

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 23

WCC No. 2002-0705

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UNINSURED EMPLOYERS' FUND

Petitioner

vs.

GREGORY M. GOULD and AIMEE V. HACHIGIAN-GOULD  
d/b/a SEVEN BAR HEART & CATTLE COMPANY

Respondents.

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ORDER DENYING MOTION FOR SUMMARY JUDGMENT

**Summary:** Respondents, an uninsured employer, moved for summary judgment on the Uninsured Employers' Fund's petition for reimbursement of benefits paid pursuant to section 39-71-504, MCA, arguing the UEF's petition is barred by the applicable statute of limitations since it was filed more than five years after the date of claimant's injury.

**Held:** Section 39-71-504, MCA (1995-2001), does not establish its own limitations period. Since the uninsured employer's obligation to reimburse the UEF is a liability created by statute, the applicable statute of limitations is the two-year statute contained in section 27-2-211(1)(c), MCA (1995-2001). Although the two-year statute applies, the claim is not time-barred. Where the action is to collect an amount equal to all benefits "paid or to be paid" by the UEF, the action did not accrue until claimant filed a claim for benefits with the UEF. Within two years of that date, the claims adjuster wrote to respondents demanding reimbursement for benefits paid. Under *Intermountain Deaconess Home v. State of Montana*, 191 Mont. 309, 623 P.2d 1384 (1981), the letter was an administrative demand tolling the statute of limitations.

**Topics:**

**Limitations Period: Accrual of Cause of Action.** The Uninsured Employers' Fund's action under section 39-71-504, MCA (1995-2001), for reimbursement from an uninsured employer does not accrue until the claimant files a claim for benefits with the UEF.

**Limitations Period: Tolling.** Under *Intermountain Deaconess Home v. State of Montana*, 191 Mont. 309, 623 P.2d 1384 (1981), the two-year statute of limitations applicable to the UEF's action against an uninsured employer for reimbursement of benefits paid or to be

paid on behalf of the claimant is tolled by an administrative demand letter sent to the uninsured employer within the two-year period.

**Limitations Period: UEF Actions.** Where the uninsured employer's obligation to reimburse the UEF under section 39-71-504, MCA, is a liability created by statute, but not for a penalty or forfeiture, the applicable statute of limitations is the two-year statute set out in section 27-2-211(1)(c), MCA (1995-2001).

#### Uncontroverted Facts

¶1 Claimant, Allen E. Williams, was injured on March 22, 1997, in Cascade County, Montana. (UEF Petition; Respondent's Brief in Support of Motion For Summary Judgment ("Resp. Brief") at 1; Petitioner's Response to Respondent's Motion for Summary Judgment at 2.)

¶2 Claimant filed a claim with the UEF for workers' compensation benefits on July 23, 1997. (*Id.*)

¶3 On January 12, 1998, the UEF found claimant's claim compensable and began paying permanent partial disability benefits to claimant. (*Id.*)

¶4 On December 6, 2002, the UEF filed a petition with the Workers' Compensation Court seeking to recover the funds paid to claimant. (Resp. Brief at 2; Petitioner's Response to Respondent's Motion for Summary Judgment at 2.)

¶5 On April 8, 1999, Bernadette Rice, claims adjuster for the UEF, wrote to respondents as follows:

April 8, 1999

Greg Gould & A Hachigian  
7 Bar Heart & Cattle Co.  
Box 67  
Ulm MT 59485

RE: Allen Williams  
05-97-00103

Dear Mr. Gould & Ms. Hachigian:

The amount owing on your account is \$55,119.78. No payment has ever been received on your account.

If we do not receive payment in full or hear from you by April 22, 1999, we will file a lien in the county, in which you reside and/or do business. This lien may affect your credit report for seven years from the date of the lien.

Sincerely,

Bernadette Rice  
Claims Adjuster  
Uninsured Employers' Fund  
Phone: (406) 444-6542

BR/rse

(Ex. B to Affidavit of Bernadette Rice.)

¶16 Between July 14, 1998 and September 12, 2002, the UEF sent at least eleven Claim Billing Notices to Greg Gould and Dr. Aimee Hachigian, indicating a current balance due the UEF based on claimant's claim. The notices contained the following language:

The total amount is due within twenty (20) days from the date of this invoice. If you are unable to pay the balance in full, please contact Frieda Huberty at (406) 444-7748 with Uninsured Employers' Fund immediately to discuss the possibility of a payment plan. If payment arrangements have already been made and payments are current please disregard.

If payment is not received, UEF may file a certificate of lien as it deems necessary to protect its lawful interests and your account may be turned over as a bad debt for collection.

(Affidavit of Bernadette Rice at 2; Ex. B to affidavit.)

