STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

KIM CRAIG	)	File No. C-20270
	)	
v.	)	By: J. Stephen Monahan General Counsel
	)	
	)	
ALPINE VANITY	)	For: Barbara G. Ripley Commissioner
(Hanover Insurance v. Commercial Union Insurance)	)	
	)	Opinion No. 8-93WC

ISSUES

1. Is summary judgment available in a contested worker's compensation claim, and if so, is Commerical Union Insurance entitled to a motion for summary judgment?

2. Did Hanover Insurance act voluntarily when it executed and negotiated a settlement agreement with claimant without an order directing them to do so from the Department?

3. Is Hanover Insurance entitled to reimbursement from prior insurance carrier for workers' compensation benefits paid to claimant when Hanover settled the claim?

THE CLAIM

Reimbursement for worker's compensation benefits paid in the amount of $12,300.

FINDINGS

Based on the information in the file and the facts discussed in the parties motions, I find:

1. Kim Craig was employed at the Alpine Vanity Beauty Shop ("Alpine Vanity") in Newport, Vermont as a cosmetologist from August 1983 to December 1989.

2. Alpine Vanity was an employer within the meaning of the Workers' Compensation Act.

3. Ms. Craig experienced problems with her hands allegedly from exposure to irritating chemicals used in hairdressing while employed at Alpine Vanity in July, 1984. Ms. Craig was medically treated for her condition by her physician, Dr. Landon Dennison,

who diagnosed her problem as contact dermatitis.

4. Dr. Dennison continued to treat her for several years from July, 1984 through December, 1989, when she terminated her employment at Alpine Vanity. The condition failed to abate and persisted during this period until she ceased working for Alpine Vanity.

5. Ms. Craig claimed she did not lose any time from work until March, 1989, when she reduced her hours.

6. On March 15, 1990, Ms. Craig filed an Employer's First Report of Injury with the Department of Labor and Industry ("Department"), and a copy was sent to Alpine Vanity's current carrier, Hanover Insurance Company ("Hanover").

7. Hanover began to write insurance coverage for Alpine Vanity on February 9, 1987, and has continued to write coverage since then.

8. On June 1, 1990, Hanover denied Ms. Craig's claim, evidently because it believed it was not carrying the risk at the time the dermatitis was first diagnosed.

9. Commercial Union Insurance Company ("Commercial Union") provided workers' compensation insurance coverage to Alpine Vanity from February 9, 1983 through February 9, 1985. Commercial Union did not provide any additional workers' compensation insurance after this date.

10. On September 4, 1991, Commercial Union denied responsibility for the claim and filed a Motion for Summary Judgment because: 1) it was not the insurance carrier carrying the risk when the claimant lost time from work; and 2) it believed the Occupational Disease Act governed the claim.

11. In April, 1992, Commercial Union's adjuster received a telephone call from a Hanover adjuster responsible for Ms. Craig's claim, seeking contribution to settle Ms. Craig's claim. Commercial Union refused to make any contribution to settle the claim. After this communication, Hanover failed to keep Commercial Union apprised of the negotiations regarding a settlement until after it was approved by the Department.

12. On July 27, 1992, Hanover and Ms. Craig entered into a settlement agreement whereby Hanover, acting on it's own, voluntarily agreed to be contractually bound to pay worker's compensation in full and final settlement of all claims for injuries for the amount of $12,300. There was nothing in either the settlement agreement or the file to indicate that Hanover was coerced to abandon their procedural rights.

13. On July 27, 1992, the Form 15 Settlement Agreement was approved by the Department.

14. Despite Hanover's contention that Commercial Union was the responsible party, there was no modification written into the settlement agreement intimating subrogation or Commercial Union's responsibility for contribution. I find the contents of the settlement agreement to be final and binding once approved by the Department.

15. On December 1, 1992, Hanover filed its Notice and Application for Hearing, seeking a determination of the responsible carrier, as between Hanover and Commercial Union, from the Department.

16. In Hanover's Notice and Application for Hearing, there is a inconsistency over when the injury occurred. Although the application for hearing described the injury as first occurring on July 3, 1984, I find the date stipulated to in the settlement agreement by Hanover, January 15, 1989, to be the date upon which the injury was sustained.

17. On December 31, 1992, Commercial Union filed a Motion to Dismiss, or in the alternative, Motion for Summary Judgment.

18. On February 4, 1993, Hanover filed a reply to Commercial Union's Motion to Dismiss, or in the alternative, Motion for Summary Judgment.

