

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 16A

WCC No. 9906-8248

**AUTO PARTS OF BOZEMAN, INCORPORATED,
A MONTANA CORPORATION,**

Appellant,

vs.

EMPLOYMENT RELATIONS DIVISION, UNINSURED EMPLOYERS' FUND,

Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

APPEALED

Summary: UEF moved for reconsideration of decision reversing finding of uninsured status, citing section 39-71-2339.

Held: Request to reconsider denied. Note: the decision of the Workers Compensation Court was reversed by the Montana Supreme Court in [Auto Parts of Bozeman v. ERD, 2001 MT 72, 305 Mont. 40, 23 P.3d 193](#).

1 The Uninsured Employers' Fund (UEF) moves for reconsideration of the Court's decision reversing the decision below and remanding to the Department for further proceedings. It urges that the Court overlooked section 39-71-2339, MCA, which provides:

39-71-2339. Cancellation of coverage - twenty days' notice required. The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. **After the cancellation date, the employer has the same status as an**

employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued. (Emphasis placed by UEF).

Relying on the section, the bolded language in particular, the UEF argues that the legislature has determined that an employer is "uninsured" for purposes of statutory penalty provisions once the State Fund canceled coverage and that the State Funds' finding that coverage was canceled is binding on the Department. It contends its reading of the section does not contravene due process, or fundamental fairness, because the employer has the ability to sue the State Fund in contract or tort for improper cancellation of the policy.

2 The UEF misses the point of this Court's original decision. At issue is not when a policy may be canceled or when an employer is deemed an uninsured employer. Section 39-71-2339, MCA, surely speaks to those issues. But it does not give the State Fund in a proceeding brought by the UEF for a penalty the power to decide whether in fact a policy has been legitimately canceled, nor does it give the State Fund the power to determine whether its own actions do or do not amount to a reinstatement or replacement of a canceled policy. Those determinations are judicial or quasi-judicial functions which are part of a determination that an insurer is in fact uninsured and therefore subject to a penalty.

3 The UEF complains that the Department of Labor and Industry does not have jurisdiction to determine contract disputes between an insurer and an employer. Again, the UEF misses the point. A penalty may be imposed only if the employer is in fact uninsured, therefore a determination as to whether the employer is in fact uninsured is an essential predicate to imposition of any penalty. At times, this may require determining whether coverage exists despite an insurer's position that a policy was canceled. The Department has jurisdiction to make the determination. It cannot delegate its duty to the State Fund or any other insurance company.

4 The motion for reconsideration is **denied**.

DATED in Helena, Montana, this 12th day of May, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Dennis E. Lind
Mr. Mark E. Cadwallader
Date Submitted: April 28, 2000