IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 58

WCC No. 2004-1074

RONALD BEAULIEU

Petitioner

vs.

HUMAN DYNAMICS CORPORATION

Respondent/Insurer.

DECISION AND ORDER DENYING MOTION TO DISMISS

Summary: Respondent moved to dismiss for lack of jurisdiction, asserting it is not an insurer and is not subject to the jurisdiction of the Workers' Compensation Court.

Held: The motion is denied. The respondent is judicially estopped from asserting it is not an insurer in light of its representations in pleadings and motions in two prior cases that it provided coverage to the claimant in this case.

Topics:

> **Estoppel and Waiver: Judicial Estoppel.** Where in two prior cases involving the claimant, the respondent party has represented in pleadings and motions that it provided workers' compensation coverage for claimant and was paying him benefits, it is judicially estopped from now denying that it is an insurer.

¶1 Through his present petition, Ronald Beaulieu (Beaulieu) seeks medical benefits from Human Dynamics Corporation ("Dynamics" or "HDC"), on account of an April 16, 1994 injury he suffered while working for Eureka Pellet Mills, Incorporated (Eureka). Dynamics moves to dismiss for lack of jurisdiction

Discussion

¶2 Beaulieu is one of a number of claimants affected by a tangled web woven by Dynamics in the mid-1990s. The facts concerning Dynamic's Montana activities are set out in *Total Mechanical Heating & Air Conditioning v. UEF*, 2002 MT 55, 50 P.3d 108, and the decisions below, 2000 MTWCC 39, 39A, and 70. As set forth in those decisions, in 1994 Dynamics enlisted thirteen Montana companies in an employee-leasing scheme under which Dynamics was to act as co-employer for the employees of the thirteen companies. Under

its agreement with the companies, Dynamics assumed responsibility for workers' compensation coverage. However, Dynamics did not, in fact, provide workers' compensation insurance, rather it insisted that the Montana workers' compensation laws were preempted by ERISA. Failing in that argument, it provided faulty documents which it insisted showed it had provided retroactive workers' compensation coverage. This Court and the Supreme Court found that no coverage was provided.

¶3 As a result of Dynamic's machinations, and its failure to comply with Montana workers' compensation laws, thirteen Montana companies were victimized; they were held to be employers liable for workers' compensation premiums and assessed substantial penalties amounting to more than one million ($1,000,000) dollars. Dynamics now attempts to add to its list of victims by denying Beaulieu a forum for pursuing workers' compensation benefits even though it has accepted liability for his claim!

¶4 One of the thirteen Montana companies victimized by Dynamics was Eureka, which was Beaulieu's employer. Beaulieu's claim arose during the period Eureka was uninsured but under contract with Dynamics. In its decision in *Total Mechanical Heating and Air Conditioning,* the Supreme Court noted:

> The parties agree that workers' compensation claims filed during the UEF-claimed lapses of compensation coverage were not paid by the UEF, **but were paid by either Dynamics or Resources** [the successor to Dynamics]. Dynamics maintains that these claims were paid under Dynamics' ERISA plan and were applied against the deductible on the CGIC workers' compensation policies carried by Dynamics and Resources.

2002 MT 55, ¶ 20 (emphasis added). Beaulieu's industrial accident occurred during the period of Dynamics' responsibility and Dynamics has been paying him workers' compensation benefits since his injury.

¶5 Despite payment of workers' compensation benefits to Beaulieu, Dynamics argues that this Court lacks jurisdiction over the petition because Dynamics is not a workers' compensation insurer and "the Supreme Court has found that program of benefits that HDC provided to its client companies, including Eureka Pellet Mills, Inc., has been under ERISA." (Memorandum in Support of Motion to Dismiss at 3.) Its arguments are not only without merit, they are reprehensible.

¶6 Contrary to its contention, the Supreme Court did not find that the benefits paid by Dynamics to injured workers or its clients were ERISA benefits. Rather, it was Dynamics which "maintained" that the benefits it was paying to injured workers were paid pursuant to an ERISA plan which preempted Montana workers' compensation laws. The preemption argument was abandoned by Dynamics in the prior proceedings and, in any event, was utterly without merit.

¶7 Dynamics contends that the Court nevertheless lacks jurisdiction because it is not an insurer. That contention flies in the face of its responses, **filed by its current attorney**, in two prior proceedings by Beaulieu with respect to his April 16, 1994 industrial accident, which is the same accident at issue in this case.

