IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC15

WCC No. 2010-2493

MICHAEL A. IVIE

Petitioner

vs.

MUS SELF FUNDED WORKERS' COMPENSATION PROGRAM

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION
TO STRIKE AND CORRECT HEADING

Summary: Petitioner Michael A. Ivie filed a petition in which he identified the Respondents as Intermountain Claims, Inc. and Montana University System Workers' Compensation Program. Montana University System Workers' Compensation Program moved to strike Intermountain from the caption and to correct the heading to identify it by its correct name, MUS Self Funded Workers' Compensation Program. Ivie does not oppose the motion to correct the caption but does oppose the motion to strike Intermountain from the caption. Ivie argues that Intermountain should remain a party to the action because it was responsible for adjusting Ivie's claim.

Held: MUS's motions are granted. Intermountain is a third-party claims administrator MUS contracted to adjust Ivie's claim. MUS is the insurer. Under the Montana Workers' Compensation Act, any potential liability for benefits, penalty, and attorney fees lies with MUS as the insurer. Although the Court may be able to exercise jurisdiction over Intermountain as a respondent in this case, Ivie has presented no reason why the Court should exercise such jurisdiction.

Topics:

> **Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.301.** Although the claimant argued that a third-party claims administrator was a proper party to his suit because he has a claim against the administrator for benefits, attorney fees, and a penalty, the WCA establishes that liability for these things lies with the insurer and

not the third-party administrator. Therefore, the claimant's dispute lies with the insurer and there is no dispute with the administrator to adjudicate.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.301. Although ARM 24.5.301 does not prohibit naming a third-party claims administrator as a party in a workers' compensation benefit dispute, it does not necessarily follow that the Court should allow parties other than the insurer to be named in the caption absent a compelling reason for doing so. The Court will not exercise jurisdiction over a party that is not necessary to the resolution of a dispute simply because it can.

Insurers: Third-Party Claims Administrators. Although ARM 24.5.301 does not prohibit naming a third-party claims administrator as a party in a workers' compensation benefit dispute, it does not necessarily follow that the Court should allow parties other than the insurer to be named in the caption absent a compelling reason for doing so. A third-party claims administrator is obligated to cooperate with the insurer for whom it is administering a claim. If the Court were presented with evidence that an administrator was not cooperating with the insurer and was obstructing discovery, it would consider making the administrator a party. However, the Court will not exercise jurisdiction over a party that is not necessary to the resolution of a dispute simply because it can.

Insurers: Third-Party Claims Administrators. If the adjustment of a claim is found by the Court to be unreasonable, any penalty or attorney fees would be assessed against the insurer pursuant to §§ 39-71-611, -2907, MCA.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.316. The Court will not require a party to re-file its motion where it set forth the basis for the motion within the motion itself and did not file a separate brief.

¶1 Petitioner Michael A. Ivie (Ivie) filed a petition in which he identified the Respondents as Intermountain Claims, Inc. (Intermountain) and Montana University System Workers' Compensation Program. Respondent Montana University System Workers' Compensation Program moved to strike Intermountain from the caption and to correct the heading to identify it by its correct name, MUS Self Funded Workers' Compensation Program (MUS).

¶2 Ivie does not oppose MUS's motion to correct the caption. Ivie opposes MUS's motion to strike Intermountain from the caption.

¶3 MUS moves to strike Intermountain from the caption because Intermountain is not an insurer but a third-party claims administrator or adjustor (TPA). Ivie does not dispute that Intermountain is a TPA. In his Answer Brief to Motion to Strike and Correct Heading, Ivie states: "Dr. Ivie is employed by Montana State University who insures its employees for workers' compensation coverage through MUS WC whose third-party administrator is Intermountain."[1] Ivie argues that Intermountain should nevertheless be named as a respondent in this action for four reasons.

¶4 Ivie's first argument is that pursuant to ARM 24.5.101(2), the function of the Workers' Compensation Court is to exercise exclusive jurisdiction over the adjudication of disputes arising under the Workers' Compensation Act (WCA). Ivie then submits that he has a claim against Intermountain for workers' compensation benefits and for a penalty and attorney fees.

¶5 MUS correctly points out in its reply brief that the WCA establishes that liability for benefits, penalty, and attorney fees is with the insurer.[2] Ivie's contention that he has a claim against Intermountain for workers' compensation benefits and for a penalty and attorney fees is incorrect.

