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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

GAYLE PINNOW, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer, and HAVERSON, SHEEHY & PLATH, P.C., Intervenor.	Cause No. WCC-2004-1190 **ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Before the Court are cross-motions for summary judgment submitted by Petitioner Gayle Pinnow, Respondent Montana State Fund and Intervenor Halverson, Sheehy & Plath, P.C. A hearing on the respective motions was held on February 14, 2006. The issue to be determined is whether Pinnow's attorney, R. Russell Plath and the Halverson firm are entitled to a 20 percent contingent fee and costs pursuant to the signed agreement and settlement documents executed by the parties.

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Background

The facts upon which the respective motions are based are undisputed. On May 24, 2004, Pinnow retained the Halverson firm to represent her on two workers' compensation/occupational disease claims resulting from Pinnow's employment as a card dealer for Kathy & Karen's Card Room. Pinnow's two claims were dated November 5, 1998, claim 03-1999-03798-5, and April 5, 1999, claim 03-1999-09294-9. The November 1998 claim involved a carpal tunnel condition. No specific incident precipitated that claim. After bilateral carpal tunnel surgeries were completed, Pinnow was able to return to work as a card dealer. After returning to work, Pinnow complained of pain in her shoulder which resulted in her second claim. No specific incident precipitated that claim, which resulted in bilateral shoulder surgeries. Although a functional capacity evaluation indicated Pinnow could return to light or medium duty work and three job descriptions were approved, Pinnow has apparently not returned to work. Pinnow was also involved in a motor vehicle accident in 2003 which increased her ongoing pain. Pinnow's treating physician provided her with a 19 percent impairment rating, and settlement discussions ensued.

The Attorney Retainer Agreement signed by Pinnow in May 2004 was the standard agreement prepared by the Montana Department of Labor and Industry for use by attorneys representing claimants having workers' compensation claims arising under the laws of the State of Montana. Pinnow agreed to representation under Option A which provides a 20 percent contingent fee on settled claims and a 25 percent contingent fee on benefits awarded by court order. In June 2004, the Montana Employment Relations Division of the Department of Labor and Industry issued a letter stating that the Attorney Retainer Agreement signed by Pinnow had been approved for Option A pursuant to Section 39-71-613, MCA, and the administrative rules of Montana.

On February 17, 2005, a settlement conference took place before Hearing Examiner Jay Dufrechou. As a result of the conference, both of Pinnow's claims were settled for a combined lump-sum payment of $125,000. On February 17, 2005, a Stipulation for Settlement was executed by Pinnow and the Halverson firm. The stipulation was also signed by attorney Mike Heringer on behalf of the State Fund. The stipulation specifically referenced both claims by claim number, and granted Pinnow a combined settlement of $125,000. The stipulation required the State Fund to pay all outstanding medical liens, and left Pinnow's medical benefits open to January 31, 2005. On February 22, 2005, then Workers' Compensation Judge Mike McCarter issued his Order and Judgment dismissing the matter with prejudice.

At some point in time after the February 22, 2005, judgment was entered, Pinnow contacted Judge McCarter to repudiate the settlement and to deny attorney fees to the Halverson firm. While's Pinnow's letter to the court is dated March 10, 2005, it was not filed until April 4, 2005. As a result of Pinnow's request to repudiate the settlement, Plath filed a March 31, 2005, notice with the Employment Relations Division withdrawing as counsel for Pinnow and placing a lien for attorney's fees in the amount of $25,000 (20 percent x $125,000) plus costs advanced in the amount of $1,906.04 against the settlement proceeds. Plath also returned the unsigned settlement checks to the court.