¶8 The first of the two prior cases was brought by Beaulieu in 1995 against both Dynamics and the Uninsured Employers' Fund (UEF). In that case, he sought an increase in temporary total disability (TTD) benefits and payment of medical expenses. In its answer to the petition, Dynamics alleged that it insured Beaulieu. In subsequent filings with the Court, Dynamics indicated that it had resolved the issues raised in the petition. Based on its motions for summary judgment indicating that it had resolved both the TTD and medical benefits issues, I dismissed the petition. *Beaulieu v. UEF and Human Dynamics, Inc.,* 1998 MTWCC 36.[(1)]

¶9 In the second case, brought in 1997, Beaulieu again sought payment of medical benefits which had been denied by Dynamics. He again named the UEF and Dynamics as respondents. Dynamics filed a response admitting it insured Eureka and in a motion to dismiss urged that the Court lacked jurisdiction to determine whether Eureka was insured or not since it (Dynamics) admitted it insured the company. Dynamics' allegations are summarized in the first two paragraphs of the decision, as follows:

> The present petition seeks medical benefits with respect to an injury claimant suffered on April 16, 1994, while working for Eureka Pellet Mills (E.P.M.). (Petition for Hearing.) Claimant alleges, in the alternative, that the employer was either insured by respondent, Human Dynamics, Inc., (HDI), or was uninsured. (*Id.*, ¶ II.) The Uninsured Employers' Fund (UEF) is named as a co-respondent.
>
> HDI filed a response admitting it insured EPM. Based on its admission of liability, it moves to dismiss the UEF as a party. It urges that its admission divests the Workers' Compensation Court of jurisdiction to adjudicate whether EPM was insured or uninsured.

(1998 MTWCC 16, ¶¶ 1-2.) I denied the motion to dismiss the UEF based on my determination that by claiming that it insured Eureka, Dynamics could not preempt Beaulieu's claim that Eureka was, in fact, uninsured. (*Id.*, ¶¶ 4-5.) I made no final determination as to insurance. As with the 1995 petition, the 1997 petition was settled and dismissed upon payment by Dynamics of the disputed benefits.

¶10 The history of Beaulieu's claim and my disposition of Dynamics' motion to dismiss the UEF with respect to the 1997 petition are discussed in my decision in *Total Mechanical:*

> The record below is replete with evidence showing that between January and October 1994, HDC adjusted and paid workers' compensation claims of injured employees of its client companies, including a claim of Ron Beaulieu (Beaulieu), an

employee of Eureka Pellet Mills. On August 25, 1994, Beaulieu's attorney wrote UEF a letter advising it that his client, Beaulieu, had been "receiving partial disability payments from Human Dynamics Corp. in Mesa, Arizona," but that the payments, and medical reimbursement were not correct under Montana law. (UEF Ex. Q at 4.) The lawyer reported that Tom Lindsey, an HDC employee,

> informed me that **because it was private insurance**, Human Dynamics did not have to submit anything to State Fund or Workers Compensation and that the amount reimbursed to Mr. Beaulieu was correct and they were not going to change it. [Emphasis added.]

(*Id*.) The record contains a copy of a check dated June 13, 1994, in the amount of $351.10 payable to Beaulieu and drawn on an account of International Risk Management, Incorporated, of Mesa, Arizona. (*Id*. at 7.) At the hearing, Anderton testified he was president of International Risk Management, which appears to be the claims adjusting adjunct to HDC. (Tr. at 37.) A printed "memo" on the check indicates: "Payment; 94MT0002 TD 5/28/94 to 6/10/94." (UEF Ex. Q at 7.)

Later on, Beaulieu filed a petition with this Court requesting an increase in his temporary total disability benefits and payment of certain medical expenses. He named the UEF and HDC as respondents. (*See Id*. at 11-13.) HDC appeared, **affirmatively alleged that it (HDC) insured Eureka Pellet Mills,** and moved to dismiss the UEF as a party. I denied the motion, holding that since the claimant alleged in the alternative that Eureka Pellet was uninsured the Court had jurisdiction to determine whether the UEF was liable for benefits, which in turn required a determination as to whether Eureka Pellet in fact was insured or not. (*Beaulieu v. Uninsured Employers' Fund and Human Dynamics, Incorporated*, 1998 MTWCC 16 at ¶ 5; UEF Ex. Q at 47.)

(2000 MTWCC 39, ¶¶ 44-45 (emphasis in the original).)

