

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**WCC No. 2022-5873**

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**ROBERT L. ALLUM**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer.**

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**APPEALED TO MONTANA SUPREME COURT – DA 22-0625 11/03/22**

**JUDGMENT AND ORDERS APPROVING SETTLEMENT, DISMISSING CLAIM  
FOR BENEFITS WITH PREJUDICE, VACATING TRIAL, CERTIFYING JUDGMENT  
AS FINAL, AND NOTICE OF ENTRY OF JUDGMENT**

¶ 1 The trial on Petitioner Robert L. Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim, which was the only dispute over benefits in this case,<sup>1</sup> was scheduled to start on Thursday, October 27, 2022.

¶ 2 On October 11, 2022, Respondent Montana State Fund (State Fund) notified this Court that it had reached an agreement with Allum to settle their dispute over whether Allum's low-back condition should be accepted as part of his 2013 workers' compensation claim.

¶ 3 However, on October 17, 2022, Allum filed Petitioner's Trial Brief,<sup>2</sup> in which he again challenged the constitutionality of the Workers' Compensation Court on the grounds

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<sup>1</sup> See Pet. For Hr'g, (Injury), Demand For Jury Trial, and Constit. Challenges, Docket Item No. 1 at 9. See also Montana State Fund's Proposed Pretrial Order, attached to Pretrial Conf. Mem., Docket Item No. 51 at 2 (stating that the issue to be determined by this Court was, "Whether Petitioner is entitled to have his low back condition accepted as part of this workers' compensation claim.").

<sup>2</sup> Docket Item No. 52.

that the Montana Legislature did not have authority to create it.<sup>3</sup> Moreover, for the first time, and long after the deadline to brief his constitutional challenges,<sup>4</sup> Allum challenged the bill under which the Montana Senate confirmed the undersigned as Judge of the Workers' Compensation Court, arguing that the bill violated the single-subject rule in Mont. Const. Art. XIV, § 11, by impermissibly combining judicial confirmations with an executive branch confirmation and that it was unlawful to appoint a person residing in Kalispell as the Judge of the Workers' Compensation Court because § 39-71-2901(1), MCA, states that the "principal office of the workers' compensation judge must be in the city of Helena."<sup>5</sup> In his Conclusion, Allum asked to present these constitutional challenges "in open court" and to have this Court address them "prior to appeal."

¶ 4 On October 18, 2022, Allum and State Fund filed their Joint Petition and Stipulation for Entry of Judgment.<sup>6</sup> They agreed to fully and finally settle Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim on a disputed compensability basis for \$48,750. They acknowledged that their agreement "does not include resolution of any constitutional or jurisdictional claims by Petitioner. Those claims remain open to the extent permitted by law." However, they agreed to dismiss Allum's low-back claim with prejudice and stipulated that this Court would enter judgment based on the terms of their Joint Petition and Stipulation for Entry of Judgment.

¶ 5 While Allum and State Fund agreed that Allum's constitutional and jurisdictional claims "remain open to the extent permitted by law," these claims are no longer "open." Because this Court is a court of limited jurisdiction, with "only such power as is expressly conferred by statute,"<sup>7</sup> the Montana Supreme Court has ruled that, under § 39-71-2905(1), MCA, which gives this Court the exclusive jurisdiction over disputes concerning workers' compensation benefits, this Court does not have jurisdiction over a constitutional challenge unless there is a dispute over benefits and the challenge is within the context

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<sup>3</sup> This Court notes that it has previously rejected Allum's claim that the Montana Legislature did not have the power to create the Workers' Compensation Court or make it a court of record because it is barred by *res judicata* and, in any event, Mont. Const., Art. VII, § 1, gives the Legislature the authority to create courts. See, e.g., Order Den. Pet'r's Summ. J. Mots., Docket Item No. 49, ¶¶ 7-11.

<sup>4</sup> See Order Setting Briefing Schedule on Pet'r's Constit. Challenges, Docket Item No. 14, ¶ 2 (setting a deadline for April 15, 2022, for Allum to file a brief setting forth his arguments and authorities on his constitutional challenges).

<sup>5</sup> Although in a different context, this Court notes that it has previously rejected Allum's claims that the Judge of the Workers' Compensation Court is part of the executive branch. See, e.g., Order Den. Pet'r's Summ. J. Mots., Docket Item No. 49, ¶¶ 9, 10. See also Order Dismissing Resp'ts State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen for Lack of Subject Matter Jurisdiction, Docket Item No. 4, ¶ 2. This Court also notes that the principal office of the workers' compensation judge is in Helena, a fact that Allum full well knows because he has been there several times, including during his first trial against State Fund.

