

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 50

WCC No. 9802-7926

TERRANCE M. JOHNSON

Petitioner

vs.

MONTANA MUNICIPAL INSURANCE AUTHORITY and

UNINSURED EMPLOYERS' FUND

Respondent/Insurer for

CORCON CONSTRUCTION

Employer.

ORDER PERMITTING THIRD-PARTY PETITION AND VACATING TRIAL SETTING

Summary: The Uninsured Employers' Fund requested that the alleged uninsured employer be formally joined as a party to this action, which involves a claim against it by a petitioner alleging injury while working for an allegedly uninsured employer. Although the employer was named on the caption to the case as the employer, it was not named as a respondent and has not appeared in the case.

Held: In effect, the UEF's request for joinder is a request that it be permitted to file a third-party petition for indemnification. Although the Court did not at the time of this action have a rule for third-party petitions, the WCC follows where appropriate the Montana Rules of Civil Procedure. Applying the principles behind Mont.R.Civ.P. 14(a), the UEF will be permitted to join the employer as resolving issues with participation of the employer will reduce the possibility of multiple actions and potentially inconsistent adjudications.

Topics:

Procedure: Joining Third Parties. The UEF requested that an allegedly uninsured employer be formally joined as a party to an action brought by a worker alleging injury. In effect, the UEF's request for joinder is a request that it be permitted to file a third-party petition for indemnification. Although the Court did not at the time of this action have a rule for third-party petitions, the WCC follows where appropriate the Montana Rules of Civil Procedure. Applying the principles behind Mont.R.Civ.P. 14(a), the UEF will be permitted to join the

employer as resolving issues with participation of the employer will reduce the possibility of multiple actions and potentially inconsistent adjudications. (Following this decision, ARM section 24.5.307A was adopted, which specifies that in any case involving entitlement to benefits from the uninsured employers' fund, the alleged uninsured employer shall be deemed a party to the action.)

Uninsured Employers' Fund: Indemnification. The UEF requested that an allegedly uninsured employer be formally joined as a party to an action brought by a worker alleging injury. In effect, the UEF's request for joinder is a request that it be permitted to file a third-party petition for indemnification. Although the Court did not at the time of this action have a rule for third-party petitions, the WCC follows where appropriate the Montana Rules of Civil Procedure. Applying the principles behind Mont.R.Civ.P. 14(a), the UEF will be permitted to join the employer as resolving issues with participation of the employer will reduce the possibility of multiple actions and potentially inconsistent adjudications. (Following this decision, ARM section 24.5.307A was adopted, which specifies that in any case involving entitlement to benefits from the uninsured employers' fund, the alleged uninsured employer shall be deemed a party to the action.)

¶1 At the request of respondent Uninsured Employers' Fund (UEF), the Court held a telephonic conference on June 3, 1998, with Mr. Kevin Braun, attorney for the UEF, Mr. Richard J. Martin, attorney for the petitioner/claimant, and Mr. Oliver H. Goe, attorney for respondent Montana Municipal Insurance Authority (MMIA).

¶2 Mr. Braun requested that the claimant's employer be formally joined as a party. The request is **granted**.

¶3 The petitioner alleges that he suffered an industrial injury and an occupational disease while working for CorCon Construction (CorCon), which was uninsured. The City of Great Falls, which is insured by MMIA, allegedly hired CorCon for the project on which petitioner was injured. Both the UEF and MMIA have denied liability for petitioner's claims.

¶4 In its response to the Petition for Hearing, the UEF requests this Court to order CorCon to indemnify it should it be held liable for petitioner's claims. Mr. Braun informed the Court that the UEF has served CorCon, which has not filed an appearance in this case, with its pleadings, notices, and other documents. Mr. Braun assumed CorCon was a party. The other two attorneys have not served their documents on CorCon.

¶5 CorCon was named in the Petition for Hearing as the "employer;" however, it was not specifically named as a "respondent."

¶6 Petitioner does not seek any relief against CorCon. In any event the Court would not have jurisdiction over such request. § 39-71-516, MCA. However, this Court has jurisdiction over indemnity disputes. *Cf. EBI/Orion Group v. State Compensation Ins. Fund*, 240 Mont. 99, 782 P.2d. 1276 (1989).

¶7 UEF's request for joinder is in effect a request that it be permitted to file a third-party petition for indemnification. The Court has no rule for third-party complaints. However, lacking a rule, the Court has in the past followed the Montana Rules of Civil Procedures. *Murer v. Montana State Compensation Mut. Ins. Fund*, 257 Mont. 434, 849 P.2d 1036 (1993).

¶8 Rule 14(a), Mont.R.Civ.P. permits a defendant to summon in a third party who it alleges is liable for all or part of the claim against it. The rule provides:

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 30 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial; the court may direct a final judgment upon either the original claim or the third-party claim alone in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

The rule serves salutary purposes. It promotes judicial economy by reducing the possibility of multiple actions. It promotes justice by reducing the possibility of inconsistent adjudications. Where indemnification is sought, joining the alleged indemnitor prevents the possibility of inconsistent decisions in the underlying liability action and the indemnity action. I find good cause to follow Rule 14 where indemnification is sought by the UEF or an insurer allegedly liable under section 39-71-405, MCA.

¶9 Finding good cause, IT IS HEREBY ORDERED that:

1. The trial setting of this matter for the week of June 8, 1998, is **vacated** and reset for the next Great Falls term of court.

2. Within 10 days of this Order, the UEF and MMIA may file third-party petitions with respect to any claims they have for indemnification arising as a result of the Court finding either of them liable for petitioner's claims.

3. Upon filing of any third-party petition, the Court will order CorCon to respond within 20 days.

DATED in Helena, Montana, this 11th day of June, 1998.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Richard J. Martin

Mr. Kevin Braun

Mr. Oliver H. Goe

Ms. Dee Ann Jellesed

Submitted: June 3, 1998