¶11 The present motion to dismiss flies in the face of Dynamics' judicial admissions in both the 1995 and 1997 cases. In both of the prior cases, Dynamics admitted it insured Beaulieu's employer and that it is liable for workers' compensation benefits payable on account of claimant's 1994 injury.

¶12 In its response to the 1995 petition, Dynamics admitted the following facts:

> ¶12a That on April 16, 1994, the Petitioner suffered an industrial injury arising out of and in the course of his employment with Eureka Pellet Mills, Inc., of Eureka, Montana.
>
> ¶12b That at the time of the injury, the Employer **was insured under the provisions of the Montana Workers' Compensation Act through Human Dynamics, Inc.**

> ¶12c **That Respondent, Human Dynamics, Inc., accepted liability for the Petitioner's injury and paid weekly temporary total disability benefits in accordance with Section 39-71-701, MCA.**

(*Beaulieu v. UEF and Human Dynamics, Inc., WCC* No. 9512-7463, Response to Petition at 1-2.) Dynamics thereafter filed a motion for summary judgment urging that the petition was moot because it had adjusted the rates of his indemnity benefits to accord with Montana workers' compensation requirements and had paid the disputed medical expenses. The motion resulted in dismissal of the petition.

¶13 In its response to the 1997 petition, Dynamics again admitted it insured Beualieu's employer and had accepted liability for his claim. Its admissions were nearly identical to its admissions in the 1995 action. In its response, it admitted:

> ¶13a That on April 16, 1994, the Petitioner suffered an industrial injury arising out of and in the course of his employment with Eureka Pellet Mills, Inc., of Eureka, Montana.
>
> ¶13b That at the time of the injury, the Employer **was insured under the provisions of the Montana Workers' Compensation Act through Human Dynamics, Inc.**
>
> ¶13c **That the Respondent, Human Dynamics, Inc., accepted liability for Petitioner's industrial accident and has paid temporary total disability benefits to the Petitioner during this period of time.** The Petitioner, through his attorney, has requested the Respondent to pay the Petitioner's biweekly benefits on a timely basis.

(*Beaulieu v. UEF and Human Dynamics, Inc.,* WCC No. 9712-7880, Response to Petition for Hearing at 1-2 (emphasis added).)

¶14 Even more telling is Dynamics Motion to Dismiss the UEF from the 1997 action. That motion was based on its admission that it had accepted liability for Beaulieu's claim. In its supporting memorandum, Dynamics stated:

> The Petitioner [Beaulieu] has been receiving, and has been accepting, biweekly compensation benefits from Human Dynamics for almost four years now. The Petitioner has been receiving, and has been accepting medical benefits from Human Dynamics for almost four years now. **In the pleadings in the instant matter, Human Dynamics has admitted that Eureka Pellet Mills was insured through Human Dynamics. That is all that should be necessary to establish that Human Dynamics is responsible for any benefits awarded to the Claimant**, and that the Uninsured Employers Fund has no standing in the matter and is not a proper party to the matter. [Emphasis added.]

(*Id.,* Memorandum In Support of Motions to Dismiss for Lack of Jurisdiction[(2)]

at page 4.**)**

¶15 I note here that the attorney who signed all of the responses to the petitions in both prior cases, who signed the memorandum in support of the motion for summary judgment in the second case, and who represented Dynamics throughout both prior cases is the same attorney who now moves to dismiss the present petition for lack of jurisdiction based on an assertion that Dynamics is not an insurer and is therefore not subject to the Court's jurisdiction. I take judicial notice of the Court files in both cases and have directed the Clerk of Court to make certified copies of the complete Court files in both cases and make them part of the record in this case.

¶16 This brings me to the present motion to dismiss. Dynamics correctly notes in its Reply Memorandum in Support of Motion to Dismiss, that a challenge to a Court's subject matter jurisdiction can be raised at any time and cannot be waived. But the issue in this case is not subject matter jurisdiction: Beaulieu is seeking workers' compensation benefits and the Court has exclusive jurisdiction over his request. Rather, the issue is whether Dynamics is a proper party. That issue is one involving *in personam* jurisdiction. Lack of personal jurisdiction is a defense which can be waived. *Harland v. Anderson Ranch Co.,* 2004 MT 132, ¶ 31, fn. 1. On grounds of judicial estoppel, I find that Dynamics has waived any objection which is based on an assertion that it is not an insurer over which the Workers' Compensation Court has jurisdiction.

