IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 28

WCC No. 2002-0547

MONTANA CONTRACTOR COMPENSATION FUND

Petitioner/Insurer for

JTL GROUP, INCORPORATED

Employer

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

D'AGOSTINO CONCRETE

Employer

RON RUSCO

Respondent/Claimant.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT
REGARDING ATTORNEY FEES

Summary: Subsequent insurer seeks attorney fees and costs against a prior insurer that it alleges is liable for claimant's condition. The subsequent insurer moved for summary judgment with respect to the request.

Held: Statutes governing attorney fees do not provide for an award of attorney fees to an insurer under any circumstances.

Topics:

Attorney Fees: Insurer. Montana workers' compensation statutes provide for attorney fees awards to claimants only. There is no provision for an award to an insurer under any circumstances and the Court is prohibited from inserting such a provision under the guise of statutory interpretation. § 1-2-101, MCA.

Statutes and Statutory Interpretation: Inserting or Removing Items. Montana workers' compensation statutes provide for attorney fees awards to claimants only.

There is no provision for an award to an insurer under any circumstances and the Court is prohibited from inserting such a provision under the guise of statutory interpretation. § 1-2-101, MCA.

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 1-2-101, MCA (1997). Montana workers' compensation statutes provide for attorney fees awards to claimants only. There is no provision for an award to an insurer under any circumstances and the Court is prohibited from inserting such a provision under the guise of statutory interpretation. § 1-2-101, MCA.

¶1 This is a dispute between two insurers regarding liability for claimant's back condition. Montana Contractor Compensation Fund (MCCF) filed the petition herein that a prior insurer - Liberty Northwest Insurance Corporation (Liberty) - is liable for claimant's condition. Among its prayers for relief is a request for an award of attorney fees and costs based on Liberty's alleged unreasonable refusal to accept liability for claimant's condition after he suffered what MCCF characterizes as a "temporary aggravation" of his original injury while working for MCCF's insured. Liberty moves for partial summary judgment with respect to the attorney fee and costs request.

Discussion

¶2 The motion for summary judgment is based on the pleadings and is essentially a motion for judgment on the pleadings. *See* Rule 12(c), Mont.R.Civ.P. Liberty urges that as a matter of law MCCF cannot recover attorney fees.

¶3 Workers' compensation is a creature of statute. As such, rights and entitlements are governed by the Workers' Compensation Act. There is no provision in the Act for an award of attorney fees or costs in favor of one insurer against another, or for that matter in favor of an insurer under any circumstances. The sole provisions for attorney fees benefit only claimants. §§ 39-71-611, -612 and -614, MCA. Prior precedents, as MCCF acknowledges, hold that insurers are not entitled to either costs or attorney fees. *Jaenish v. Super 8 Motel,* 248 Mont. 383, 812 P.2d 1241 (1991); *North American Van Lines v. Evans Transfer and Storage,* 234 Mont. 209, 766 P.2d 220 (1990). MCCF urges, however that this Court should "carve out an exception to the general rule" based upon the "egregious nature" of Liberty's conduct, i.e., its alleged unreasonable refusal to accept further liability for claimant's condition. (Petitioner/Insurer's Answer Brief in Opposition to Respondent/Insurer's Motion for Partial Summary Judgment on the Pleadings at 4.)

¶4 There is no statutory or case support for MCCF's position. The legislature has provided both attorney fees and penalties for an insurer's unreasonable conduct, §§ 39-71-611, -612, 2907, MCA, but all of those provisions afford relief only to claimants. The Court cannot rewrite these provisions to benefit an insurer seeking relief against another insurer, no matter how egregious the other insurer allegedly is. Section 1-2-101, MCA, provides in

relevant part, "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, **not to insert what has been omitted** or to omit what has been inserted. " (Emphasis added.)

ORDER

¶5 The request for attorney fees and costs is without merit. The motion for partial summary judgment is **granted**.

DATED in Helena, Montana, this 23rd day of May, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Bradley J. Luck
Mr. Larry W. Jones
Mr. Christopher R. Angel
Submitted: May 13, 2002