

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2001 MTWCC 2**

**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/Intervenor.**

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**ORDER DENYING MOTION TO ENFORCE SETTLEMENT AGREEMENT BASED ON AFFIDAVITS  
AND REQUIRING A SETTLEMENT CONFERENCE**

**Summary:** The Uninsured Employers' Fund (UEF) brought this action against Payless Shoes and its insurer for reimbursement of benefits it has paid and may in the future pay to two alleged employees of Payless. Payless moves for a motion to enforce an oral settlement agreement allegedly reached between its counsel and counsel for the UEF with respect to one of the claimants. Affidavits filed by the parties demonstrate a factual dispute as to whether a settlement agreement was ever reached.

**Held:** The affidavits do not establish that a settlement agreement was ever reached, but Payless is entitled to a hearing with respect to its allegations. However, since the parties' affidavits demonstrate, at minimum, substantial progress towards reaching a settlement agreement, and the motion pits one attorney against another as to their conversations, the Court finds it appropriate to order a formal settlement conference to attempt a final resolution. Since a settlement conference may lead to an overall settlement involving both claimants, the claimant who is already party to the action but who is not involved in the alleged agreement, is ordered to participate, and the UEF is directed to encourage the non-party claimant as to whom the alleged settlement pertains to obtain counsel and

participate in the conference. If the settlement conference fails to produce a settlement, then a hearing on the merits of the motion will be scheduled.

**Topics:**

**Settlements: Existence.** Where parties' affidavits indicate a dispute as to the existence of an oral settlement agreement of a pending action before the Court, the motion cannot be resolved upon affidavits and requires an evidentiary hearing.

**Settlement Conferences.** Where the parties engaged in settlement negotiations and disagree as to whether an oral settlement agreement was reached, it is appropriate to order the parties to engage in a formal settlement conference before holding a hearing and deciding the merits of a motion to enforce the alleged settlement agreement.

1 The Uninsured Employers' Fund (UEF) commenced this action against Payless Shoesource, Incorporated, and its insurer, American International Group, for indemnification for benefits it has paid, and may in the future be required to pay, to Mark Hurlbert and Donald Revell. I will refer to Payless *and* its insurer as "Payless."

2 The matter before the Court is Payless' motion to enforce an alleged settlement agreement involving the claim of Mark Hurlbert. I use the word "alleged" purposely as it is apparent from the affidavits submitted to the Court that there are factual disputes as to whether any agreement was ever reached, hence at minimum a hearing is required to determine the facts.

3 Two other things are apparent from the motion and the parties' briefs and affidavits. First, two of the attorneys in this case are in a swearing match as to what they agreed and did not agree to. Second, at least as to the Hurlbert claim, the parties were close to settlement even if no settlement was in fact reached.

4 The parties, of course, are entitled to engage in further battle and to a hearing to determine whether there was in fact a settlement. If I determine that there was no settlement agreement, then they are entitled to continue their battle and to a hearing on the merits of the UEF's claim for reimbursement with respect to both Hurlbert's and Revell's claim.

5 But in light of the obvious progress made in the negotiations outlined in the documents submitted to me, and the nature of the dispute between counsel, I am persuaded that before any further battles are joined, or hearings held, that the parties should be brought together in a formal settlement conference under the auspices of the Court.

6 There are two claimants in this matter. Mark Hurlbert is one of them. It is with respect to an alleged settlement of his benefits that Payless seeks to enforce the alleged settlement agreement. Hurlbert has not been made a party to this case but may have an interest in settling any settlement. Donald Revell, the other claimant affected by this matter, has

intervened and is represented by counsel. There is no allegation that the UEF's claim with respect to him has been settled.

7 I can require only those parties to this case to appear for a settlement conference, and I do so. With respect to Hurlbert, I encourage the UEF to secure his attendance and to encourage him to secure counsel to represent him at the conference.

8 Accordingly, I HEREBY ORDER AS FOLLOWS:

9 1. The motion to enforce settlement agreement for mark hurlbert is **denied** *based upon the affidavits submitted in the connection with the motion*. The motion is denied *pending a formal settlement conference* with the Court's Hearing Examiner. If the parties are unable to reach a settlement following a settlement conference, then a hearing will be scheduled with respect to the motion and the motion will be considered on it's merits.

10 2. The parties are ordered to participate in a settlement conference before the Court's Hearing Examiner at a date, time and place to be set. Each party shall have someone with ultimate settlement authority present at the conference. The UEF shall contact Mark Hurlbert and encourage him to secure an attorney and attend the conference with an attorney.

11 3. All further proceedings are **stayed** pending the outcome of the settlement conference.

DATED in Helena, Montana, this 17th day of January, 2001

(SEAL)

Mike McCarter

JUDGE

c: Ms. Julie W. Swingley - Mailed and Faxed

Mr. Donald R. Herndon - Mailed and Faxed

Mr. Andrew D. Huppert - Mailed and Faxed

Submitted: January 4, 2001