IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 16

WCC No. 2011-2730

ROBERT MORSE

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORP.

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: In 2009, Petitioner sought medical treatment for hip pain and learned that his condition was likely attributable to two industrial accidents which occurred in the fall or winter of 2006. Although no one has located a contemporaneous incident report, Petitioner contends that he reported both accidents to his employer's safety officer. The safety officer testified that he recalls filling out an incident report for Petitioner's first accident and recalls Petitioner reporting the second accident. Respondent denied Petitioner's claims on the grounds that he did not timely report his injury to his employer within 30 days, as required by § 39-71-603, MCA, and that he failed to comply with the claims filing time limitations found in § 39-71-601, MCA.

Held: Petitioner reported his industrial accidents to his employer, and the employer later mislaid the paperwork for one injury, and failed to prepare a report for the second. The employer's actions can be imputed to Respondent, and Petitioner is entitled to an additional 24 months in which to file his claim under § 39-71-601, MCA. Petitioner's second industrial accident falls within the additional time limit and is therefore compensable.

Topics:

> **Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-603.** Where Petitioner testified that he notified both his supervisor and the safety officer trainee about one industrial accident, and the trainee about a second industrial accident, and the trainee testified that he clearly recalled Petitioner reporting both industrial accidents to

him, the Court concluded that Petitioner complied with the notice requirements of § 39-71-603, MCA.

Claims: Notice to Employer or Insurer: Supervisor. Where Petitioner testified that he notified both his supervisor and the safety officer trainee about one industrial accident, and the trainee about a second industrial accident, and the trainee testified that he clearly recalled Petitioner reporting both industrial accidents to him, the Court concluded that Petitioner complied with the notice requirements of § 39-71-603, MCA.

Limitation Periods: Notice to Employer. Where Petitioner testified that he notified both his supervisor and the safety officer trainee about one industrial accident, and the trainee about a second industrial accident, and the trainee testified that he clearly recalled Petitioner reporting both industrial accidents to him, the Court concluded that Petitioner complied with the notice requirements of § 39-71-603, MCA.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-601. Although Petitioner's time-of-injury employer apparently created an incident report for Petitioner's industrial accident, the parties could not find the report and no one testified that Petitioner had signed it. Therefore, the Court concluded that the missing report did not fulfill the requirements of § 39-71-601, MCA.

Limitation Periods: Claim Filing: Waiver of Time: Estoppel. Where Petitioner's industrial accident occurred more than one year prior to Petitioner's claim filing, Petitioner may have an additional 24 months to present his claim in writing if he can prove by clear and convincing evidence that Respondent is equitably estopped from denying his claim under § 39-71-601, MCA.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.301. The Court held that although the insurer characterized its relationship with its insured as a "complete disconnect," ARM 24.5.301(4) states that it should not be construed as relieving any employer from its duty to cooperate and assist its insurer; this Court previously rejected an insurer's argument that it did not have access to its insured's files to answer discovery; and § 39-71-2203(1)(a), MCA, imputes an employer's knowledge to the insurer. By accepting the responsibility for injury reporting and claims filing, Petitioner's employer stood in the

place of Respondent insurer in dealing with injured workers and acted as Respondent's agent.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2203. The Court held that although the insurer characterized its relationship with its insured as a "complete disconnect," ARM 24.5.301(4) states that it should not be construed as relieving any employer from its duty to cooperate and assist its insurer; this Court previously rejected an insurer's argument that it did not have access to its insured's files to answer discovery; and § 39-71-2203(1)(a), MCA, imputes an employer's knowledge to the insurer. By accepting the responsibility for injury reporting and claims filing, Petitioner's employer stood in the place of Respondent insurer in dealing with injured workers and acted as Respondent's agent.

Agency: Actual. Where Petitioner's employer accepted the responsibility for injury reporting and claims filing, it acted as Respondent's agent. The employer's conduct lulled Petitioner into a false sense of security; its conduct is imputed to Respondent.

