

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2016 MTWCC 3

WCC No. 2014-3374

CLOY HARTUNG

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner maintains that the settlement of his workers' compensation claim should be reopened or rescinded because he lacked the mental capacity to consent to the settlement or because his consent to settle was obtained through undue influence. Respondent counters that the facts of the case do not show any undue influence exerted on Petitioner to settle his claim, and the fact that Petitioner has entered into two marriages, a dissolution of marriage, and two attorney retainer agreements with his current legal counsel is evidence of his capacity to contract. Respondent also points out that Petitioner does not have a guardian or a conservator appointed to help him manage his affairs, and he has never been adjudicated incompetent.

Held: Petitioner has failed to prove he lacked the mental capacity to understand the terms of the Petition for Settlement and has failed to prove that Respondent exerted undue influence over him. He is not entitled to reopen or rescind the settlement on the grounds asserted.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 28-2-202. Mental weakness which falls short of the claimant

being incapable of understanding the force and effect of an agreement is insufficient to invalidate a contract. Capacity to contract deals with the ability to understand the terms of the document, not a person's actual understanding.

Contracts: Generally. Mental weakness which falls short of the claimant being incapable of understanding the force and effect of an agreement is insufficient to invalidate a contract. Capacity to contract deals with the ability to understand the terms of the document, not a person's actual understanding.

Settlements: Contracts. Mental weakness which falls short of the claimant being incapable of understanding the force and effect of an agreement is insufficient to invalidate a contract. Capacity to contract deals with the ability to understand the terms of the document, not a person's actual understanding.

Settlements: Reopening: Rescission. Mental weakness which falls short of the claimant being incapable of understanding the force and effect of an agreement is insufficient to invalidate a settlement agreement. Capacity to contract deals with the ability to understand the terms of the document, not a person's actual understanding.

Evidence: Expert Testimony: Generally. While medical evidence demonstrated that the claimant had a learning disability and extremely low cognitive ability, the reports were equivocal as to whether he had a mere mental weakness, or was incapable of understanding the force and effect of his settlement agreement. Without an expert's testimony that the claimant was incapable of understanding the settlement agreement, the Court is not persuaded that he was unable to understand it.

Settlements: Contracts. While medical evidence demonstrated that the claimant had a learning disability and extremely low cognitive ability, the reports were equivocal as to whether he had a mere mental weakness, or was incapable of understanding the force and effect of his settlement agreement. Without an expert's testimony that the claimant was incapable of understanding the settlement agreement, the Court is not persuaded that he was unable to understand it.

Settlements: Reopening: Rescission. While medical evidence demonstrated that the claimant had a learning disability and extremely low

cognitive ability, the reports were equivocal as to whether he had a mere mental weakness, or was incapable of understanding the force and effect of his settlement agreement. Without an expert's testimony that the claimant was incapable of understanding the settlement agreement, the Court is not persuaded that he was unable to understand it.

Proof: Sufficiency. Where the claimant did not present expert testimony as to whether he was capable of understanding a settlement agreement, he was never declared incompetent nor had a guardian or conservator appointed, and he entered into other contracts including two marriages, a divorce, and an attorney retainer agreement, this Court concluded that the claimant failed to prove that he was incapable of understanding the documents pertaining to his settlement agreement when they were read to him.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 28-2-407. This Court rejected the claimant's contention that the insurer's claims adjuster exerted undue influence over him, leading him to settle his claim. The claimant and the claims adjuster did not have a "confidential relationship" in light of the fact that the claimant expressed some dissatisfaction over the handling of his claim and his fiancée participated in resolving issues surrounding his claim.

Settlements: Reopening: Duress and Undue Influence. This Court rejected the claimant's contention that the insurer's claims adjuster exerted undue influence over him, leading him to settle his claim. The claimant and the claims adjuster did not have a "confidential relationship" in light of the fact that the claimant expressed some dissatisfaction over the handling of his claim and his fiancée participated in resolving issues surrounding his claim.

¶ 1 The trial in this matter began on November 25, 2014, and concluded on January 21, 2015, in Kalispell. Petitioner Cloy Hartung was present and represented by Laurie Wallace. Thomas E. Martello represented Respondent Montana State Fund (State Fund).

¶ 2 Exhibits: This Court admitted Exhibits 1 through 15, 17 through 35, and 37 through 49 without objection. This Court overruled the relevancy objections to Exhibits 16 and 36 and they were admitted.

¶ 3 Stipulations: The parties stipulated that the 2009 version of the Workers' Compensation Act applies to this case.¹

¶ 4 Witnesses and Depositions: The parties filed the depositions of Hartung and Michaun Archer, and they are considered part of the record. Hartung, Cheryl Hellbusch, Don Agan, MA, CRC, and Norman W. Johnson, CRC, ABVE/F, were sworn and testified.

¶ 5 Issues Presented: The Pretrial Order sets forth the following issues:²

Issue One: Whether Petitioner's claim should be reopened and temporary total disability benefits reinstated or permanent total disability benefits paid from the date of termination to the present.

Issue Two: Whether Respondent has been unreasonable and thereby entitling Petitioner to an increased award of 20% of all compensation benefits awarded pursuant to § 39-71-2907, MCA.

Issue Three: Whether Petitioner is entitled to reasonable costs and attorney fees.

Since this Court has ruled against Hartung on Issue One, this Court does not reach Issues Two or Three.

