IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 27

WCC No. 2006-1750

ROBERT LANMAN

Petitioner

vs.

MONTANA MUNICIPAL INSURANCE AUTHORITY

Respondent/Insurer.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT[1]

Summary: Respondent moves for summary judgment on the issue of whether Petitioner failed to file his claim within the one-year statute of limitations set forth at § 39-72-403(1), MCA (2003). Respondent argues that Petitioner failed to file his claim within one year from when he knew or reasonably should have known that his condition was related to his employment. Petitioner contends that material facts in dispute preclude summary judgment.

Held: Summary judgment is denied. A genuine issue of material fact remains as to whether Petitioner knew or should have known that his asbestos condition was related to his employment more than one year before he filed his claim.

Topics:

> **Summary Judgment: Disputed Facts.** Although Respondent contended that Petitioner should have known that his condition was related to his employment because of advice Petitioner's treating physician gave him and from certain testimony Petitioner gave during his deposition, the Court found that the advice and deposition testimony were not as clear-cut as Respondent alleged. The Court concluded that whether Petitioner knew or should have known that his condition was work-related more than a

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[1] Respondent's motion to dismiss is converted to a motion for summary judgment pursuant a conference call held May 9, 2011.

year before he filed his claim remained a legitimate issue to explore at trial and therefore denied summary judgment.

¶ 1 Respondent Montana Municipal Insurance Authority (MMIA) moves for summary judgment[2] on the issue of whether Petitioner Robert Lanman properly filed his claim within the statute of limitations.[3] Lanman opposes MMIA's motion, arguing that factual disputes exist concerning whether statements made by his doctor and relied upon by MMIA to show his alleged knowledge were sufficient to make him aware that his condition is work-related.[4]

ANALYSIS AND DISCUSSION

¶ 2 In its opening brief in support of its motion, MMIA sets forth the following facts which it contends are uncontested.[5]

> 1. On or about July 9, 2003, Lanman was diagnosed with asbestos-related lung disease by Dr. Alan Whitehouse.
>
> 2. On or about September 16, 2003, Lanman was told by his doctor that he should file a workers' compensation claim.
>
> 3. On or about October 5, 2004, Lanman filed a claim with MMIA for compensation for alleged asbestos-related lung disease arising out of his employment with the City of Libby.
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> 4. Lanman's last day of work with the City of Libby was in June 2005.
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> 5. On or about October 30, 2006, Lanman filed a petition for compensation against MMIA for alleged exposure to asbestos while employed from 1987 to 2005 by the City of Libby.

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[2] MMIA originally moved to dismiss Lanman's petition. Because matters outside the pleadings were presented for the Court's consideration, I convened a conference call on May 9, 2011, and advised the parties that I was converting MMIA's motion to dismiss to a motion for summary judgment, and afforded the parties the opportunity to present additional materials for the Court's consideration. (Minute Book Hearing No. 4273 (Minute Entry), Docket Item No. 43.)

[3] Respondent Montana Municipal Insurance Authority's Brief in Support of Motion to Dismiss (Opening Brief) at 2-3, Docket Item No. 34.

[4] Petitioner's Response to Respondent's Motion to Dismiss at 3, Docket Item No. 39.

[5] Opening Brief at 1-2.

¶ 3 Lanman disputes MMIA's contention: "On or about September 16, 2003, Lanman was told by his doctor that he should file a workers' compensation claim." The accuracy of that contention will be discussed below.

¶ 4 For summary judgment to be granted, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.[6] Summary judgment is disfavored. Summary judgment is an extreme remedy which should not be a substitute for a trial on the merits if a material factual controversy exists. All reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the nonmoving party.[7] In this case, material factual disputes preclude summary disposition.

¶ 5 Lanman retired from his position with the City of Libby in June of 2005.[8] The 2003 Occupational Disease Act (ODA) applies to this claim.[9]

¶ 6 Section 39-72-403(1), MCA, provides:

> When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.[10]

¶ 7 MMIA contends:

> On September 16, 2003, Dr. Whitehouse told [Lanman] that he should file a workers' compensation claim. Therefore, at the latest, on September 16, 2003, Petitioner knew that he was suffering from an occupational disease and knew that it was work related. However, Petitioner did not file his claim until October 5, 2004, which was outside the statute of limitations.[11]

¶ 8 MMIA's reliance on the September 16, 2003, Whitehouse letter for commencing the statute of limitations is misplaced. Although MMIA characterizes Dr. Whitehouse's

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[6] ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

[7] *Delaware v. K-Decorators, Inc.,* 1999 MT 13, ¶ 55, 293 Mont. 97, 973 P.2d 818.

[8] Opening Brief at 2.

[9] *Hardgrove v. Transportation Ins. Co.,* 2004 MT 340, 324 Mont. 238, 103 P.2d 999. The law in effect on an employee's last day of work governs the resolution of an ODA claim.

[10] § 39-72-403(1), MCA (2003).

[11] Opening Brief at 3.

letter as advising Lanman to "file a workers' compensation claim," Dr. Whitehouse's letter actually advised Lanman to "file for Grace's plan."[12] The plan to which Dr. Whitehouse referred in his letter is the Grace Libby Medical Program. The Grace Libby Medical Program is open to former employees of the Libby mine or mill, family members of those employees, or any Libby residents who lived within a 20-mile radius of the Libby mine or mill for at least 12 consecutive months at any time before January 1, 2000.[13] Dr. Whitehouse's advice that Lanman should "file for Grace's plan" does not constitute advice to file a workers' compensation claim. An equally reasonable inference is that Dr. Whitehouse was advising Lanman to "file for Grace's plan" based on his eligibility as a longtime Libby resident. Another equally reasonable inference is that neither Dr. Whitehouse nor Lanman gave any thought to the source of Lanman's asbestos-related disease since Lanman qualified for the Grace Libby Medical Program in multiple ways, both occupational and non-occupational. As the party opposing summary judgment, all reasonable inferences are drawn in favor of Lanman. Dr. Whitehouse's letter does not provide a basis for summary judgment.

¶ 9 Aside from the Whitehouse letter, MMIA also contends that selected portions of Lanman's deposition testimony indicate that he knew or should have known that his asbestos-related disease was work-related more than a year before he filed his claim. Reading Lanman's deposition testimony in its entirety, however, reveals that Lanman's knowledge as to the nature and source of his condition is not as clear-cut as MMIA contends. Lanman has resided in Libby since 1974. Prior to working for the City of Libby, Lanman was employed by W.R. Grace. As he testified in his deposition, he would have had the same exposure to asbestos as any other Libby resident.[14]

¶ 10 Whether Lanman knew or should have known that his condition was related to his employment remains a legitimate issue to explore at trial. For purposes of summary judgment, "[t]he evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences are to be drawn in favor of the party opposing summary judgment."[15] This issue is not appropriate for summary disposition.

ORDER

¶ 11 Respondent's motion for summary judgment is **DENIED.**

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[12] Opening Brief, Exhibit B.

[13] Petitioner's Supplemental Documents in Support of Petitioner's Response to Defendant's Motion to Dismiss, Exhibit 10, Docket Item No. 44.

[14] Response Brief, Exhibit 8, Lanman Dep. at 150.

[15] *In Re Thornton*, 2009 MT 367, ¶ 13, 353 Mont. 252, 220 P.3d 395.

¶ 12 The Court will issue an Order resetting this matter on the next Kalispell trial docket.

DATED in Helena, Montana, this 28th day of December, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Laurie Wallace/Jon L. Heberling
Oliver H. Goe/Morgan M. Weber
Submitted: May 13, 2011