19. On March 4, 1993, Commercial Union filed its' response to Hanover's reply to Commercial Union's motion.

CONCLUSIONS OF LAW

1. Commercial Union's Motion to Dismiss is treated as a Motion for Summary Judgment.

2. Hanover contends that summary judgment is not available in a contested worker's compensation claim based on its belief that 21 V.S.A. § 663 concerns itself only with a full hearing and not a summary proceeding. This interpretation is incorrect. Workers' Compensation Rule 8 provides:

> *The Vermont Rules of Civil Procedure and Rules of Evidence as applied in Superior Court shall, in general, apply to all hearings conducted under 21 V.S.A. § 663; except as provided in these Rules, and only insofar as they do not defeat the informal nature of the hearing. Rule 8.*

In addition, 21 V.S.A. § 602 provides the commissioner the authority to promulgate rules to carry out process and procedure which will be brief and reasonably simple. Rule 8 is one such rule; it integrates the Vermont Rules of Civil Procedure to all

workers' compensation hearings. By incorporation, summary judgments provide an expeditious mechanism for the disposition of issues, claims and defenses which do not require a full hearing. Since Rule 8 supports applying the Vermont Rules of Civil Procedure to the Department of Labor and Industry's workers' compensation hearings, under 21 V.S.A. § 663, the Department has authority for deciding whether a motion for summary judgment is appropriate.

3. Hanover executed a Form 15 Settlement Agreement with Ms. Craig. A Form 15 is an agreement whereby the claimant agrees to accept an amount in full and final settlement of all claims for injuries sustained as a result of an accident. The Department permits the use of such a settlement form when clear issues as to compensability of an injury exist. Hanover could have protected its' rights by requesting a hearing on the liability issue. Hanover also could have advanced payments to Ms. Craig while preserving its' procedural rights to seek reimbursement against Commercial Union, but it did not do so. An insurer who settles a claim for which it may not be liable is making a voluntary payment and cannot seek reimbursement. see e.g., Norfolk & Dedham Fire Ins. Co. v. Aetna Casualty & Surety Co., 132 Vt. 341 (1974). The Department had neither issued an interim order nor any § 662(c) order directing Hanover to pay the claim.

4. The negotiated agreement was purely voluntary. When the agreement was approved by the Department, it took on the quality of an award and was equivalent to stipulating to an order. Therefore, the Form 15 Settlement Agreement was a legal, binding contract between the two parties involved; the fact that the settlement agreement was approved by the Department does not alter the agreement's voluntary character.

5. Hanover, by negotiating a voluntary settlement agreement, has foreclosed its entitlment to contribution from Commercial Union. Moreover, Hanover's act to settle the claim not only prejudiced Commercial Union, but compels Hanover to accept the benefit of their bargain. Specifically, Hanover adopted January 15, 1989 as the date upon which the injury was sustained. Hanover was Alpine Vanity's insurance carrier on this date and the insurer obligated to pay compensation. I cannot help but notice that although claimant's dermatitis was diagnosed before 1989, claimant did not lose time for which she might be compensated prior to 1989. Furthermore, there was no reservation in or modification of the agreement, nor was there any additional materials in the file intimating that Hanover intended to subrogate the claim so as to collect contribution. Since Hanover negotiated and accepted this date, it is final and binding on the parties to the agreement. Therefore, Hanover cannot now seek contribution since Commercial Union was not the insurer at the time of the injury.

6. Based on the discussion above, it is not necessary to decide

whether the claim fell within the purview of the Occupational Disease Act. However, it is noted that under the Occupational Disease Act, the employer and the insurance carrier, on the risk when such employee was last exposed, will be liable without the right to contribution from any prior employer or insurance carrier. 21 V.S.A. § 1008.

7. Summary judgment is appropriate where, giving the nonmoving party the benefit of all reasonable doubts and inferences, the movant establishes there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Murray v. White, 155 Vt. 621 (1991); V.R.C.P. 56(c). There are no genuine issues of material fact in dispute with regard to the nature of the Form 15 and the circumstances which lead to its signing; for reasons discussed earlier, Commercial Union is entitled to summary judgment as a matter of law.

ORDER

Therefore, based on the foregoing findings and conclusions, it is ORDERED:

1. The claimant's insurance request for reimbursement is **DENIED**;

2. Commercial Union's motion for summary judgment is **GRANTED**.

Dated at Montpelier, Vermont this 15th day of July, 1993.

Barbara G. Ripley

Barbara G. Ripley
Commissioner