Equity: Equitable Estoppel. The Court determined that Petitioner had established the six elements of equitable estoppel and ordered Respondent estopped from denying Petitioner's claim under the one-year claim filing limitation of § 39-71-601, MCA. In this instance, Petitioner trusted his employer's representation that he had properly reported his industrial accidents and that he need not take further action to protect his claim; Petitioner's employer knew that an injured worker would believe that following the employer's reporting requirements would fulfill the injured worker's responsibilities in properly reporting a potential claim; Petitioner was unaware that his employer had not filed a claim on his behalf after he followed his employer's reporting procedure; Petitioner's employer would reasonably expect Petitioner to act as if he had properly reported his industrial accidents because Petitioner followed his employer's reporting procedure; Petitioner relied upon his employer's reporting procedure and therefore did not file a claim with Respondent; and Petitioner's reliance on his employer's reporting procedure changed his position for the worse when Respondent later denied his claim as untimely.

Limitation Periods: Claim Filing: Waiver of Time: Estoppel. Where Petitioner established the six elements of equitable estoppel, the Court

ordered Respondent be estopped from denying Petitioner's claim under the one-year claim filing limitation of § 39-71-601, MCA. The Court found that Petitioner reasonably relied upon his employer's representation that Petitioner need only follow his employer's accident reporting procedures in order for his industrial accident claim to be filed.

¶ 1 The trial in this matter began on December 20, 2011, when the Court heard the testimony of Charles L. Goddard. R. Russell Plath represented Petitioner Robert Morse. Larry W. Jones represented Respondent Liberty Northwest Insurance Corp. (Liberty). The parties appeared at Fisher Court Reporting in Billings, Montana. The Workers' Compensation Court participated via videoconference from Fisher Court Reporting in Helena, Montana. The trial continued on January 25, 2012. On that date, the Court presided from Fisher Court Reporting in Helena; Morse appeared with his counsel at Fisher Court Reporting in Billings; and Larry W. Jones, representing Liberty, appeared at Fisher Court Reporting in Helena.

¶ 2 Exhibits: On December 20, 2011, I admitted Liberty's Exhibits A, B, C, and D. I admitted Morse's Exhibit E subject to the testimony of a Department of Labor employee. Although no department employee subsequently testified, Liberty withdrew its objection and I therefore admit Exhibit E.[1]

¶ 3 Witnesses and Depositions: The depositions of Morse and Arthur Allen Hazen were submitted to the Court and are considered part of the record. Goddard, Hazen, and Morse were sworn and testified.

¶ 4 Issues Presented: The Pretrial Order sets forth the following issue:[2]

> Is Respondent liable for payment of workers' compensation or occupational disease benefits to Petitioner?

FINDINGS OF FACT

¶ 5 Robert Morse testified at trial. I found him to be a credible witness. Morse worked as a maintenance supervisor for Beall Trailers of Montana, Inc. (Beall) for nearly 14 years, leaving that employment in 2008. Morse testified that at Beall, he was instructed to report any on-the-job injuries to his immediate supervisor. If one of the

[1] E-Mail Communication from Respondent to Court, Docket Item No. 26.

[2] Pretrial Order at 2.

employees he supervised was injured, they were to report the incident to him and he would then report it to the safety officer.[3]

¶ 6 Morse testified that he had two slip and fall accidents at Beall which are pertinent to the present case. In the first incident, he fell while opening an outdoor gate at Beall. He reported the incident to his supervisor Dennis Gauthier and told Gauthier that he intended to "work through it" and see how he felt later. Morse also mentioned the incident to Arthur Hazen, who was in the process of training into the position of safety officer at the time. Morse testified that he believed Hazen would take care of any necessary paperwork relating to this incident. Morse testified that he did not seek medical treatment because he believed he would heal from the fall on his own.[4]

¶ 7 About eight weeks later, Morse slipped and fell a second time, injuring the same hip he had injured in the first fall. Morse again informed Gauthier and Hazen about the fall, but he did not seek medical treatment. Morse testified that he did not personally fill out any paperwork regarding this incident, but assumed that Hazen would complete the necessary paperwork.[5]

¶ 8 From the time of the two falls forward, Morse experienced intermittent problems with his hip. Morse testified that he did not realize the severity of his hip condition until the summer of 2009, when he sought medical attention. Morse testified that his medical bills related to his hip condition were paid by his health insurance, but he did not immediately realize this. He assumed that Beall's workers' compensation insurance was paying for his medical treatment because his doctor had opined that his industrial accidents caused his hip condition. When Morse realized that his personal health insurance was covering his treatment, he informed his doctor that workers' compensation should be covering the treatment. He then learned that no workers' compensation claim regarding his two slip and fall accidents had ever been filed.[6]

¶ 9 Morse testified that he later learned that no incident reports for his two slip and fall accidents were found in his Beall personnel file, but he does not know why those reports were not located.[7] Morse testified that he specifically recalls discussing his slip

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[3] Trial Test.