¶17 The purpose of the doctrine of judicial estoppel is summarized in the recent case of *Cowan v. Cowan,* 2004 MT 97, 321 Mont. 13, 89 P.3d 6 at paragraph 15:

> "The fundamental purpose of judicial estoppel is to protect the integrity of the judicial system and thus to estop a party from playing 'fast and loose' with the court system." *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 15, 307 Mont. 45, ¶ 15, 36 P.3d 408, ¶ 15. "[T]he doctrine of judicial estoppel binds a party to his or her judicial declarations, and precludes a party from taking a position inconsistent with previously made declarations in a subsequent action or proceeding." *Kauffman-Harmon*, ¶ 15. In *Kauffman-Harmon*, we examined the doctrine of judicial estoppel as it applies to resulting and constructive trusts. In that case, we determined that when Dr. Kauffman claimed in a previous legal action that he had no interest in certain assets that he had transferred to a corporation, he was barred from claiming an interest in the assets in a subsequent proceeding. *Kauffman-Harmon*, ¶ 17.

¶18 Four elements must be satisfied to judicially estop a party from taking a position inconsistent with a prior position. First, the estopped party must have had knowledge of the facts at the time the party took the original position. Second, the party must have succeeded in maintaining the original position. Third, the original position must, in fact, be inconsistent with the position taken in the present case. Fourth, and finally, the original position must have misled the adverse party such that allowing the estopped party to

change position would injure the adverse party. *Stanley L. and Carolyn M. Watkins Trust v. Lacosta,* 2004 MT 144, ¶ 33.

¶19 All four elements are satisfied in the present case. First, Dynamics had knowledge of the facts as to whether it was an workers' compensation insurer or not. If not a *de jure* insurer it has certainly acted as a *de facto* insurer. If it believed that it was not a workers' compensation insurer subject to this Court's jurisdiction, then its representations to the Court in the 1995 and 1997 actions amounted to a deliberate fraud upon the Court. Second, Dynamics was successful in getting both actions dismissed by representing it insured Beaulieu; then accepting or settling his claim for benefits so as to moot both of his petitions.[(3)] Third, Dynamics motion to dismiss in the present case is patently inconsistent with its position in the prior case. Fourth, and finally, Beaulieu has plainly relied on Dynamics' representations in the prior cases and changed his position to his detriment. He accepted benefits from Dynamics and allowed his prior actions claiming that his employer was uninsured and naming the UEF as the responsible party for his benefits to be dismissed. It is also apparent from the pleadings, motions, and briefs filed herein that he has continued to rely on Dynamics for his workers' compensation benefits. It should be clear from this discussion that Dynamics is, in fact, "playing fast and loose with the court system."

¶20 Dynamics has admitted liability for the workers' compensation benefits to which Beaulieu is statutorily entitled. Its attempt to deny him a forum to litigate the proper amount of those benefits is not only unreasonable on its face, it is reprehensible. If I were to adopt its position, Beaulieu would be left with no remedy in disputes involving his benefits and would be forced to look to the UEF and Eureka for satisfaction of his claim, thus leading to renewed litigation in district court and this Court. Dynamics would then have succeeded in further victimizing the claimant, Eureka, and the State of Montana.

¶21 I find the motion to dismiss not only without merit under the facts outlined above, but outrageous. The motion is **denied**.

¶22 It is further ordered that Dynamics shall file its response to the petition on or before August 18, 2004.

DATED in Helena, Montana, this 10th day of August, 2004.

(SEAL)

Mike McCarter
JUDGE

c: Ms. Laurie Wallace
Mr. Andrew J. Utick
Submitted: August 4, 2004

1. In both my decisions, I referred to respondent without distinguishing between the respondent UEF and respondent Dynamics. However, the context of my decisions, as well as my file review, show that the respondent referred to was Dynamics, not the UEF.

2. The lack of jurisdiction issue was limited to whether the UEF was a proper party and whether the Court could consider an allegation that Eureka was uninsured. The whole purpose of Dynamics' motion was to avoid litigating the insured status of the employer. Dynamics tendered itself as an insurer which had accepted liability for Beaulieu's claim.

3. The 1998 petition was dismissed by agreement after Dynamics and Beaulieu settled the amounts Beaulieu claimed were due him and Dynamics sent him a check for the settlement amount. *See* Court file in *Beaulieu v. UEF and Human Dynamics,* WCC No. 9712-7880.