#### Discussion

¶17 Respondent contends the UEF's petition is time-barred because it was filed more than five years after claimant's March 22, 1997 injury.

¶18 The present action is commenced pursuant to section 39-71-504, MCA (1995-2001), which provides for the UEF to seek reimbursement from an uninsured employer:

The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

The section does not itself establish a limitations period.

¶19 Respondent argues the applicable statute of limitations is two years, citing section 27-2-211(1), MCA (1995-2001), which provides:

**Action to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years is the period prescribed for the commencement of an action upon:

- (a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;
- (b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;
- (c) a liability created by statute other than:
  - (i) a penalty or forfeiture; or
  - (ii) a statutory debt created by the payment of public assistance.

Respondent relies upon subsection (1)(a), but that subsection is not applicable since the UEF's collection action is not for a "penalty or forfeiture," rather it is simply an action for indemnification. Moreover, section 39-71-504, MCA, gives no rights of enforcement to individuals. Subsection (1)(c), however, is applicable because section 39-71-504, MCA, establishes a statutory liability on the part of the uninsured employer to reimburse the UEF.

¶10 In order to determine when the two year limitations period began, the Court must first determine when the UEF's claim against the uninsured employer accrued. Because the UEF's action was to collect an amount equal to all benefits "paid or to be paid" to an injured employee, the action did not accrue until claimant requested benefits from the UEF. Before that point, there was nothing to indicate any benefits might even "be paid" by the UEF. According to the agreed facts, the claim for benefits was filed with the UEF on July 23, 1997, thus it is on that date that the two years began running.

¶11 Citing *Intermountain Deaconess Home v. State of Montana*, 191 Mont. 309, 623 P.2d 1384 (1981), the UEF argues the statute was tolled by Rice's April 8, 1999 letter. That letter, which was sent within the two-year period, demanded reimbursement from the employer. The letter was followed, between July 14, 1998 and September 12, 2002, with a series of claim billing notices informing respondents of the current balance owed.

¶12 I agree that *Intermountain Deaconess* applies and that the April 9, 1999 letter tolled the limitations period. In *Employment Relations Division v. Total Mechanical Heating & Air Conditioning, et al.*, 2000 MTWCC 39, aff'd, 2002 MT 55, I summarized *Intermountain Deaconess Home* as follows:

¶ 64 In *Intermountain Deaconess Home* the Department of Labor and Industry sought overtime wages on behalf of several employees. In 1977, it audited the employer and sent "a letter to plaintiff demanding over \$40,000, for back wages." *Id.*, 191 Mont. at 311, 623 P.2d at 1386. However, no action was filed in district court to enforce the demand for more than five years after the date the wages had accrued. Five years was the applicable limitations period. The district court held that the action was barred because the Department failed to commence an action within the limitations period which could result

in a judgment by a court. 191 Mont. at 313, 623 P.2d at 1386. Agreeing the appropriate limitations period was five years, the Supreme Court nonetheless reversed, holding:

The statute of limitations was tolled in this case when plaintiff received the Department's demand letter notifying plaintiff of each claimant's minimum wage claims. The court erred by concluding that only court action tolls the running of this statute of limitations. The statute of limitations for wage claims may be tolled by an active, timely administrative pursuit of the unpaid wages that gives notice to the employer. We recently decided this issue in *State, Dep. of Labor v. Wilson* (1980), Mont., 614 P.2d 1066, 37 St.Rep. 1393:

"The question remains: (in wage claim enforcement cases) Is the statute of limitations tolled by the commencement of formal administrative proceedings, or must an action be commenced by the Department's filing a complaint with the District Court?

"...

"In an administrative setting, where the agency acts to enforce the (Minimum Wage) law on its own initiative this action is the equivalent of the filing of a civil complaint. The Department's ... (demand letter to the employer) fulfilled the purposes of a complaint by giving ... notice of the claim being made against them."

191 Mont. at 314, 623 P.2d at 1387. *Accord State v. Wilson*, 189 Mont. 52, 58-59, 614 P.2d 1066, 1070 (1980) (Department letter notifying appellants of overtime claim against them was the administrative equivalent to filing a civil complaint).

¶13 Here, Rice's April 8, 1999 demand letter was the functional equivalent of the administrative letter in *Intermountain Deaconess Home*, and was sufficient to toll the statute of limitations. Having received Rice's letter and subsequent billing notices, respondents cannot legitimately claim any surprise or prejudice in the UEF's enforcement of the right of reimbursement set out in section 39-71-504, MCA.

¶14 The motion for summary judgment is **denied**.

Dated in Helena, Montana, this 21<sup>st</sup> day of March, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Brenda Wahler

Mr. L. D. Nybo

Submitted: March 5, 2003