[4] Trial Test.

[5] Trial Test.

[6] Trial Test.

[7] Trial Test.

and fall accidents with Hazen. Morse testified that he does not recall whether he signed any paperwork that Hazen prepared.[8]

¶ 10 On December 5, 2009, Morse signed a First Report of Injury or Occupational Disease (FROI) which stated that on November 12, 2007, he slipped and fell onto his right knee and right hip while opening a gate, and that he fell on ice and landed on his right knee while walking from one building to another two months later, injuring his right hip.[9] Morse testified that although his FROI has a date of injury of November 12, 2007, he subsequently decided that that date was incorrect. Morse explained that he guessed at an approximate date. Later, he recalled that the workers at Beall had gone on strike in the summer or fall of 2007, and he is sure this incident happened prior to the strike. Therefore, Morse believes the incident most likely happened in late 2006.[10]

¶ 11 Charles L. Goddard testified at trial. I found him to be a credible witness. Goddard was a safety officer at Beall. His job duties included completing new employee orientation and paperwork, conducting safety meetings and handling OSHA reports, and reporting safety issues to the general manager. Goddard received reports of industrial accidents and completed claims for compensation. Goddard testified that Beall's reporting policy required an injured worker to report the accident to a supervisor, and the supervisor would send the injured worker to the safety officer. The injured worker and the safety officer would fill out an incident report, even for very minor injuries. Goddard testified that the incident report was different from a workers' compensation FROI. Goddard testified that a FROI would only be filled out if an injured worker either sought medical treatment or lost work time due to the injury.[11]

¶ 12 Goddard held the safety officer position for approximately three years prior to his February 2007 retirement. In August or September of 2006, Hazen began taking on the safety officer job duties as Goddard was training Hazen to take over the safety officer position upon Goddard's retirement. Goddard testified that in the fall of 2006, if Morse reported an industrial injury, he would have reported it either to Goddard or Hazen. Goddard testified that Hazen was a very thorough, very disciplined employee and that he witnessed him correctly follow Beall's accident reporting procedure in other cases. Goddard testified that Morse did not report an accident to him and no one else reported to him that Morse had suffered an industrial accident. Goddard testified that if Morse filed an incident report, the report would have gone into Morse's "safety file." Goddard

[8] Trial Test.

[9] Ex. 3 to Morse's Deposition.

[10] Trial Test.

[11] Trial Test.

testified that he did not have any explanation as to why no incident report or FROI for Morse was found in Beall's files.[12]

¶ 13 Hazen testified at trial. I found him to be a credible witness. Hazen has worked for OSHA since October 2007. Prior to that time, he worked at Beall. In approximately August 2006, Hazen began training to replace Goddard as Beall's safety officer.[13]

¶ 14 Hazen testified that Goddard trained him to fill out certain reporting paperwork if an employee reported an industrial injury. Hazen testified that when an employee reported an industrial injury, he would note the incident in an OSHA reporting log, conduct an OSHA investigation, and file a claim with Liberty. However, if a worker did not seek medical attention, Hazen would not record the incident in the OSHA log but would hold the paperwork in case the injured worker later sought medical attention for the injury. Once the injured worker sought medical attention, Hazen then processed the paperwork, including filing the claim with Liberty.[14]

¶ 15 Hazen testified that as safety officer, he was responsible for filling out incident reports and workers' compensation claims. Injured workers did not fill out the forms.[15] Hazen testified that new hires were not taught how to file claims for injuries. Instead, they were instructed to report any injuries to their supervisors.[16] Hazen testified that it was his practice to fill out the incident report form with input from the injured worker and then he would ask the worker to read over the report, sign, and date it.[17]

¶ 16 Hazen testified that in the late fall or early winter of 2006, Morse told him that he had fallen while opening Beall's main gates. Hazen testified that he recalls Morse sitting in his office while Hazen filled out an incident report.[18] Hazen did not testify as to whether he had Morse review the incident report, sign, and date it.

¶ 17 Hazen testified that when an employee reported an industrial accident but did not immediately seek medical attention, it was his practice to fill out an incident report and place it in the top drawer of his desk. If the employee did not seek medical attention within a reasonable time, Hazen would then file the report in the employee's file. Hazen

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[12] Trial Test.

[13] Trial Test.

[14] Trial Test.

