IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 69

WCC No. 9912-8384

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Petitioner,

vs.

SCOTT GRINER,

Claimant,

SENTRY INSURANCE MUTUAL COMPANY,

Respondent.

ORDER CONSTRUING RESERVATION OF RIGHTS

Summary of Case: Counsel requested a hearing to present testimony regarding the meaning of a reservation of rights letter sent by the insurer to claimant's attorney. The claimant's attorney questioned whether the letter was ambiguous and therefore whether parole evidence is proper.

Held: The letter is unambiguous on its face, stating that the insurer reserved only the right to seek an adjudication that a prior insurer is liable for the claimant's condition; if not, then it was accepting the claim subject only to a determination of the correct benefits due. Parole evidence is inadmissible and the hearing is cancelled.

Topics:

> **Claims: Reservation of Rights.** Letter which states that the insurer is reserving its rights to seek an adjudication that a prior insurer is liable for claimant's condition, but is accepting liability if the prior insurer is not liable, is clear on its face and requires no interpretation.

¶1 At the request of counsel, the Court set a hearing for November 15, 2000, to take evidence concerning the meaning and intent of a reservation of rights letter sent by Mr. Larry W. Jones, senior attorney for Liberty Mutual Fire Insurance Company, to Mr. Robert J. Whelan, attorney for the claimant. Subsequently, Mr. Whelan questioned the need for a hearing, pointing out that "the Court must first determine that an ambiguity exists."

(October 31, 2000 letter of Robert J. Whelan to Judge McCarter.) A copy of the reser-vation of rights letter in question was attached.

¶2 On November 8, 2000, a telephone conference was held with all three counsel of record. During that conference call I determined that the letter is unambiguous. This Order constitutes my written ruling on the matter.

¶3 The reservation of rights letter, which is dated January 22, 1999, reads as follows:

> After Dr. Murphy's deposition we discussed the possibility of vacating the current hearing while Liberty pursued a claim against the insurer of your client's original injury. I propose vacating the hearing with Liberty agreeing to continue to pay your client wage loss and medical benefits that are directly related to his claim against Liberty under a reservation of rights.
>
> Liberty would continue to adjust your client's claim until and unless the earlier insurer accepted liability or was found liable by a court of competent jurisdiction.
>
> **The idea is that Liberty, while adjusting your client's claim under a reservation of rights, could dispute those elements of your client's claim that it would have the right to dispute if it accepted liability, e.g., continued entitlement to TTD benefits, liability for a specific bill and so forth. Liberty would not take the position that it was not liable under the OD Act for your client's claim. The purpose of adjusting the claim under a reservation of rights would be to preserve Liberty's right to go against the earlier insurer.** With this explanation of Liberty's proposal, please contact me to let me know if your client agrees that the hearing now set for January 26, 1999 can be vacated. [Emphasis added.]

On its face, the letter is clear. It reserves Liberty's right to argue that a prior insurer should be liable for claimant's current condition, however, Liberty agrees that if the prior insurer is not held liable, then it (Liberty) is liable for the condition. The only other reservation is to specific benefits to which claimant may be entitled for his condition, thus reserving the right to contest such matters as whether claimant is temporarily totally disabled, or the duration of such disability, or whether a specific medical bill is related to his work-related condition. There is no ambiguity which would warrant consideration of parol evidence.

DATED in Helena, Montana, this 16th day of November, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. William J. Mattix
Mr. Robert J. Whelan
Mr. Kelly M. Wills