

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 65

WCC No. 9307-6858

JAMES P. SMITH

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE COMPANY

Respondent/Insurer for

RSA-USA INC./IDC SERVICES, INCORPORATED

Employer.

PARTIAL SUMMARY JUDGMENT

Summary: Claimant moved for summary judgment based on *Haag v. State Compensation Ins. Fund*, 274 Mont. 109, 906 P.2d 693 (1995), alleging that his claim was not accepted or denied within 30 days as stated in section 390-71-606(1), MCA (1991). Respondent argued his claim is barred by his failure to notify his employer of his injury within 30 days. Neither party complied with ARM 24.5.329(3), which requires a brief in support of or opposition to a motion for summary judgment to include a statement of uncontroverted facts, in serial (not narrative) form, referencing specific pleadings, affidavits or other documents that support each specific fact.

Held: If the motion required the Court to conclude that certain facts were established, it would be denied based on failure to comply with ARM 24.5.329(3). This motion, however, raises a purely legal question. The WCC concludes that failure to provide 30 days notice to an employer is a defense to liability. *Haag* precludes the insurer from raising any defense, including this one, if the claim was not accepted or denied within 30 days.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated:

Section 39-71-606(1), MCA (1991). A claimant's failure to provide 30 days notice to an employer is a defense to liability. [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#) precludes the insurer from raising any defense,

including this one, if the claim was not accepted or denied within 30 days as required by section 390-71-606(1), MCA (1991)

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court

Rules: ARM 24.5.329(3). Neither party complied with ARM 24.5.329(3), which requires a brief in support of or opposition to a motion for summary judgment to include a statement of uncontroverted facts, in serial (not narrative) form, referencing specific pleadings, affidavits or other documents that support each specific fact. If this motion required the Court to conclude that certain facts were established, it would be denied based on failure to comply with ARM 24.5.329(3).

Cases Discussed: Workers' Compensation Cases: Haag v. MSGIA. A claimant's failure to provide 30 days notice to an employer is a defense to liability. [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#) precludes the insurer from raising any defense, including this one, if the claim was not accepted or denied within 30 days as required by section 390-71-606(1), MCA (1991).

Claims: Acceptance. A claimant's failure to provide 30 days notice to an employer is a defense to liability. [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#) precludes the insurer from raising any defense, including this one, if the claim was not accepted or denied within 30 days as required by section 390-71-606(1), MCA (1991).

Claims: Notice to Employer or Insurer: Generally. A claimant's failure to provide 30 days notice to an employer is a defense to liability. [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#) precludes the insurer from raising any defense, including this one, if the claim was not accepted or denied within 30 days as required by section 390-71-606(1), MCA (1991).

Summary Judgment: Motion for Summary Judgment. Neither party complied with ARM 24.5.329(3), which requires a brief in support of or opposition to a motion for summary judgment to include a statement of uncontroverted facts, in serial (not narrative) form, referencing specific pleadings, affidavits or other documents that support each specific fact. If this motion required the Court to conclude that certain facts were established, it would be denied based on failure to comply with ARM 24.5.329(3).

Petitioner in this case, James P. Smith (claimant), alleges that his claim for compensation was not accepted by the insurer within the 30 days specified by section 39-71-606(1), MCA (1991). He moves for summary judgment based on [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#). Respondent, National Union Fire Insurance Company (National), resists the motion, arguing that claimant's failure to notify his

employer of his injury within 30 days, as required by section 39-71-603, MCA, bars his claim for benefits.

Factual Background and Restatement of the Issue

Rule 24.5.329(3) of this Court governs the presentation of facts supporting a motion for summary judgment. It provides:

Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found. Any party opposing a motion filed under this rule shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party.

Neither party has complied with the rule.

In his Brief in Support of Summary Judgment, petitioner sets forth a list of four uncontested facts which reference certain exhibits attached to the brief. That recitation is as follows:

1. On July 19, 1991, the Petitioner completed and signed a Claim For Compensation alleging an industrial injury that occurred on July 2, 1991, while employed by R.S.A./U.S.A. as a production assistant. A copy of said claim is attached hereto as Summary Judgement Exhibit 1.
2. The Claim For Compensation was transmitted to the employ-ment Relations Division by letter dated July 30, 1991. A copy of said letter is attached hereto as Summary Judgement Exhibit 2.
3. R.S.A./U.S.A. completed the Employer's First Report on November 26, 1991. The report was received by the insurer on December 2, 1991. A copy of said report is attached hereto as Summary Judgement Exhibit 3.
4. On January 27, 1992, the insurer, National Union Fire Insurance Company, through their adjuster, Crawford and Company, denied Petitioner's claim. A copy of said denial is attached hereto as Summary Judgement Exhibit 4.