[15] Hazen Dep. 19:21 – 20:4.

[16] Hazen Dep. 16:11-20.

[17] Hazen Dep. 20:2-12.

[18] Trial Test.

testified that he is sure Morse did not seek medical attention for this fall because he would have faxed a FROI to Liberty if he had.[19]

¶ 18 Hazen testified that one of the reasons why he clearly recalls this incident is because he frequently kidded Morse about his age and he did so after Morse told him that he fell. Hazen testified that he warned Morse that he would need a nursing home if he broke a hip.[20] Hazen further recalled that about two days after the incident, he approached Morse at lunch and handed him a classified advertisement for a wheelchair. Hazen testified that he also recalls following up with Morse a few times to make sure that Morse was feeling better.[21]

¶ 19 Approximately two months later, Morse fell a second time while walking on packed snow up a slight incline toward the building which housed Beall's boiler. Hazen specifically recalled this incident as well. He testified that Morse was upset after the second fall and told Hazen that he had fallen on the same hip. Hazen testified that he did not fill out a second incident report, but he asked Morse if he wanted to seek medical treatment and Morse declined.[22]

¶ 20 Hazen testified that Morse's two slip and fall incidents were separate and distinct, but Morse injured the same hip in both incidents. Hazen filled out an incident report for the first incident, but did not send the report to Liberty since Morse did not seek medical attention. Hazen did not fill out an incident report for the second incident since it involved the same body part. Hazen admitted that he now realizes he should have filled out a separate report for the second incident, but at the time he did not realize he needed to do so.[23] Hazen testified that at the time, he believed that the first form he completed satisfied Beall's reporting requirements.[24]

¶ 21 Hazen testified that Morse correctly followed Beall's policies regarding reporting industrial injuries, but Hazen "dropped the ball" by not placing the incident report in Morse's file. Hazen testified that shortly after Morse's second fall at work, Beall relocated Hazen to a new office and he did not keep the same desk. Hazen believes he may have left the incident report in the top drawer of the old desk.[25]

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[19] Trial Test.

[20] Hazen Dep. 29:4 – 30:5.

[21] Trial Test.

[22] Trial Test.

[23] Hazen Dep. 31:5 – 32:9.

[24] Hazen Dep. 32:10-15.

[25] Trial Test.

¶ 22 Hazen testified that if Morse's incident report was not in his file, "I'm certain I can say nobody took it out, I didn't put it in. It would have been one hundred percent my fault."[26] Hazen stated that he is "one hundred percent sure" that he filled out an incident report form.[27]

CONCLUSIONS OF LAW

¶ 23 This case is governed by the 2005 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect at the time of Morse's industrial accident. [28] Morse bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.[29]

Is Respondent liable for payment of workers' compensation or occupational disease benefits to Petitioner?

¶ 24 In the present case, Liberty contends that it is not liable for Morse's industrial injury, either because Morse failed to give proper notice of his injury under § 39-71-603, MCA, or because Morse failed to comply with the one-year claim filing period found within § 39-71-601, MCA. Morse contends that he provided timely notice of his industrial accident to his supervisor and Beall's safety officer and that the safety officer completed the necessary reporting paperwork on his behalf.

¶ 25 Under § 39-71-603(1), MCA, a claim to recover benefits under the WCA for injuries not resulting in death may not be considered compensable unless the injured worker, or someone on the worker's behalf, gives notice of the time and place where the accident occurred and the nature of the injury to the employer or the employer's insurer within 30 days of the occurrence.

¶ 26 Morse testified that he notified both his supervisor Gauthier and Hazen, who was performing safety officer duties as he trained into the position, regarding his first slip and fall incident and that he notified Hazen regarding the second. Hazen testified that he clearly recalled Morse reporting both of these incidents to him. From the testimony presented at trial, it is clear that Morse complied with the notice requirements of § 39-71-603(1), MCA. Therefore, Liberty cannot deny Morse's claim under this statute.

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[26] Hazen Dep. 42:8-11.

[27] Hazen Dep. 42:12-19.

[28] *Buckman v. Montana Deaconess Hosp*., 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

[29] *Ricks v. Teslow Consol.,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co*., 183 Mont. 190, 598 P.2d 1099 (1979).

¶ 27 Under the pertinent provisions of § 39-71-601, MCA, claims for personal injury must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department within 12 months from the date of the accident. The time requirement may be extended up to an additional 24 months upon a reasonable showing by the claimant of lack of knowledge of disability, latent injury, or equitable estoppel.

