IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 45

WCC No. 9504-7270

CHAMPION INTERNATIONAL CORPORATION

Petitioner

vs.

JOHN BERNHARD

Respondent.

ORDER DISMISSING PETITION WITHOUT PREJUDICE

Summary: Self-insured employer filed petition for determination of what, if any, benefits are due claimant regarding several prior industrial accidents. Noting the petition was in the nature of a "preemptive strike," the Court issued an order to show cause why the petition should not be dismissed. Claimant filed a brief requesting dismissal, arguing that an injured worker has the right to request judicial determination of his claim when he is financially, emotionally, and medically prepared to do so.

Held: The Workers' Compensation Court does not permit insurers or self-insured employers to use principles of declaratory judgment to determine the timing of litigation of a worker's potential entitlement to benefits under the Workers' Compensation or Occupational Disease Acts. The pleadings in this case, and affidavit filed by claimant's counsel, indicate that the employer attempted to persuade claimant to settle all his claims so it could close its files, but claimant resisted. Adjudication may never be necessary on claimant's claims. The insurer cannot use declaratory judgment procedure to force claimant to settle or litigate just so it can close its files.

Topics:

Declaratory Judgment: Pre-emptive Strikes. Where adjudication may never be necessary concerning entitlement to benefits, the insurer cannot use a pre-emptive strike to force claimant to settle or litigate just so it can close its files.

Jurisdiction: Pre-emptive Strikes. Where adjudication may never be necessary concerning entitlement to benefits, the insurer cannot use a pre-emptive strike to force claimant to settle or litigate just so it can close its files.

Jurisdiction: Ripeness. Where adjudication may never be necessary concerning entitlement to benefits, the insurer cannot use a pre-emptive strike to force claimant to settle or litigate just so it can close its files.

(SEE FOLLOWING ORDER)

1995 MTWCC 45

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CHAMPION INTERNATIONAL CORPORATION,

Petitioner/Employer, **WCC No. 9504-7270**

vs.

JOHN BERNHARD,

Claimant/Respondent.

ORDER DISMISSING PETITION WITHOUT PREJUDICE

The petition in this case was filed by a self-insured employer, Champion International Corporation (Champion), seeking a determination as to what, if any, benefits may be due claimant with respect to several prior industrial accidents. Noting that "[t]he petition is in the nature of a preemptive strike and raises a serious question in the Court's mind as to its appropriateness since the respondent may or may not ever pursue an action for further benefits," the Court issued an order to show cause why the petition should not be dismissed. (ORDER VACATING SCHEDULING ORDER AND TO SHOW CAUSE (April 27, 1995).) Champion responded by filing a CONSOLIDATED REPLY TO COURT'S ORDERS TO SHOW CAUSE. Respondent/claimant, John Bernhard (claimant), responded by filing a MOTION TO DISMISS and a supporting brief. Claimant's motion is granted and Champion's petition is dismissed without prejudice.

Claimant was employed by Champion for a number of years, during which time he suffered at least eleven (11) separate injuries over an eleven (11) year period between 1976 and 1987. Champion alleges that some of the claims may be time-barred and that all were minor in nature and did not result in any wage loss benefits. It alleges that as a result of the injuries claimant might have an entitlement to some disability benefits. Champion attempted to resolve outstanding claims but was unable to do so. In other words, Champion attempted to persuade claimant to settle all his claims so it could close its files, but failed. Champion now requests the Court determine what benefits are due to claimant. (PETITION FOR HEARING ¶ 4.)

In his MOTION TO DISMISS, claimant, through his attorney, makes it clear that he does not wish to pursue his claims, at least at this time, and specifically requests that the petition be dismissed. His BRIEF IN SUPPORT OF MOTION TO DISMISS verifies that Champion initiated the attempt to settle and close out his old claims. (The facts set forth in the brief are verified by an AFFIDAVIT OF REX PALMER.) He notes that "the purpose of Workers' Compensation statutes is the protection of the interests of the injured worker" and says:

> Permitting an insurer to dictate the timing of the judicial determination of all possible disability benefits is an anathema to this principle. At the very least, this principle must mean that an injured worker has the right to make a request for judicial determination of his claim when he is financially, emotionally, and medically prepared to do so . . . .