On April 20, 2005, Judge McCarter entered a minute entry which: (1) authorized the withdrawal of Plath as attorney of record; (2) gave Pinnow until April 25, 2005, to decide if she would repudiate the settlement; (3) ordered the State Fund's attorney to hold the settlement checks totaling $120,000 jointly payable to Pinnow and Plath, as Pinnow had been sent a check for $5,000; and, (4) treated Pinnow's correspondence regarding attorney fees as a petition disputing fees, opened a new case

file, and proposed issuance of a scheduling order with respect to the attorney fee dispute so that Plath had an opportunity to respond.

On April 27, 2005, Pinnow filed a letter confirming that she was rejecting the settlement because she believed she was only settling the April 1999 shoulder claim 03-1999-09294-9, not both claims. She also claimed that her medical treatment should be reopened so that she could receive additional surgery.

On May 3, 2005, the undersigned accepted jurisdiction of this matter from former Judge McCarter. On November 10, 2005, the State Fund filed its motion seeking to enforce the settlement and judgment. Thereafter, on November 22, 2005, Pinnow mailed notice to the State Fund and to the Halverson firm that she was withdrawing her objections to the terms of the stipulated settlement and judgment. In her notice stating that she was accepting the $125,000 settlement, Pinnow sought to reserve the attorney fee dispute for further ruling by this Court. On November 30, 2005, the Halverson firm filed a motion to intervene to resolve the attorney fee dispute. That motion was granted in December 2005.

On December 5, 2005, Pinnow filed her separate motion for summary judgment requesting that this Court rule in her favor on the attorney fee issue because of the apparent failure of the Halverson firm to file a response to Pinnow's April 20, 2005 petition disputing the settlement within the time required pursuant to ARM 24.5.316(3) and (4).

Standard of Review

Rule 24.5.329(1)(a) of the Workers' Compensation Court Rules provides that a "party may . . . move for a summary judgment in the party's favor upon all or any part of a claim or defense." The moving party bears a two-prong burden of establishing the absence of any genuine issue of material fact, and entitlement to judgment as a

matter of law. Satterlee v. Lumberman Mut. Cas. Co., 2005 MT Wrk. Comp. LEXIS 69; 2005 MTWCC 55, citing Moore v. Does, 271 Mont. 162, 164, 895 P.2d 209, 210 (1995). If a petitioner fails to establish either prong, summary judgment must be denied. Id. Here, there are no consequential facts which are in dispute, and this matter is ripe for summary judgment.

Discussion

In its November 2005 brief, the State Fund argues that the February 17, 2005, Stipulation for Settlement clearly delineates that Pinnow was settling both claims, as both claims are clearly identified by their respective claim numbers. The State Fund argues that Pinnow's attempted repudiation of the judgment was untimely under the 20-day requirement for motions for reconsideration set forth in ARM 24.5.337 and the 30-day requirement for perfecting an appeal under ARM 24.5.348 and Rule 72, M.R.Civ.P. However, Pinnow's March 10, 2005, letter was timely (even though not filed until April 2005) and, by Order dated April 20, 2005, Judge McCarter deemed Pinnow's letter a petition disputing fees. Therefore, Pinnow's motion was timely.

The State Fund further argues that the February 2005 Stipulation for Settlement is a valid contract and must be enforced. This Court agrees. Since there was an unconditional offer and an unconditional acceptance, the $125,000 settlement is valid and enforceable. Lockhead v. Weinstein, 2003 MT 360, ¶ 9, 319 Mont. 62, ¶ 9, 81 P.3d 1284, ¶ 9. Pinnow acknowledged this fact in her November 2005 notice when she accepted the settlement. Pinnow now wishes to only contest the 20 percent contingent fee portion of the settlement. Because there has been an unconditional offer and unconditional settlement as to attorney fees, based on Lockhead, Pinnow is bound by her agreements. Id.

