

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 41

WCC No. 2000-0220

DONALD R. HOUSEHOLDER

Petitioner

vs.

REPUBLIC INDEMNITY COMPANY OF CALIFORNIA

Respondent/Insurer for

POVERELLO CENTER, INCORPORATED

Employer.

ORDER DISAPPROVING PROPOSED SETTLEMENT

Summary: The insurer denied liability for a dissecting aorta which manifested itself at work. Claimant petitioned the Court and the parties thereafter reached a settlement agreement under which the insurer continued to deny liability but agreed to chip in \$35,000.00 towards \$122,000.00 in medical bills. The agreement provided that the bills were to be reduced in accordance with the medical fee schedule promulgated under the Workers' Compensation Act, and 20% deducted from the resulting amount to pay attorney fees. The agreement provided that the medical providers were limited to the fee schedule amount less the attorney fees. The net effect was to reduce the compensation to medical providers to \$63,223.07, with the claimant paying the difference between the \$63,223.07 and the \$35,000.00 tendered by the insurer. One of the providers filed an objection to the provisions limiting payments to the fee schedule.

Held: Upon review of a proposed stipulation and judgment prepared by the parties, the Court disapproves the stipulation since the medical fee provisions are inapplicable where the insurer does not accept full liability for medical bills associated with the claim and there has been no adjudication that the claim is compensable. The agreement is a subterfuge and the Court refuses to endorse it. Moreover, it is improper and outrageous to assess medical providers with attorney fees on amounts claimant has agreed to pay.

Topics:

Benefits: Medical Benefits: Fee Limitations. Fee schedule promulgated pursuant to the Workers' Compensation Act applies only to medical benefits payable under the Act. It is inapplicable where the insurer has neither accepted liability for the claim or at least for the full amount of medical services, nor has been adjudicated liable for the claim.

Jurisdiction: Standing. Whether or not a medical provider has legal standing to object to a settlement and stipulation for judgment which purports to limit its medical bills to the workers' compensation fee schedule, the Court will consider the merits of the objection in determining whether it is appropriate for it to approve the settlement agreement and enter a judgment adopting it.

Judgments: Stipulated Judgments. Irrespective of the parties agreement and stipulation, the Court will not enter a judgment purporting to bind a non-party since the non-party has not been afforded basic due process. Even if the judgment is unenforceable, the judgment would be a chimera and the Court declines to create such a monster.

Judgments: Stipulated Judgments. The Court will not enter judgment on a stipulation that contains provisions which are contrary to law.

Settlements: Stipulated Judgments. The Court will not enter judgment on a stipulation that contains provisions which are contrary to law.

Settlements: Stipulated Judgments. Irrespective of the parties agreement and stipulation, the Court will not enter a judgment purporting to bind a non-party since the third party has not been afforded basic due process. Even if the judgment is unenforceable, the judgment would be a chimera and the Court declines to create such a monster.

¶1 The claimant in this matter suffered an ascending aortic dissection while working for Poverello Center, Incorporated. Poverello's insurer, Republic Indemnity Company of California (Republic), denied liability and the claimant petitioned the Court seeking a determination that his condition is work related and therefore compensable. During the pendency of the petition, the parties engaged in settlement negotiations which led to an agreement under which the insurer continues to deny liability but agrees to provide \$35,000 to be applied to medical bills amounting to more than \$122,000. The parties further agreed that claimant would provide the remaining funds to pay medical bills and that medical bills would be paid in accordance with the workers' compensation schedule for medical benefits less 20% for attorney fees. A copy of the proposed settlement agreement is attached as Exhibit B to Respondent's Brief in Opposition to Objection to Proposed Settlement.