(BRIEF IN SUPPORT OF MOTION TO DISMISS at 5.)

The cause of action in this case belongs to the claimant, not to the insurer. It is he who, under the Workers' Compensation Act, may be entitled to benefits for work-related injuries. Thus, the insurer's petition is one for declaratory judgment. "The purpose of declaratory relief is to liquidate uncertainties and controversies **which might result in future litigation** and to adjudicate rights of parties who have not otherwise been given an opportunity to have those rights determined." *In re Dewar,* 169 Mont. 437, 444, 548 P.2d 155 (1976) (emphasis added). Courts are not required to entertain every action for declaratory judgment. Even though all of the necessary elements of jurisdiction exist, the Court may, in its sound discretion, dismiss the action. *Brisendine v. Montana Department of Commerce,* 253 Mont. 361, 364, 833 P.2d 1019 (1992).

A declaratory judgment was never intended "to provide a substitute for other regular actions." *In re Dewar,* 169 Mont. at 444. Its primary purpose is "to determine the meaning of a law or a contract and to adjudicate the rights of the parties therein, but not to determine controversial issues of fact . . . ." *Raynes v. City of Great Falls,* 215 Mont. 114, 121, 696 P.2d 423 (1985); *accord Remington v. Department of Corrections,* 255 Mont. 480, 483, 844 P.2d 50 (1992). The Montana Supreme Court has adopted the general rule from C.J.S. on declaratory judgments in *State ex rel. Industrial Ind. Co. v. District Court,* 169 Mont. 10, 14, 544 P.2d 438 (1975). It said, "'ordinarily a court will refuse a declaratory judgment which can be made only after a judicial investigation of disputed facts, especially where the disputed questions of fact will be the subject of judicial investigation in a regular action.'" (Quoting 26 C.J.S. Declaratory Judgments, section 16, page 81.)

Champion's response to the order to show cause confirms that its petition raises significant factual issues. It says, "The parties have significant differences of opinion on material facts and legal interpretations dealing with entitlement." (CONSOLIDATED REPLY TO COURT'S ORDERS TO SHOW CAUSE at 4.) Factual issues are more appropriately raised in an action commenced by a claimant for benefits, not in a declaratory judgment action.

It is also uncertain whether claimant ever will pursue any action for further benefits. It is by no means certain that an adjudication concerning any of his claims will ever be required. Courts should not "determine matters purely speculative, enter anticipatory judgements, . . . adjudicate academic matters, . . . [or] provide for contingencies which may hereafter arise . . . . " *Department of Natural Resources & Conservation v. Intake Water Co.*, 171 Mont. 416, 440 (1976).

Champion cites a number of cases in support of its contention that it is entitled to pursue its present petition. All but one of the cited cases are distinguishable because they concern concrete claims for indemnification as between insurers, *EBI/Orion Group v. State Compensation Mutual Insurance Fund,* 249 Mont. 449, 816 P.2d 1070 (1991); for repayment where the insurer has overpaid, *Champion International Corp. v. McChesney,* 239 Mont. 287, 779 P.2d 527 (1989) and *Aetna Life & Casualty Co. v. Main,* WCC No. 9112-6315 (decided July 21, 1992); for amounts allegedly due the insurer as a result of settlement of a third party action, *State Compensation Mutual Insurance Fund v. Mordja,* WCC No. 9202-6391 (decided September 16, 1992); or for repayment of amounts paid due to a claimant's fraud, *State Compensation Mutual Insurance Fund v. Chapman and Pyfer,* WCC No. 9207-6543 (decided September 1, 1993). The last cited case, *Connecticut Indemnity Co. v. Nerpel*, WCC No. 9206-6464 (decided June 30, 1993), did not address the appropriateness of an action brought by the insurer. It established no precedent with regard to the present question.

I conclude that the petition in this matter is an inappropriate action for a declaratory judgment and should be dismissed. The insurer cannot force a claimant to settle or litigate his claims just so it can close its files.

Judgment Dismissing Petition

1. The petition in this matter is **dismissed without prejudice.**

2. This JUDGMENT is certified as final for purposes of appeal.

Dated in Helena, Montana, this 13th day of June, 1995.

(SEAL)

Mike McCarter

JUDGE

c: Mr. Bradley J. Luck
Mr. Rex Palmer