

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 49

WCC No. 2000-0062

UNINSURED EMPLOYERS' FUND

Petitioner

vs.

AMERICAN INTERNATIONAL GROUP

Respondent/Insurer for

PAYLESS SHOESOURCE, INCORPORATED

Employer.

ORDER GRANTING MOTION TO INTERVENE

Summary: Claimant seeks to intervene in action brought by Uninsured Employers' Fund (UEF) against his employer for benefits paid by the UEF to him. The motion for intervention was filed more than 30 days after the petition and is untimely under Rule 24.5.309(2).

Held: The time for filing the motion is extended to the date the motion was filed and the motion is granted. The motion demonstrate good cause for both the extension and for intervention. The employer's response to the petition denies that claimant's injuries were covered under the Montana Workers' Compensation Act and claimant did not learn until recently that if the employer prevails the UEF may ask him to repay benefits. Therefore, his interest in the litigation did not arise until after the expiration of the 30 days allowed for a motion to intervene. Rule 24.5.309(2). However, the rule gives the Court discretion to permit later filing.

Topics:

ARM 24.5.309(2). Injured employee who received benefits from Uninsured Employers' Fund allowed to intervene in action filed by UEF against employer even though his motion to intervene was filed more than 30 days after the petition and was thus not timely under ARM 24.5.309(2). Motion to intervene demonstrated good cause for both intervention and extension of time where employee's interest in intervention arose only after employer answered petition denying that claimant's injuries were covered by the WCA, leading to

claimant's discovery he might be asked to repay benefits already received if employer's position prevailed.

Procedure: Intervention. Injured employee who received benefits from Uninsured Employers' Fund allowed to intervene in action filed by UEF against employer even though his motion to intervene was filed more than 30 days after the petition and was thus not timely under ARM 24.5.309(2). Motion to intervene demonstrated good cause for both intervention and extension of time where employee's interest in intervention arose only after employer answered petition denying that claimant's injuries were covered by the WCA, leading to claimant's discovery he might be asked to repay benefits already received if employer's position prevailed.

1 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).

2 The petition was filed March 30, 2000. A copy was forwarded to Revell at that time.

3 On July 11, 2000, Revell moved to intervene. Payless and American International acquiesce to the motion, however, the UEF objects on the ground the motion is untimely.

4 Rule 24.5.309 governs intervention, including the time for filing a motion to intervene, providing:

(1) Intervention in a pending proceeding shall be governed by the considerations set forth in Rule 24(a) and (b) of the Mont.R.Civ.P.

(2) Unless otherwise permitted by order of the court, a motion to intervene must be served within 30 days of the service of the petition by the court. The motion shall state the grounds upon which intervention is sought. A copy of the motion, supporting brief and any affidavits shall be served upon all parties. Any party to the dispute shall have 10 days following service to serve an answering brief. The court, in its discretion, will determine whether or not to allow intervention.

(3) If intervention results in the trial being vacated and good cause is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such insurer has a right to seek indemnity from the responsible insurer if it is later determined it was not responsible.

Revell's motion is untimely under the rule since it was filed long after the 30 days provided in subsection (2). However, the rule expressly reserves to the Court the discretion to permit

late filing of the motion. Such discretion arises from the "[u]nless otherwise permitted by order of the court" language in the subsection.

5 In ruling on the motion to intervene, I note that the UEF does not argue against the merits of the motion, only its timeliness. I therefore will address only the timeliness issue, although I note without discussion that the motion does establish good cause for intervention.

6 Revell's brief in support of his motion states that he seeks to intervene because American International's response to the petition denies that the Montana Workers' Compensation Act is applicable to his claim and alleges he was not entitled to the benefits the UEF has paid. (donald revell's brief in support of motion to intervene at 2, citing paragraphs 10, 11, and 13 of the response to petition.) The brief further states, "In recent conversations with counsel for the Uninsured Fund, it was learned that the Uninsured Fund will look to Revell for repayment of benefits in the event the Court determines Revell's claim was not properly brought within the Montana Workers' Compensation Act." (*Id.* at 2.) The UEF does not deny the conversations.

7 The facts set out in the previous paragraph show that Revell's need to intervene and protect his interests arose after the 30-day period set out in Rule 24.5.309(2). There is good cause to extend the time for filing of the motion. Therefore, I am extending the time for filing the motion to the date it was filed. Since the motion is not resisted on its merits and has facial merit, the motion to intervene is **granted**.

8 Revell shall file a written response to the petition and American International's response within 20 days.

9 SO ORDERED.

DATED in Helena, Montana, this 14th day of August, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Julia W. Swingley

Mr. Donald R. Herndon

Mr. Andrew D. Huppert (copy of American International Group's Response to Petition and Order Resetting Scheduling Order, filed June 7, 2000, included)

Submitted: July 26, 2000