¶ 28 In the present case, no incident reports from Morse's slip and fall incident at Beall's main gate or his subsequent slip and fall approximately two months later have been found. We have only Morse's and Hazen's testimony regarding the existence of these reports. Both Morse and Hazen acknowledge that no incident report was created for the second incident. As to the first incident, while Hazen testified that he created an incident report, he did not testify whether Morse signed the report, and Morse testified that he had no recollection of doing so. Therefore, I cannot conclude that this missing report fulfilled the requirements of § 39-71-601, MCA, because there is no testamentary evidence that Morse signed it.

¶ 29 However, on December 5, 2009, Morse filed a FROI for both incidents which fulfills the requirements of § 39-71-601, MCA. As the findings above indicate, Morse is a poor historian and was unable to recall with any certainty when his two slip and fall accidents occurred. His best guess was that the first accident occurred in the fall of 2006. Hazen testified that his recollection is that Morse's first fall occurred in the late fall or early winter of 2006. Regarding this fall, I conclude that Morse has not met his burden of proving that the fall occurred after December 5, 2006. Therefore, even if Morse were able to avail himself of the 24-month time filing extension provided for in § 39-71-601(2), MCA, his December 5, 2009, FROI would be untimely regarding the first slip and fall accident pertinent to the present case.

¶ 30 With respect to the second fall, both Morse and Hazen agree that Morse's second fall occurred about two months after the first. In light of this testimony, I conclude it is more probable than not that Morse's second fall occurred after December 5, 2006. Clearly, this is beyond the one-year time limitation of § 39-71-601(1), MCA. However, under § 39-71-601(2), MCA, Morse had an additional 24 months to present his claim in writing upon a reasonable showing of lack of knowledge of disability, latent injury, or equitable estoppel. Morse argues that equitable estoppel applies to his case. If proven, this would make his December 5, 2009, FROI timely under the applicable statute.

¶ 31 Morse argues that Liberty should be equitably estopped from barring his claim under § 39-71-601(2), MCA. In *Selley v. Liberty Northwest Ins. Corp.*, the Montana Supreme Court stated:

> As a general matter, estoppel arises when a party through its acts, conduct, or acquiescence, has caused another party in good faith to change its position for the worse. . . .
>
> [S]ix elements are necessary in order to establish an equitable estoppel claim: (1) the existence of conduct, acts, language, or silence amounting to a representation or concealment of material facts; (2) the party estopped must have knowledge of these facts at the time of the representation or concealment, or the circumstances must be such that knowledge is necessarily imputed to that party; (3) the truth concerning these facts must be unknown to the other party at the time it was acted upon; (4) the conduct must be done with the intention or expectation that it will be acted upon by the other party, or have occurred under circumstances showing it to be both natural and probable that it will be acted upon; (5) the conduct must be relied upon by the other party and lead that party to act; and (6) the other party must in fact act upon the conduct in such a manner as to change its position for the worse. A party must establish all six elements before the doctrine can be invoked. Equitable estoppel must be established by clear and convincing evidence.[30]

¶ 32 The court further noted that wrongdoing is not necessary to invoke equitable estoppel. It explained:

> Classically, the function of the doctrine of equitable estoppel is the prevention of fraud, actual or constructive. However, this does not imply that the party sought to be estopped must have possessed an actual intent to deceive, defraud or mislead the other party at the inception of the transaction.[31]

The court noted that in modern usage, equitable estoppel is invoked to prevent an inequitable result.[32]

¶ 33 Liberty raises two arguments in asserting that equitable estoppel cannot apply to Morse's claim against it. First, Liberty argues that Beall did not interfere with Morse's ability to fill out a claim form, and therefore Morse cannot establish a *prima facie* case for equitable estoppel, which arises only when an employer or insurer has taken some

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[30] *Selley*, 2000 MT 76, ¶¶ 9-10, 299 Mont. 127, 998 P.2d 156. (Citations omitted.)

[31] *Selley*, ¶ 12. (Citations omitted.)

[32] *Selley*, ¶ 14.

"positive action" which prevents the employee from filing a claim or leads the employee to believe he need not file a claim.[33] Under the facts of this case, Liberty's argument is misplaced. Beall indeed led Morse to believe he need not file a claim because Morse followed Beall's reporting procedures. Liberty argues that no conduct by Beall interfered with Morse's "ability to fill out a claim form."[34] The issue here, however, is not whether Morse filled out a form, but whether the form was filed with Liberty. While there is no evidence of any malicious intent on Beall's behalf, the employer nonetheless took a positive action when it led Morse to believe that his claim would be filed, but ultimately failed to do so.