<sup>6</sup> Docket Item No. 53.

<sup>7</sup> *Thompson v. State of Mont.*, 2007 MT 185, ¶ 24, 338 Mont. 511, 167 P.3d 867 (citation omitted). See also *Liberty Nw. Ins. Corp. v. State Comp. Ins. Fund*, 1998 MT 169, ¶ 11, 289 Mont. 475, 962 P.2d 1167 ("The jurisdictional parameters of the Workers' Compensation Court are defined by statute as interpreted, from time to time, by the decisions of this Court.").

of that dispute.<sup>8</sup> Here, Allum and State Fund have fully and finally settled their dispute over whether Allum's low-back condition should be accepted as part of his 2013 workers' compensation claim, which was the only dispute over benefits in this case, and agreed that this Court is to dismiss that claim with prejudice. Thus, there is no longer a dispute over benefits in this case. Therefore, under § 39-71-2905(1), MCA, this Court no longer has jurisdiction to rule on Allum's challenges because his challenges are now outside the context of a dispute over workers' compensation benefits. Because this Court no longer has jurisdiction over Allum's challenges, this Court will not address them.

¶ 6 Based on the foregoing, this Court enters the following:

### JUDGMENT AND ORDERS

¶ 7 IT IS ORDERED AND ADJUDGED that, pursuant to their Joint Petition and Stipulation for Entry of Judgment, Allum and State Fund have fully and finally settled Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim and that the terms of Allum's and State Fund's settlement, as set forth in their Joint Petition and Stipulation for Entry of Judgment, are adopted as the Judgment of this Court.

¶ 8 IT IS FURTHER ORDERED AND ADJUDGED that the full and final settlement of Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim is **approved** and that Allum and State Fund shall comply with the terms of their Joint Petition and Stipulation for Entry of Judgment.

¶ 9 IT IS FURTHER ORDERED that Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim is **dismissed with prejudice**.

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<sup>8</sup> See *Thompson*, ¶¶ 25, 26, 30 (in case in which there was no dispute over benefits, holding that Workers' Compensation Court did not have jurisdiction under § 39-71-2905(1), MCA, to rule that statutes were unconstitutional because the constitutional challenge was made outside the context of a dispute over benefits). See also *Herman v. Mont. Contractor Comp. Fund*, 2020 MTWCC 16, ¶ 53 (ruling that this Court no longer had jurisdiction to decide a constitutional challenge to a statute under § 39-71-2905(1), MCA, and *Thompson* because the insurer had agreed to pay the benefits that had been at issue and, therefore, the claimant's constitutional challenge was no longer in the context of a dispute over benefits); *Robinson v. Mont. State Fund*, 2008 MTWCC 55 (ruling that, under § 39-71-2905(1), MCA, and *Thompson*, this Court did not have jurisdiction to rule upon the claimant's constitutional challenges to statutes and administrative rules because her challenges were outside the context of a dispute over benefits); *Berry v. Mid Century Ins. Co.*, 2020 MTWCC 10, ¶ 86 (ruling that after insurer accepted liability for medical benefits, there was no longer a justiciable controversy because the issue of the medical benefits became a moot question – i.e., "one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy" – because this Court could not grant the claimant any meaningful relief) (citations omitted) (internal quotation marks omitted)). Cf. *Miller v. Liberty Mut. Fire Ins. Corp.*, 2008 MTWCC 18, ¶ 8 (ruling that, under § 39-71-2905(1), MCA, and *Thompson*, this Court had jurisdiction to rule upon a constitutional challenge to an administrative rule because it was within the context of a dispute over benefits).

¶ 10 IT IS FURTHER ORDERED that Allum's request to present the challenges he makes in Petitioner's Trial Brief in open court is **denied** and that the trial in this case, scheduled to start on Thursday, October 27, 2022, is **vacated**.

¶ 11 IT IS FURTHER ORDERED AND ADJUDGED that all claims and issues in this case that were properly before this Court have been adjudicated and that the rights of the parties have been conclusively determined. Therefore, this Court certifies this Judgment as a final judgment. Pursuant to ARM 24.5.348(2), this Judgment and Orders Approving Settlement, Dismissing Claim for Benefits with Prejudice, Vacating Trial, Certifying Judgment as Final, and Notice of Entry of Judgment shall be considered as the notice of entry of judgment.

DATED this 20<sup>th</sup> day of October, 2022.

/s/ DAVID M. SANDLER  
JUDGE

c: Robert L. Allum  
Tom Bell  
Austin Knudsen, Montana Attorney General (courtesy copy)

Submitted: October 18, 2022