¶6 Ivie's second argument is that MUS has not cited any authority as to why this Court should ***not*** exercise jurisdiction over Intermountain other than arguing that Intermountain is not an insurer. Noting that this Court has jurisdiction over issues involving the administration of workers' compensation benefits to Montana workers, Ivie argues that the Court should have jurisdiction over all entities that are responsible for administering benefits under the WCA. Ivie points out that ARM 24.5.301(4) prohibits naming the employer in the caption of a petition; it does not prohibit naming a TPA.

¶7 Ivie is correct that ARM 24.5.301(4), does not prohibit naming a TPA in the caption. It does not necessarily follow, however, that because the Court ***may*** allow parties other than the insurer to be named in the caption, the Court ***should*** allow parties other than the insurer to be named in the caption absent a compelling reason for doing so. Ivie has not presented any reason for including Intermountain in the caption. In *Lund v. St. Paul Fire & Marine Ins. Co.*,[3] this Court threatened to make the employer a party to the action ***if*** the employer failed to cooperate with the insurer in responding to

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[1] Answer Brief to Motion to Strike and Correct Heading at 2-3.

[2] Reply Brief to Petitioner's Answer Brief in Opposition to Motion to Strike and Correct Heading at 6; *See*, *e.g.*, §§ 39-71-407, -611(1), -2203(1)(c), -2203(3), and 2905(1).

[3] 2001 MTWCC 62.

the claimant's discovery requests.[4] A TPA has similar obligations to cooperate with the insurer for whom it is administering a claim. If I was presented with evidence that Intermountain was not cooperating with MUS and obstructing discovery, I would consider making Intermountain a party. It makes little sense, however, for the Court to exercise jurisdiction over a party that is not necessary to the resolution of a dispute simply because it can.

¶8 Ivie's third argument is that Intermountain is a real party in interest regarding this dispute because it has contracted to be solely responsible for any penalty or fines imposed against MUS by this Court resulting from its claims handling. Ivie provides no basis for his contention that Intermountain is contractually obligated to indemnify MUS for any penalty or fines imposed because of Intermountain's claims handling. Assuming *arguendo* that Intermountain is contractually obligated to indemnify MUS, Ivie cites no legal authority for his argument that this contractual obligation makes Intermountain a real party in interest. As a practical matter, if Intermountain remained a respondent in this case and I found its claims handling unreasonable, any penalty or attorney fees would still be assessed against MUS as the insurer pursuant to §§ 39-71-611 and -2907, MCA. Intermountain's theoretical obligation to indemnify MUS would have no bearing on these issues. I therefore can see no reason to retain Intermountain as a respondent under Ivie's real party in interest theory.

¶9 Ivie's fourth argument is that MUS did not file an accompanying brief in support of its motion. Ivie argues that this should be deemed an admission that the motion is without merit pursuant to ARM 24.5.316(4). MUS responds in its reply brief that although it did not file a separate brief identified as such, it did provide a basis for its motion to change caption and strike Intermountain contained within the motion itself. MUS argues that there are no statutory or procedural requirements prescribing the length and format of a supporting brief. MUS points out that this Court has accepted as valid the exact same brief in previous cases and granted motions to strike a party from the caption.[5]

¶10 The previous cases MUS references in which this Court granted motions to strike were both uncontested motions and therefore provide limited precedential value. Indeed, it appears from the motion MUS filed in this case that it expected this to be a *pro forma* motion. Nevertheless, MUS is correct that there is no requirement that a supporting brief be a certain length and MUS did set forth the basis for its motion although the basis was not separately denominated a "supporting brief." More to the point, if I were to deny MUS's motion on procedural grounds, MUS could simply refile

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[4] *Id.* at ¶ 8.

[5] *Ikeda v. MUS Self Funded Workers' Compensation Program*, WCC No. 2007-1994; *Willis v. Truck Ins. Exch.*, WCC No. 2009-2350.

the motion under the deadlines in the current scheduling order. Since I have ultimately determined the motion to have merit, it would be exalting form over substance to require the motion to be refiled.

ORDER

¶11 MUS's Motion to Strike and Correct Heading is **GRANTED**.

¶12 All future pleadings shall be captioned consistent with the caption in this Order.

DATED in Helena, Montana, this 9th day of June, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Daniel B. Bidegaray
Joe C. Maynard
Submitted: May 6, 2010