

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 59A

WCC No. 9706-7768

STEPHEN T. GARCIA

Appellant/Employer

vs.

**DEPARTMENT OF LABOR & INDUSTRY
EMPLOYMENT RELATIONS DIVISION/
UNINSURED EMPLOYERS' FUND**

Respondent/Insurer for

JULIE MANIACI

Claimant.

ORDER AMENDING ORDER ON APPEAL

Summary: In order issued October 23, 1997, the Workers' Compensation Court reversed the Department of Labor's disapproval of a settlement agreement between a claimant and an allegedly uninsured employer. At issue was whether the Uninsured Employers' Fund was a necessary party to the settlement agreement. In examining that issue, the WCC noted that the UEF was not an insurer within the relevant statutes. Subsequently, the Court reconsidered that question.

Held: Although the UEF is not listed within the definition of insurer contained in section 39-71-116(13), MCA (1995), section 39-71-505, MCA (1995) provides that "all appropriate provisions in the Workers' Compensation Act apply to the [Uninsured Employers'] fund in the same manner as they apply to compensation plans 1, 2, and 3. Given this provision, the UEF is subject to the same requirements as insurers under the workers' compensation statutes. The Court's earlier holding regarding approval of a settlement agreement without the UEF, however, stands.

Topics:

Uninsured Employers' Fund: Generally. Although the UEF is not listed within the definition of insurer contained in section 39-71-116(13), MCA (1995), section 39-71-505, MCA (1995) provides that "all appropriate provisions in the Workers'

Compensation Act apply to the [Uninsured Employers'] fund in the same manner as they apply to compensation plans 1, 2, and 3. Given this provision, the UEF is subject to the same requirements as insurers under the workers' compensation statutes.

On October 23, 1997, this Court entered its Order on Appeal. Subsequently, I determined that I was in error when I concluded that the Uninsured Employers' Fund (UEF) is not an "insurer" within the meaning of the Workers' Compensation Act (WCA). Although the error does not change the result, it should nonetheless be corrected. The time for appeal has not yet expired, therefore *sua sponte* I am amending the Order on Appeal *nunc pro tunc*.

In finding that the UEF was not an insurer, I relied on section 39-71-116(13), MCA (1995), which defines insurer as follows:

(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

The UEF is not a self-insured employer, an insurance company or the State Fund. In its brief on appeal, the Department of Labor and Industry acknowledged that the UEF does not meet the definition of an insurer. I opted for the obvious conclusion, to wit: the UEF is not an insurer.

In doing so, I overlooked, as did the Department, section 39-71-505, MCA (1995), which provides:

All appropriate provisions in the Workers' Compensation Act apply to the [Uninsured Employers'] fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

This provision is plainly intended to subject the UEF to the same requirements as insurers, hence it is to be treated as an insurer under the WCA.

Nonetheless, I reaffirm my determination that the Department is not a necessary party to the settlement between the claimant and the employer. As found in the original decision, section 39-71-519, MCA (1995), expressly provides that an uninsured employer and a claimant may enter into a settlement. While such settlement is subject to Department review under section 39-71-741, MCA, the latter section does not nullify the express terms of section 39-71-519, MCA. Section 39-71-741, MCA, refers to settlements between an "insurer" and a claimant. Section 39-71-519, MCA, must be read as expanding the Department's review to the agreements expressly authorized by that section.

As amended by this Order, the Order on Appeal is **reaffirmed**.

DATED in Helena, Montana, this 7th day of November, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. William Dean Blackaby

Mr. Robert J. Campbell

Ms. Julie Maniaci Brennan - Certified Mail

Ms. Christine L. Noland

Ms. Anne L. MacIntyre - E-mailed