The exhibits are not authenticated and the facts are not otherwise referenced to pleadings, affidavits, depositions, answers to interrogatories or responses to requests for production, as required by Rules 24.5.329(2) and (3).⁽¹⁾

On its part, National recites its facts in narrative rather than serial form. Its factual narrative focuses on claimant's alleged failure to notify his employer of an injury within 30 days, however, it has not filed a cross-motion for summary judgment based on those facts. As

pertains to claimant's summary judgment motion, National does not specifically address the most critical fact set forth by claimant, that being that National failed to accept or deny his claim within 30 days of its receipt.

The rule requiring a serial, annotated statement of facts serves a good purpose. First, it forces the parties to focus on the facts essential to the motion. Second, it compels the parties to inform the Court as to which facts are in dispute. Third, by requiring the parties to support each fact by a reference to affidavits, depositions or discovery responses, it eases the Court's burden of combing through the record and permits it to quickly verify the factual statements made by the parties. It is my intent to enforce the rule and I decline to undertake a general review of the record for evidence which might support the proffered facts.

Nonetheless, the motion for summary judgment and National's response to the motion raise a critical issue of law which is appropriately resolved prior to trial and which does not require the Court to resolve factual issues. Specifically, does an insurer's failure to accept or deny a claim within 30 days, as required by section 39-71-606(1), MCA (1991), preclude an insurer from raising a defense based on a claimant's failure to report his industrial accident to his employer within the 30 days required by section 39-71-603, MCA (1991)? The Court can answer that question without resolving whether in fact National failed to accept the claim within 30 days or whether in fact the claimant failed to report his injury within 30 days.

Discussion

Haag holds that an insurer's failure to accept or deny a claim within 30 days amounts to an acceptance of the claim as a matter of law. 274 Mont. at 115, 906 P.2d at 697. The question presented in the present case is whether such acceptance cuts off a defense based on a claimant's failure to timely notify his or her employer within 30 days, as required by section 39-71-603, MCA (1991).

The failure of a claimant to timely notify his or her employer of an industrial injury provides a valid basis for denying a claim. Notice by the injured worker is "mandatory" and is "indispensable" to maintaining a claim for compensation. *Reil v. Billings Processors, Inc.*, 229 Mont. 305, 308-9, 756 P.2d 617, 619 (1987) (citing *Dean v. Anaconda Co.*, 135 Mont. 13, 16, 335 P.2d 854, 856 (1959)). But so is proof of an employment relationship. § 39-71-401, MCA (1991); see also *Morgan v. Industrial Accident Board*, 130 Mont. 272, 278-79, 282, 301 P.2d 954, 958, 960 (1956) (stating that the intent of all workers' compensation laws is to "reach and cover the status of the employer-employee relationship" and that Montana's Act "is based upon" that relationship). Nonetheless, *Haag* holds that the insurer's failure to accept or deny a claim within 30 days precludes it from raising any defense based on the lack of an employment relationship. I can only read *Haag* as holding that the usual defenses to a claim are cut off by the insurer's failure to comply with section

39-71-606(1), MCA.⁽²⁾ Therefore, if the claimant in this case can establish that National failed to accept or deny liability within 30 days of its receipt of his claim for compensation, then National is liable for his claim and is barred from asserting as a defense any failure on claimant's part to timely notify his employer of his injury.

ORDER AND PARTIAL SUMMARY JUDGMENT

For the reasons set forth in the foregoing discussion, IT IS HEREBY ORDERED as follows:

1. An insurer's failure to accept or deny a claim within the time permitted by section 39-71-606(1), MCA (1991), amounts to an automatic acceptance of the claim and precludes the insurer from asserting as a defense a failure on the part of the claimant to timely notify his employer of his injury.
2. At this time, the petitioner has not demonstrated, as a matter of uncontroverted fact, that the respondent failed to accept or deny his claim within the 30 days permitted by section 39-71-606(1), MCA (1991).
3. The ruling set forth in paragraph 1 of this Order shall govern further proceedings in this case.
4. The trial of this matter shall be reset by a separate scheduling order.

DATED in Helena, Montana, this 15th day of October, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Randall O. Skorheim
Ms. Sara R. Sexe
Submitted: September 6, 1996

1. Rule 24.5.329(2) provides:

Subject to the other provisions of this rule, summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for production, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

2. This does not mean that the insurer can never dispute liability. As this Court recently pointed out in *Theda Bouldin v. Liberty Mutual Ins. Co.*, WCC No. 9604-7536 (October 8, 1996), there are grounds for relieving an insurer of liability after acceptance, including fraud, subsequent injury, and, possibly, mutual mistake of fact.