¶ 34 Secondly, Liberty argues that it cannot be equitably estopped from denying Morse's claim as untimely because Beall's actions cannot be imputed to Liberty.[35] Liberty acknowledges that insurers have previously been estopped based on an employer's conduct, but argues, "[N]one of these cases squarely address this issue in the context of the Court's rule governing who is a party and the complete disconnect between an employer and an insurer in a workers' compensation claim."[36]

¶ 35 Although Liberty characterizes the relationship between insurer and insured in the workers' compensation context as a "complete disconnect," statutes, case law, and this Court's rules say otherwise. ARM 24.5.301(4) provides that while the caption of the petition and other pleadings and documents shall not name the employer, "This rule shall not be construed as relieving any employer from its duty to cooperate and assist its insurer . . . ." In *Lund v. St. Paul Fire & Marine Ins. Co.*, this Court swiftly rejected the insurer's contention that it could not provide certain requested discovery because the documents were in the possession of the employer, stating:

> Claimant propounded interrogatories and requests for production asking St. Paul to provide information and files from [St. Paul's insured]. St. Paul interposed a general objection to the requested discovery on the ground that St. Paul is the "real party in interest" and its counsel "does not have access" to the employer's files other than those documents contained in St. Paul's claims file. My consideration of the objection generates enough heat to melt snow on a cold Montana winter day. Whether or not the

[33] Liberty' Post-Trial Supplemental Brief (Liberty's Supplemental Brief), Docket Item No. 28, at 4.

[34] *Id.*

[35] *Id.*

[36] *Id.*

> employer is a party in this case, it has a duty to cooperate with the insurer. The insurer can insist that the employer fulfill that obligation. . . .[37]

¶ 36 Furthermore, § 39-71-2203, MCA, provides, in pertinent part:

> (1) All policies insuring the payment of compensation under [Compensation Plan Number Two] must contain a clause to the effect that, as between the employee and the insurer:
>
> (a) the notice to or knowledge of the occurrence of the injury on the part of the insured constitutes notice or knowledge, as the case may be, on the part of the insurer . . . .

¶ 37 Section 28-10-101, MCA, states that an agent is one who represents another, called the principal, in dealings with third persons. As ARM 24.5.301(4) states, an employer has a duty to cooperate with the insurer. *Lund* echoes this sentiment, and § 39-71-2203(1)(a), MCA, imputes an employer's knowledge to the insurer. In the present case, by accepting the responsibility for injury reporting and claims filing, Beall stood in the place of Liberty in dealing with injured workers and acted as Liberty's agent.

¶ 38 Liberty essentially argues that equitable estoppel cannot apply to a situation in which a worker complies with all of his employer's reporting requirements. Instead, Liberty would impose the additional requirement that the worker circumvent the employer and go directly to the insurer to confirm that the employer has fulfilled all of its obligations under the WCA. Beall's conduct as Liberty's agent lulled Morse into a false sense of security; this conduct is imputed to Liberty. Therefore, I consider whether the elements for equitable estoppel are met.

1. Representation or concealment of material fact

¶ 39 To fulfill the first element of equitable estoppel, Morse must establish the existence of conduct, acts, language, or silence amounting to a representation or concealment of material facts.[38] Morse argues that Beall's conduct, acts, and language amounted to a representation of a material fact. Morse argues that he trusted Hazen's representation that he had properly reported his industrial accidents to his employer and that Morse need not take further action to protect his claim. The testimony of both Hazen and Goddard is consistent with Morse's contention: As noted above, Goddard testified that as the safety officer, he was responsible for receiving industrial accident reports and completing claim forms. Goddard testified that Beall's reporting policy required an injured worker to report the accident to a supervisor, and that the supervisor

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[37] *Lund*, 2001 MTWCC 62, ¶ 8.

[38] *Selley*, ¶¶ 9-10.

would then send the injured worker to the safety officer, and that the safety officer and injured worker would fill out an incident report together. Goddard further testified that a FROI would only be filled out in cases involving medical treatment or lost work time due to the injury. Hazen's testimony regarding Beall's reporting policy is consistent with Goddard's. Hazen further testified that he specifically recalls filling out the incident report in regard to Morse's first slip and fall accident, and that he recalls Morse reporting the second slip and fall accident as per Beall's reporting policy. Morse believed that he had properly complied with Beall's reporting policy because he had, in fact, complied with Beall's reporting policy. I conclude Morse has established this element of equitable estoppel.

