, under § 39-71-608, MCA (1983), the insurer, by making such payments, did not waive its right to subsequently assert nonliability for the claimant's condition insofar as it was not causally related to the elbow injury.

250 Mont. at 381, 820 P.2d at 747. While Grenz now couches his argument in terms of estoppel, which is a doctrine related to waiver, the substance of his argument is the same in this case as *Grenz I*.

¶16 In *Grenz v. Fire and Casualty of Connecticut*, 260 Mont. 60, 857 P.2d 730 (1993) (*Grenz IV*), the Supreme Court considered Grenz's claim that he suffered from arthritis caused by a series of microtrauma. The Court held that his claim was time-barred and rejected his argument that the insurer and employer were estopped from raising the limitations defense. As apropos to this case, the Court found:

Grenz next argues that F&C should be equitably estopped from relying on the statute of limitations, citing *Scott v. Utility Line Contractors* (1987), 226 Mont. 154, 734 P.2d 206, and *Weigland v. Anderson-Meyer Drilling Co.* (1988), 232 Mont. 390, 758 P.2d 260. *Scott* and *Weigland* are inapplicable to the case before us.

In both cases, the claimant failed to present his claim within the one-year statutory period but assisted the employer in preparing the Employer's First Report within the time period. *Scott*, 734 P.2d at 208; *Weigland*, 758 P.2d at 262. We concluded in both cases that the Employer's First Report contained ample information to inform the employers of the nature and basis of the workers' potential claims. The report satisfied the purpose behind § 39-71-601, MCA, which is to give the employer written notice of the worker's claims within twelve months of the injury or accident in order to allow the employer to investigate the claim and, if necessary, prepare a defense. *Scott*, 734 P.2d at 208; *Weigland*, 758 P.2d at 262.

Grenz did not assist his employer in completing an Employer's First Report of a new and separate microtrauma-based injury; in fact, he did nothing that would have alerted the employer to this new cause of his degenerative arthritis. **As stated above, throughout this period, Grenz insisted that the arthritis was caused by his elbow injury. It was only after he had lost his case concerning the elbow injury in 1991 that he asserted that the arthritis was caused by a series of microtraumas un-related to the elbow injury. The employer and insurer were completely unable to investigate the claim and prepare a defense to the microtrauma injury until 1992, seven years after Grenz had ceased working at American Stud.** The equitable estoppel principles from *Scott* and *Weigland* simply have no application here.

260 Mont. at 64-65, 857 P.2d at 732-33 (emphasis added). The Court then addressed Grenz's attempt to estop the insurer from denying liability based on its payment of benefits:

In another twist to his estoppel argument, Grenz claims that F&C waived its right to deny his claim for benefits because it paid medical benefits for treatment of his arthritis. We find no merit to this argument. As explained in *Grenz I*, F&C accepted liability for Grenz' disabilities resulting from his bumped elbow and paid benefits to Grenz only for disabilities resulting from the bumped elbow. *Grenz I*, 820 P.2d at 747. We also emphasized in *Grenz I* that under § 39-71-608, MCA (1983), F&C's payment of benefits *did not* waive its right to subsequently assert nonliability for conditions not related to the elbow injury. *Grenz I*, 820 P.2d at 747. Thus, we conclude that F&C has not waived its right to deny liability for the unrelated, microtrauma-based injuries now claimed by Grenz.

Id. at 65, 857 P.2d at 733. Finally, it rejected his contention that the insurer knew of his degenerative condition and should have informed him of it:

As a third aspect to his estoppel theory, Grenz claims that F&C "knew of Grenz's degenerative condition and ... [a]t no time did they inform Grenz or his attorney of the need to file or modify his claim, though the evidence clearly shows that the Respondent knew of Grenz's seeking medical care for his degenerative condition." He also claims that because he was functionally illiterate, he is entitled to more leniency. We disagree.

Faced with a similar argument in *Wassberg*, we emphasized:

... the duty is upon the claimant to file his claim, not upon the insurer to solicit claims. The Workmen's [sic] Compensation Act has not changed the principle that he who asserts a right has the burden of proof or the burden of proceeding.