Pinnow argues that because the Halverson firm did not timely respond to her April 20, 2005, petition contesting fees, her request should be granted pursuant to ARM 24.5.316(3) and (4). Pinnow argues that she is entitled to summary ruling on her motion because the Halverson firm failed to file a brief in response to her motion within ten days. Id. However, as above-referenced, the Halverson firm was not allowed to intervene in this action until its motion to intervene was granted in December 2005. By that time, the State Fund had already filed a motion for summary judgment asking this Court to grant attorney fees to the Halverson firm. Therefore, the time requirements set forth in the administrative rules do not apply as the Halverson firm was not a party to this action at the time Pinnow's motion was filed.

Finally, pursuant to Sections 39-71-613 and 614, MCA, this Court believes the 20 percent contingent fee is reasonable. Pursuant to Section 39-71-614(3), MCA, this Court believes that Pinnow and Plath entered a binding contingent fee agreement and no mutual mistake of fact or any other defense has been raised upon which this Court could void that binding agreement under the Lockhead decision above-referenced. In addition, based on the record provided to the Court, it appears Plath was able to obtain a very reasonable settlement of Pinnow's claims. A strong presumption exists in favor of approving authorized contingent fee agreements, and Pinnow has failed to meet her burden as to why the attorney fee agreement, signed stipulation and judgment of the Workers' Compensation Court should not be honored. See, e.g., Plooster v. Hughes Livestock Co., 256 Mont. 287, 292, 846 P.2d 976, 979 (1993); Wight v. Hughes Livestock Co.., 204 Mont. 98, 115, 664 P.2d 303, 312 (1983).

Conclusion

Based on the above, it is hereby ORDERED, ADJUDGED, and DECREED that the State Fund's motion for summary judgment is hereby GRANTED, Pinnow's

motion for summary judgment is DENIED and the Halverson firm's motion is GRANTED. The State Fund is hereby ordered to pay the Halverson firm $26,906.04 (20 percent x $125,000 plus costs of $1,906.04) and the remainder to Pinnow.

DATED this 24 day of February, 2006.

JEFFREY M. SHERLOCK
District Court Judge

pcs: The Clerk of Court is directed to mail conformed copies to Petitioner and counsel of record.

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Contracts: Generally. Where Petitioner attempted to repudiate a stipulation for settlement on the grounds that she believed she was settling only one of two claims, when the language of the settlement clearly delineated that she was settling both claims, the Court agreed with Montana State Fund that the Stipulation for Settlement is a valid contract and must be enforced. Since there was an unconditional offer and an unconditional acceptance, the $125,000 settlement is valid and enforceable. *Lockhead v. Weinstein*, 2003 MT 360, ¶ 9, 319 Mont. 62, 81 P.3d 1284.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.316. Although Petitioner argued that her request to deny attorney fees to the attorney who negotiated the settlement she wished to repudiate should be granted due to the attorney's failure to file a brief in response to her motion within ten days as set forth in Rule 24.5.316 ARM, the attorney was not allowed to intervene in this action until its motion to intervene was granted, and therefore the time requirements set forth in the administrative rules do not apply as the firm was not a party to this action at the time Petitioner's motion was filed.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-613. Pursuant to §§ 39-71-613, -614, MCA, the Court believes the 20 percent contingent fee is reasonable. Pursuant to § 39-71-614(3), MCA, the Court believes the parties entered into a binding contingent fee agreement and no mutual mistake of fact or any other defense has been raised upon which this Court could void that binding agreement.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-614. Pursuant to §§ 39-71-613, -614, MCA, the Court believes the 20 percent contingent fee is reasonable. Pursuant to § 39-71-614(3), MCA, the Court believes the parties entered into a binding contingent fee agreement and no mutual mistake of fact or any other defense has been raised upon which this Court could void that binding agreement.

Attorney Fees: Amount. Where Petitioner sought to deny her attorney the 20 percent fee she agreed to in her Attorney Retainer Agreement, the Court found that her attorney obtained a very reasonable settlement of Petitioner's claims. The Court noted that a strong presumption exists in favor of approving authorized contingent fee agreements, and Petitioner failed to meet her burden as to why the agreement should not be honored.