2. Actual or constructive knowledge

¶ 40 To fulfill the second element of equitable estoppel, Morse must establish that the party estopped must have knowledge of these facts at the time of the representation or concealment, or the circumstances must be such that knowledge is necessarily imputed to that party.[39] Morse argues that Hazen's testimony that he completed an incident report form fulfills this element. From the evidence presented, it is clear that Beall's representatives knew that an injured worker believed that following Beall's reporting requirements would fulfill the injured worker's responsibilities in properly reporting a potentially compensable workers' compensation claim. I therefore conclude that Morse has established this element.

3. Truth unknown to the other party

¶ 41 To fulfill the third element of equitable estoppel, Morse must establish that the truth concerning these facts must be unknown to him at the time it was acted upon.[40] As the facts indicate above, up until the time he discovered that his private health insurance was paying for medical care related to his hip condition, and he then questioned why his hip condition was not being paid for by Liberty, Morse was unaware that Beall had not in fact filed a workers' compensation claim on his behalf after he followed Beall's reporting procedure regarding his two slip and fall accidents. I conclude Morse has established this element.

4. Intent or expectation that conduct will be acted upon

¶ 42 To fulfill the fourth element of equitable estoppel, Morse must establish that the conduct was done with the intention or expectation that it would be acted upon by him, or have occurred under circumstances showing it to be both natural and probable that

[39] *Id.*

[40] *Id.*

he would act upon it.[41] As the facts above indicate, Morse complied with Beall's reporting policy. Hazen, acting as Beall's safety officer, took Morse's report for each slip and fall accident, although Hazen acknowledges that he mistakenly believed at the time that he did not need to fill out a separate incident report for the second incident because it involved the same body part as the first. Morse argues that the evidence presented demonstrates that all parties intended to properly report his industrial injuries and move forward with any future medical treatment if necessary. Clearly, Morse believed he had properly reported his industrial injuries when he reported the two slip and fall accidents to Hazen. Although Hazen subsequently deviated from his usual practice of either filing a FROI or placing the incident report in the worker's personnel file, Morse had no knowledge of this deviation from Beall's reporting procedures. Therefore, it is reasonable to conclude that Beall would expect Morse to act as if he had properly reported industrial injuries because so far as Morse's involvement in Beall's process went, Morse had done so. Therefore, I conclude this element has been met.

5. Conduct relied upon by other party

¶ 43 To fulfill the fifth element of equitable estoppel, Morse must establish that the conduct was relied upon by him and led him to act.[42] As the facts above indicate, Morse relied upon Hazen's representations that Morse had properly reported his industrial injuries to the appropriate authorities. Although he did not seek medical care for his hip for some time after his industrial accidents, Morse relied upon Beall to have followed its own reporting policies and therefore Morse saw no need to file a FROI with Liberty until he learned that Beall had never followed through with filing his claim. I therefore conclude this element has been met.

6. Change of position for the worse

¶ 44 To fulfill the sixth element of equitable estoppel, Morse must establish that he acted upon the conduct in such a manner as to change his position for the worse.[43] Morse points out that he relied upon Beall's representation that he had followed the necessary steps to report his industrial accidents, and later Liberty denied his claim for medical benefits because it had not received a FROI for his accidents. Clearly, Morse's reliance on Beall's conduct changed his position for the worse, and therefore I conclude that this element of equitable estoppel is also met.

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[41] *Id.*

[42] *Id.*

[43] *Id.*

¶ 45 A party must establish all six elements of equitable estoppel before the doctrine can be invoked.[44] In the present case, I have determined that Morse has established all six elements. Therefore, under § 39-71-601(2)(c), MCA, the time requirement for filing his claim with Liberty was extended by 24 months. His second slip and fall accident occurred within 36 months of his December 5, 2009, FROI, and therefore Liberty is liable for this claim.

JUDGMENT

¶ 46 Respondent is liable for payment of workers' compensation or occupational disease benefits to Petitioner.

¶ 47 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 3rd day of May, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: R. Russell Plath
Larry W. Jones
Submitted: March 16, 2012

[44] *Id.*