Wassberg, 697 P.2d at 915. The employer has no duty to pursue the employee's claim for him. *Wassberg*, 697 P.2d at 916. As in *Wassberg*, Grenz was cognizant of the availability of a compensation claim; he had participated in the process before. Regarding his asserted illiteracy, we note that Grenz initially obtained workers' compensation benefits for his elbow injury beginning in 1984 and has become quite familiar with the procedures involved. We also note the reams of judicial papers which Grenz has filed as a very competent pro se litigant in the process of this protracted litigation. F&C had no duty to inform Grenz of his duty to assert a separate claim.

Id.

¶7 The doctrine of *res judicata* "is based on the public policy that there must be some end to litigation" and bars relitigation of matters the party has already had an opportunity to litigate. *Glickman v. Whitefish Credit Union Ass'n*, 287 Mont. 161, 166, 951 P.2d 1388, 1391 (1998). Four elements must be satisfied for the doctrine to apply: "the parties or their privies are the same; the subject matter of the claim is the same; the issues are the same and relate to the same subject matter; and the capacities of the persons are the same in reference to the subject matter and the issues." *Id.* All of the elements are met in this case. In his present petition and supporting brief, Grenz makes the identical contentions he made in *Grenz I* and *Grenz III*. The Supreme Court rejected his contentions and its decisions are *res judicata*.

¶8 I need not consider the insurer's other arguments.

JUDGMENT

¶9 The petition is **dismissed with prejudice**.

¶10 This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 19th day of June, 2000.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Samuel J. Grenz - Certified Mail

Mr. Neil S. Keefer

Submitted: March 16, 2000

APPENDIX

A brief review of WCC records and SC records show the following cases. This may not be an inclusive list.

Samuel J. Grenz Cases in Workers' Compensation Court

Grenz v. American Timber Co. WCC No. 8408-2619
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 8811-4977
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 8904-5266
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9005-5811
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9103-6111
Grenz v. Am. Stud Co. & EBI/Orion WCC No. 9202-6378
Grenz v. Fire & Casualty of Conn. WCC No. 9202-6384
Grenz v. Fire & Casualty of Conn. WCC No. 9310-6922
Grenz v. Fire & Casualty of Conn. WCC No. 9408-7130
Grenz v. Fire & Casualty of Conn. WCC No. 9501-7224
Grenz v. Fire & Casualty of Conn. WCC No. 9501-7225
Grenz v. Fire & Casualty of Conn. WCC No. 9701-7693
Grenz v. Fire & Casualty of Conn. WCC No. 9901-8127

Samuel J. Grenz Workers' Compensation Cases in Montana Supreme Court

Grenz v. Fire & Cas. of Conn., 1998 MT 35N (decided February 18, 1998)
Grenz v. Fire & Cas. of Conn., 278 Mont. 268, 924 P.2d 264 (1996)
Grenz v. Fire & Casualty of Conn., 260 Mont. 60, 857 P.2d 730 (1993)
Grenz v. Fire & Casualty of Conn., 255 Mont. 121, 841 P. 2d 494 (1992)
Grenz v. Fire & Casualty of Conn., 250 Mont. 373, 820 P.2d 742 (1991)

Samuel J. Grenz District Court Cases in Montana Supreme Court

Grenz v. Orion Group, Inc., 243 Mont. 486, 795 P.2d 444 (1990)
Grenz v. Prezeau, 244 Mont. 419, 798 P.2d 112 (1990)
Grenz v. Medical Management Northwest, 250 Mont. 58, 817 P.2d 1151 (1991)

Various Supreme Court Orders Dismissing Samuel J. Grenz Cases

Grenz v. EBI/Orion Group, 89-283, Nonciteable, unpublished - 9/1989

Grenz v. EBI/Orion & American Stud Co., 89-432, Premature appeal - 10/1989

Grenz v. Stangl, 91-195, Nonciteable, unpublished - 9/24/91

Grenz v. Fire & Casualty of Conn., 91-429, Not an appealable Order -9/24/91

Grenz v. Fire & Casualty of Conn., 98-313, Original Proceeding - 6/16/98

1. An Appendix listing all of the decisions in Grenz's cases was attached to my 1999 decision. A copy is attached, as well, to this decision, however, it should be supplemented by adding my 1999 decision and the Supreme Court's dismissal of his appeal of that decision.

2. The insurer also alleges that Grenz failed to comply with mediation requirements, but in view of the prior actions and decisions, the Court is at a loss as to what new issues might be mediated. Based on the prior litigation, I find that mediation requirements are satisfied or inapplicable.