

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 64

WCC No. 2001-0456

LYMAN GREENE

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

ALDER KOA KAMPGROUND d/b/a NANNINI BROTHERS

Employer/Respondent.

ORDER AWARDING COSTS AGAINST UNINSURED EMPLOYER

Summary: Claimant prevailed in his claim against the Uninsured Employers' Fund (UEF) and the uninsured employer. The present question before the Court is whether costs can be awarded against the uninsured employer.

Held: Since the workers' compensation statutes are silent concerning an award of costs against an uninsured employer, the Workers' Compensation Court will be guided by Rule 54(d) of the Montana Rules of Civil Procedure. *Moen v. Peter Kiewit & Sons, Co.*, 201 Mont. 425, 434, 655 P.2d 482, 486 (1982). Under that rule, costs are awarded against the uninsured employer.

Topics:

Costs: Uninsured Employers. Since the workers' compensation statutes are silent concerning an award of costs against an uninsured employer, the Workers' Compensation Court will be guided by Rule 54(d) of the Montana Rules of Civil Procedure. *Moen v. Peter Kiewit & Sons, Co.*, 201 Mont. 425, 434, 655 P.2d 482, 486 (1982). Under that rule, costs are awarded against the uninsured employer.

Costs: Uninsured Employers' Fund. In light of Rule 54(d), Mont.R.Civ.P., the prior ruling of the Workers' Compensation Court imposing costs on the UEF, *Pekus v. Uninsured*

Employers' Fund and Yakos, 2003 MTWCC 33, is called into question and should be revisited in a future case.

¶11 The sole remaining issue in this case is whether the Court may award costs against the uninsured employer in this case. I conclude it can and therefore do so.

Discussion

¶12 I have previously held that sections 39-71-611 and -612, MCA, which expressly authorize an award of costs against insurers, do not prohibit an award of costs against the Uninsured Employers' Fund. *Pekus v. Uninsured Employers' Fund and Yakos*, 2003 MTWCC 33. I found that in light of the statutory silence with respect to imposition of costs other than against insurers, the Court could exercise inherent authority to award costs. I have already applied that ruling in the present case. Order Denying Motion to Amend and Certifying Judgment (May 20, 2003.) In light of the following discussion, however, my specific holding with regard to the UEF being subject to costs may require reconsideration in a future case.

¶13 As already noted, Workers' Compensation statutes are silent with respect to imposition of costs other than against insurers. Claimant urges that the starting point for analysis is therefore the Montana Rules of Civil Procedure. I agree. It has long been the rule that where its own rules are silent, the Workers' Compensation Court may look to the Rules of Civil Procedure for guidance. *Moen v. Peter Kiewit & Sons, Co.*, 201 Mont. 425, 434, 655 P.2d 482, 486 (1982).

¶14 The guidance provided by Rule 54(d), Mont.R.Civ.P, is in accordance with the general American rule requiring the losing party to pay costs and I find it appropriate to apply the rule here. Rule 54(d) provides:

(d) Costs. Except when express provision therefor is made either in a statute of the state of Montana or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the state of Montana, its officers, agencies, and political subdivisions shall be imposed only to the extent permitted by law.

There is no express provision governing an award of costs with respect to uninsured employers, therefore, the general rule requiring an award of costs applies. Accordingly, I find and hold that Alder KOA Kampground (Alder KOA) is liable for the costs in this case. Since Alder KOA was not previously provided with an opportunity to object to specific costs submitted by claimant, it will be provided with an opportunity to do so.

¶15 As noted earlier, reliance on Rule 54(d) may require the Court to reconsider its previous ruling subjecting the UEF to costs. As set out in Rule 54(d), costs may be imposed on state agencies "only to the extent permitted by law." The UEF is a state agency, and there is no express statutory authority for imposing costs on it, my prior ruling allowing imposition of costs on it should be revisited. However, I will not do so in this case since my prior order

regarding costs against the UEF was certified as final for purposes of appeal. In any event, Alder KOA is ultimately responsible for the costs in this case.

¶16 This Order will be certified as final after a final determination regarding the amount to be assessed against Alder KOA is made.

ORDER

¶17 Alder KOA is liable for claimant's costs in this matter. It shall have ten days in which to file its objections to the specific costs claimed by the claimant.

DATED in Helena, Montana, this 3rd day of November, 2003.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Frank J. Joseph
Ms. Julia W. Swingley
Ms. Elizabeth A. O'Halloran
Submitted: August 28, 2003