

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 5

WCC No. 9708-7811

LUCY HERNANDEZ

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH

Respondent/Insurer.

PUBLICATION OF RULING REGARDING INSURERS' DUTIES

Summary: Ruling on insurer's duty to claimant.

Held: Workers' compensation insurers are directly liable to claimants and have direct duty to claimants when adjusting claims. Insurers cannot delegate their duties to insured employers.

Topics:

Insurers: Duties. Workers' compensation insurers are directly liable to claimants and have direct duty to claimant's when adjusting claims. Insurers cannot delegate their duties to insured employers.

¶1 In light of interest expressed in a bench ruling made by the Court on October 28, 1997, concerning the duties of insurers, and the Court's proposed rule to delete the employer from the caption of the case except where the employer is in fact an interested party, the following excerpt of the transcript of the trial and bench ruling in *Lucy Hernandez v. National Union Fire Insurance Company of Pittsburgh*, WCC No. 9708-7811 (October 28, 1997), is published, as follows:

As far as the insurers responsibility in delegating that [responsibility] to the employer, that is patently unreasonable. I so hold as a matter of law.

And I refer counsel to 39-71-2203, which concerns Plan No. Twos. It says that "[t]he insurance agreement shall be construed to be a direct promise by the insured to the person entitled to compensation."

Every Plan No. Two must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his insureds beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable. **"The duty is [on] the insurer here and that [duty] cannot be delegated to the employer."**

(Tr. at 43-44, emphasis added.)

¶2 Subsequent to trial, but prior to any written decision, the Hernandez case was settled. That settlement vitiated the Court's bench ruling except to the extent of rulings of law.

¶3 The above excerpt is published simply as the Court's ruling on the insurers' direct duty to claimants.

¶4 Due to continuing interest in this issue, a partial transcript of the proceeding, the testimony of the adjuster, is also being published on the Court's website (wcc.dli.state.mt.us/H/Hernandez_insurer's_responsibilities.pdf) with the caveat that no final judgment was rendered in this matter as the case settled.

DATED in Helena, Montana, this 31st day of January, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy

Mr. Steven S. Carey

[Partial Transcript of Proceedings](#)