

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 3

WCC No. 2002-0573

UNINSURED EMPLOYERS' FUND

Petitioner

vs.

AMY MACKEY

Respondent.

ORDER DENYING MOTION TO DISMISS

Summary: The Uninsured Employers' Fund (UEF) petitioned the Court to enforce a settlement agreement between itself and a claimant. The agreement provided for claimant to pay the UEF one-third of any recovery over \$10,000 which claimant secured from the uninsured employer. In return, the UEF assigned its right to reimbursement from the uninsured employer to the claimant and also discharged claimant from any claim by the UEF for subrogation to monies collect by claimant from the uninsured employer. The claimant moves to dismiss for lack of jurisdiction.

Held: Since the Workers' Compensation Court has jurisdiction over the UEF claims which were the subject of the settlement agreement, it has jurisdiction to enforce the settlement agreement.

Topics:

Jurisdiction: Original Jurisdiction. Where the Workers' Compensation Court has jurisdiction to resolve claims arising under the Workers' Compensation Act, and those claims are resolved in a settlement agreement, it also has jurisdiction to enforce the settlement agreement.

¶1 The Uninsured Employers' Fund (UEF) petitioned this Court to enforce the claimant's agreement, the validity of which is not disputed, to pay the UEF one-third of any recovery from the unemployed insurer on whose account UEF had paid claimant benefits. The claimant moves to dismiss for lack of jurisdiction.

Facts

¶12 The salient facts are undisputed. The following facts are pled in the petition and admitted in the claimant's response:

¶12a On or around April 8, 1989, while working for Royal Pines Equestrian Center, Amy Mackey injured her back while bucking hay bales.

¶12b On June 6, 1989 Amy Mackey filed a claim for workers' compensation benefits. Amy Mackey's employer, Royal Pines Equestrian Center, had no workers' compensation insurance policy in place at the time Amy was injured, and the Uninsured Employer's Fund accepted the claim and began paying Amy Mackey indemnity and medical benefits.

¶12c Don and June Frownfelter were the sole owners of Royal Pines Equestrian Center.

¶12d On March 27, 1992, Jon Heberling, drafted an agreement for the UEF's signature and provided this agreement to Cheryl Russel who signed on behalf of the UEF. It stated in pertinent part that "Amy Mackey agrees to pay the Fund 1/3 of any recovery in the Mackey v. Frownfelters action over \$10,000."

¶12e Amy Mackey filed a civil action against the Frownfelters in Flathead District Court and on September 21, 1993 she received a judgment against June and Don Frownfelter for \$116,273.13.

¶12f According to Amy Mackey's attorney, Jon L. Heberling, through various collection actions, Amy Mackey collected \$27,904 of this in 1994 and \$19,615 in 1999, making Amy Mackey's total recovery \$47,519.

¶13 The agreement referenced in paragraph 2d is attached to the claimant's Response to Petition as a part of her exhibit A. It reads in full part:

Cheryl Russell
Employment Relations Division
Uninsured Employers' Fund
P.O. Box 8011
Helena, MT 59601-8011

Re: Mackey v. Frownfelters
Claim # 5-89-00059-5

Dear Cheryl:

This will confirm our conversation of 3/26/92. We discussed the letter of Allan McGarvey of 2/13/92 and your response of 2/25/92. I believe we will be in a stronger position with the Court if we have an assignment of the Fund's rights under § 39-71-506, MCA.

I suggest the following agreement:

The parties agree as follows:

1. Amy Mackey agrees to pay the Fund 1/3 of any recovery in the Mackey v. Frownfelters action over \$10,000.
2. The Fund assigns to Amy Mackey its rights to sue the uninsured employer under § 39-71-506, MCA.
3. This assignment also covers and discharges the Fund's subrogation rights under § 39-71-505, MCA, referencing § 39-71-414, MCA.

If the Fund approves this agreement, please sign below.

Yours sincerely,

jlh:MVH

\s\ Jon L. Heberling

APPROVED:

JON L. HEBERLING

\s\ Cheryl Russell

Cheryl Russell

Uninsured Employers Fund

Applicable Statutes

¶4 The statutes in effect at the time of the claimant's injury govern the substantive rights of the parties. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). However, the forum for resolution of substantive disputes under the Workers' Compensation Act is a procedural matter and governed by the law in effect at the time of the proceeding. *Seeger v. Magnum Oil*, 1999 MTWCC 67 (and cases cited therein, including Supreme Court cases.)⁽¹⁾

¶5 The following 1987 statutes in effect at the time of the claimant's injury are substantive and govern the rights of the UEF to recover amounts paid by it to claimant.

39-71-504. Funding of [uninsured employers'] fund - option for agreement between division and injured employee. The fund shall be funded in the following manner:

...

(2)(a) The fund shall receive 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. . . .

39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

...

¶16 The current forum for resolving disputes under the above sections is the Workers' Compensation Court. Section 39-71-2905(1), MCA (2001), provides:

39-71-2905. Petition to workers' compensation judge -- time limit on filing. (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, **the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516.** The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71. [Emphasis added.]

Discussion

¶17 The Workers' Compensation Court is a statutory court⁽²⁾ and its jurisdiction is fixed by the legislature. The general grant of jurisdiction is set out in section 39-71-2905(1), MCA (2001), which is set forth verbatim above. As pertains to the present controversy, the claims compromised by the parties' agreement were claims arising under chapter 71, thus under the plain language of section 39-71-2905(1), MCA, this Court has jurisdiction to resolve disputes over those claims.⁽³⁾ The question presented here is whether the Court also has

jurisdiction to enforce a settlement agreement encompassing the claims. I conclude that it does. In *State ex. rel Uninsured Employers' Fund v. Hunt*, 191 Mont. 514, 519, 625 P.2d 539, 542 (1981), the Supreme Court held:

Although the Workers' Compensation Court is not vested with the full powers of a District Court, it nevertheless has been given broad powers concerning benefits due and payable to claimants under the Act. It has the power to determine which of several parties is liable to pay the Workers' Compensation benefits, or if subrogation is allowable, what apportionment of liability may be made between insurers, **and other matters that go beyond the minimum determination of the benefits payable to an employee.** [Emphasis added.]

If the Court has jurisdiction to litigate the claims which are compromised in the settlement agreement, then it certainly has jurisdiction to enforce the settlement agreement.

¶8 The motion to dismiss for lack of jurisdiction is **denied**.

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

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Julia W. Swingley

Mr. Jon L. Heberling

Attachment: *Seger v. Magnum Oil*, 1999 MTWCC 67

Submitted: August 7, 2002

1. A copy of the *Seger* decision is attached in lieu of repeating what was said and cited there.

2. See discussion in *Seger v. Magnum Oil*, 1999 MTWCC 67, ¶ 8.

3. Alternatively, the Court has jurisdiction under the first sentence of section 39-71-2905(1), MCA (2001), since the UEF claims involve benefits paid by it. The procedural provisions applicable to insurers, including those in 39-71-2905, MCA, are expressly applicable to the UEF, § 39-71-505, MCA (2001).