

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 49A

WCC No. 2000-0062

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UNINSURED EMPLOYERS' FUND,

Petitioner,

vs.

AMERICAN INTERNATIONAL GROUP,

Respondent/Insurer for

PAYLESS SHOESOURCE, INCORPORATED,

Employer,

and

DONALD REVELL,

Claimant/Intervener.

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ORDER AMENDING ORDER GRANTING MOTION TO INTERVENE

**Summary:** Uninsured Employers Fund moved to amend order granting intervention to correct statement that UEF had accepted liability for claim.

**Held:** Where the UEF proffered adjusters letter stating that benefits would be paid under reservation of rights, the order is amended. Other parties are not precluded from arguing at trial that liability was in fact accepted.

**Topics:**

**Claims: Reservation of Rights.** Where UEF presented evidence that liability was not accepted on claim, but benefits paid under reservation of rights, Court order granting intervention would be amended to omit reference to acceptance of liability. Other parties are not precluded from arguing at trial that liability was in fact accepted.

1 On August 14, 2000, I entered an order granting motion to intervene. Paragraph 1 of that order states:

Donald Revell (Revell) was injured on June 20, 1996, while working on a Payless Shoe Store (Payless) remodeling project in Salt Lake City, Utah. According to the petition, Payless had

contracted with Revell's employer, which is a Montana contractor, to perform the work. **The employer was uninsured and the claim was therefore submitted to the Uninsured Employers' Fund (UEF), which accepted liability and began paying benefits.** Through its present petition, the UEF seeks indemnification pursuant to section 39-71-405, MCA, from Payless' insurer, American International Group (American International).

(Order Granting Motion to Intervene at 1-2, emphasis added.)

2 On August 18, 2000, the Uninsured Employer's Fund (UEF) moved to amend the Order, stating that the UEF did not accept the claim, rather it commenced paying benefits under a reservation of rights as provided by section 39-71-608, MCA. The motion is supported by a September 4, 1997 letter of the UEF's claims adjuster to the claimant in which she specifically stated that benefits were being commenced and paid "subject to a full reservation of rights" and that "[i]n the event the Uninsured Employers' Fund determines you are not entitled to benefits, you will be required to repay the full amount."

3 The other parties have not filed oppositions to the motion. Finding good cause, paragraph 1 is amended to read:

Donald Revell (Revell) was injured on June 20, 1996, while working on a Payless Shoe Store (Payless) remodeling project in Salt Lake City, Utah. According to the petition, Payless had contracted with Revell's employer, which is a Montana contractor, to perform the work. The employer was uninsured and the claim was therefore submitted to the Uninsured Employers' Fund (UEF), which commenced benefits but notified claimant it was paying those benefits under a reservation of rights. Through its present petition, the UEF seeks indemnification pursuant to section 39-71-405, MCA, from Payless' insurer, American International Group (American International).

4 As noted by the UEF in its motion, the issue of whether the UEF in fact effectively reserved its right may be raised and litigated by respondent and claimant. Nothing in this Order is intended to preclude them from doing so or to preclude the UEF from introducing evidence that benefits were paid under effective reservation of rights.

5 SO ORDERED.

DATED in Helena, Montana, this 8th day of September, 2000.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Julia W. Swingley  
Mr. Donald R. Herndon

Mr. Andrew D. Huppert

Submitted: September 5, 2000