¶12 Upon learning of the proposed agreement, Collection Bureau Services, Incorporated, as assignee of St. Patrick Hospital, filed an objection to the agreement. St. Patrick has the lion's share of the medical bills, its share amounting to \$94,722.38. Its assignee (hereinafter referred to as St. Patrick) specifically objected to any provision which would limit its recovery to the workers' compensation fee schedule. After reviewing the objection, the Court requested claimant and respondent to reply to the objection. (The request was made orally and is not reflected in the Court file.) Both parties have filed briefs asking the Court to overrule the objection.

Discussion

¶13 The proposed settlement agreement, attached as Exhibit B to Respondent's Brief in Opposition to Objection to Proposed Settlement, is in the form of a Stipulation for Dismissal and Order for Dismissal With Prejudice. It thus requires the Court's approval and endorsement.

¶14 As a threshold matter, claimant argues that St. Patrick lacks standing to contest the settlement since it is not a party before the Court. The argument is without merit. The parties are requesting the Court's approval of the agreement. Whether or not St. Patrick is a party or has standing, the Court will not approve a settlement agreement that is contrary to law. Moreover, the proposed judgment purports to limit St. Patrick's right to reimbursement. If St. Patrick does not have standing to object to the limitation, then how, in light of basic and fundamental due process principles, could it be bound by the judgment? A judgment which is unenforceable is a chimera, and the Court declines to create such a monster.

¶15 In their proposed stipulation, the parties acknowledge that "a significant dispute exists concerning liability." (¶ 2.) They further agree that in return for the insurer's contribution of \$35,000 towards outstanding medical bills, all claims by the petitioner for compensation, medical, and rehabilitation benefits, as well as for attorney fees, penalties, and costs, shall be dismissed with prejudice. With respect to payment of medical bills, the stipulation goes on to provide:

5. That medical bills related to the care and treatment of the March 10, 2000 cardiovascular accident suffered by Petitioner are unpaid and outstanding, and that it is the intention of the parties to this agreement that **certain outstanding and unpaid medical bills shall be fully satisfied pursuant to the terms of this agreement**. The amount of the unpaid and outstanding medical bills to be paid pursuant to this Stipulation is set forth in Exhibit "A" which is attached hereto and incorporated into this Stipulation.

6. That for the purposes expressed herein and in accordance with the terms outlined in this Stipulation, the Respondent/Insurer hereby accepts responsibility for paying

the unpaid medical bills. That the amount payable to the health care providers shall equal to the amounts provided by the workers' compensation fee schedule reduced by 20% in acknowledgment of the attorney fee pursuant to the *Lockhart*⁽¹⁾ decision. The amount to be paid to the various health care providers is set forth in Exhibit "A" which is attached hereto and incorporated into this Stipulation.

7. That pursuant to this agreement, the parties stipulate that judgment shall be entered by this Court directing the Respondent/Insurer to pay \$35,000 in satisfaction of the bills set forth in Exhibit "A." That pursuant to this agreement, the parties stipulate that judgment shall be entered by this Court directing the Respondent/Insurer to pay the remaining bills set forth in Exhibit "A" out of proceeds provided to Responded [sic] by Petitioner for purposes of paying the bills.

8. That pursuant to this agreement, the parties stipulate that judgment shall be entered by this Court providing that any bills not set forth on the attached Exhibit "A" shall be the sole responsibility of Petitioner. [Emphasis and footnote added.]

(Exhibit B to Respondent's Brief in Opposition to Objection to Proposed Settlement at 2-3.)

¶6 Exhibit A to the stipulation is attached to this Order. It is a schedule of the outstanding medical bills. The first column identifies the provider. The second column lists the amount billed by the provider. The third column lists the amount payable under the fee schedule promulgated pursuant to the Workers' Compensation Act. The final column lists the net amount due each provider following deduction of a 20% attorney fee, purportedly pursuant to *Lockhart v. New Hampshire Insurance Company*, 1999 MT 205, 295 Mont. 465, 984 P.2d 744. As set forth in the schedule, the outstanding medical bills are \$122,080.32. Under the parties' stipulation the medical providers would receive \$63,223.07, which is approximately one-half (51.79%) of what they are entitled to if their fees are not limited by the Workers' Compensation Act.

¶7 The proposed stipulation and judgment plainly attempts to limit the claimant's and the insurer's liability for medical bills to \$63,223.07. It states that the amount computed in the schedule as payable to medical providers "**shall be fully satisfied pursuant to the terms of this agreement.**" The parties do not dispute that this is their intent, rather they argue that through their agreement they can subject medical providers to fee schedules adopted pursuant to the Workers' Compensation Act. The parties are wrong.

¶8 Section 39-71-704, MCA, regulates fees charged by hospitals, physicians, and other medical providers for care provided to claimants for work-related, compensable injuries. Subsections (2), (3), and (4) provide:

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for

nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3)(a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

The fee provisions are part and parcel of the provision for payment of medical benefits for injured workers. Medical benefits are payable only for compensable claims, hence only for claims accepted by the insurer as compensable or found by the Court to be compensable.

¶9 A separate section requiring medical providers to accept the fees fixed pursuant to section 39-71-704, MCA, as payment in full similarly applies only to benefits paid pursuant to the Workers' Compensation Act for compensable claims. Section 39-71-743(3), MCA, provides:

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

On its face, the section applies only to claims for which liability has been accepted or determined.

¶10 Under the proposed stipulation, liability continues to be disputed. The insurer does not accept liability for medical bills, it only agrees to contribute \$35,000 towards them as a compromise. Claimant's argument that the insurer has accepted liability is disingenuous - the plain terms of the agreement show that except for its \$35,000 contribution, the insurer is to act as a mere conduit for payments made by the claimant. In the case of an accepted claim, the insurer becomes directly liable to the medical providers for payments. That is not the case here.

¶11 Moreover, the attorney fee reduction outlined by the schedule of medical bills is contrary to *Lockhart*. The parties have deducted 20% of the full amount they propose to pay the medical providers. Under *Lockhart*, attorney fees are deductible only for benefits which the claimant successfully secures from the insurer. It has no application to amounts payable by a claimant personally, and I find it outrageous that the parties have attempted to saddle the medical providers with attorney fees on medical bills the claimant has agreed to pay.

¶12 Since the insurer has not accepted liability for the claim in this case, or even for full medical benefits, the fee limitations imposed by the Workers' Compensation Act are inapplicable to claimant's medical bills. The Court declines the parties' invitation to participate in their subterfuge. The proposed stipulation and judgment is **disapproved and rejected**.

DATED in Helena, Montana, this 6th day of August, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Howard Toole
Mr. Kelly M. Wills

Mr. Michael J. Moore (Courtesy Copy)

Date Submitted: August 1, 2001

Attachment: Exhibit A to Stipulation for Dismissal and Order for Dismissal with Prejudice

<u>Provider</u>	<u>Amount of Bill</u>	<u>Fee Schedule Amount</u>	<u>Lockhart Payment</u>
St. Patrick Hospital	\$94,722.38	\$61,209.61	\$48,967.69
Missoula Anesthesiology, P.C.	3,078.00	2,503.46	2,002.77
Pathology Consultants	49.75	21.36	17.09
International Heart Institute	8,314.00	6,100.58	4,880.46
Stan Wilson, M.D.	579.30	351.60	281.28
Montana Healthcare Consultants	590.44	590.44	472.35
Louis Kattine, M.D.	9,757.25	4,985.51	3,988.41
Missoula Radiology, Inc.	1,541.60	1,435.10	1,148.08
Western Montana Clinic	3,233.00	1,693.78	1,355.02
Mountain West Rehabilitation	<u>215.00</u>	<u>137.40</u>	<u>109.92</u>
TOTAL:	\$122,080.32	\$79,028.84	\$63,223.07

EXHIBIT A

1. *Lockhart v. New Hampshire Insurance Company*, 1999 MT 205, 295 Mont. 465, 984 P.2d 744.