FINDINGS OF FACT³

¶ 6 Hartung testified at trial. This Court found him to be a credible witness.

¶ 7 Hartung grew up on his father's ranch in the Moiese area of western Montana.⁴ Hartung attended Charlo High School and graduated in 2002.⁵ His degree was attained by attending special education classes. A modified curriculum was developed for him in accordance with an Individual Educational Plan (IEP) that took into account, *inter alia*, his low IQ and poor reading ability. In his senior year, Hartung's IEP included learning the concept of days of the week.

¹ Pretrial Order at 4, Docket Item No. 30.

² *Id.*

³ All Findings herein are taken from trial testimony unless otherwise noted.

⁴ Hartung Dep. 13:1-4, 14:1-20.

⁵ Hartung Dep. 13:14-25.

¶ 8 In his afternoons after school and on the weekends, Hartung milked and fed cows, cut hay, changed irrigation pipe, fixed fence, and moved cattle on horseback.⁶ He operated a grain truck, a truck with a hoist, a backhoe, a tractor with a bucket, a swather, and a baler.⁷ Hartung participated in team roping competitions at rodeos.⁸ He was the “header,” roping the steer’s head while his partner lassoed the hind legs.⁹

¶ 9 In 2002, Patricia L. Webber, PhD, conducted a psychological evaluation of Hartung.¹⁰ She administered the Wechsler Adult Intelligence Scale – III.¹¹ His score was in the “Extremely Low” range.¹² Dr. Webber stated that his results “indicate driving is a very questionable goal.”¹³ Dr. Webber also stated that his results indicated that he was “not capable of handling his own funds.”¹⁴

¶ 10 Hartung was, however, able to obtain a valid driver’s license.¹⁵

¶ 11 Hartung met Archer in October 2008.¹⁶ Archer graduated in the top 3% of her high school class and received a scholarship to attend Jamestown College in North Dakota, where she graduated in 2009 with a teaching degree in elementary education and endorsements in special education and in early childhood.¹⁷ She also attended classes at Flathead Valley Community College to attain her Montana teaching certificate.¹⁸ At the time of her testimony, she was teaching third and fourth grade in the Whitefish School District,¹⁹ where she worked with special education and special needs children,²⁰ and was working on obtaining a master’s degree.²¹

⁶ Hartung Dep. 14:16 – 15:3, 20:13-25.

⁷ Hartung Dep. 17:19 – 19:21.

⁸ Hartung Dep. 21:5-11.

⁹ Hartung Dep. 21:11 – 22:19.

¹⁰ Ex. 13-1 to 13-6.

¹¹ Ex. 13-4, 13-5.

¹² Ex. 13-4.

¹³ Ex. 13-2.

¹⁴ *Id.*

¹⁵ Ex. 13-89.

¹⁶ Archer Dep. 18:12-13.

¹⁷ Archer Dep. 10:9 – 11:12, 13:24 – 14:9.

¹⁸ Archer Dep. 12:16 – 13:23.

¹⁹ Archer Dep. 16:5 – 18:9.

²⁰ Archer Dep. 37:10-13; Ex. 3-5.

²¹ Archer Dep. 14:7-9.

¶ 12 On November 15, 2008, Hartung began working on a ranch outside of Kalispell.²² Hartung was hired to take care of the cows and move them around in their pens to make sure they were moving and healthy.²³ He also changed out irrigation pipe, helped with the haying, and operated a backhoe, moving dirt and digging holes.²⁴

¶ 13 Hartung and Archer became engaged in April 2009.²⁵

¶ 14 On August 25, 2009, Hartung lost his dominant right hand and wrist in an industrial accident involving an auger.²⁶

¶ 15 Hartung dictated the answers to the questions on the State Fund's First Report to Archer, who filled in the information.²⁷

¶ 16 State Fund accepted liability for his claim.²⁸ Hellbusch adjusted Hartung's claim. Hartung felt that Hellbusch treated him "all right . . . as a person," but he did not think she always kept him informed as to what was happening and did not think she was "efficient."²⁹ Hartung testified that while Hellbusch approved most of his and his doctor's requests, it often took a while to get done.³⁰ Hartung was also dissatisfied with Hellbusch because it often took two or three days for her to return phone calls.³¹

¶ 17 Hellbusch testified at trial. This Court found her to be a credible witness.

¶ 18 Hellbusch telephoned Hartung at Harborview Medical Center in Seattle the day after his accident.³² Since Hartung was asleep, Hellbusch spoke with Archer, who was in his hospital room.³³ Archer explained that they had hoped to salvage Hartung's hand, but because of the damage, the decision was made to amputate his right hand two inches

²² Hartung Dep. 26:17-21; Ex. 42-1.

²³ Hartung Dep. 26:25 – 28:25.

²⁴ Hartung Dep. 29:1 – 33:13.

²⁵ Archer Dep. 18:13-18.

²⁶ Pretrial Order at 1-2.

²⁷ Hartung Dep. 34:20 – 35:18; Ex. 42.

²⁸ Pretrial Order at 2.

²⁹ Hartung Dep. 57:12 – 58:12.

³⁰ Hartung Dep. 58:14 – 59:2.

³¹ Hartung Dep. 58:1-8, 58:21 – 59:6.

³² Ex. 18-109 to 18-110.

³³ Ex. 18-109.

above the wrist.³⁴ Hellbusch gave Archer her name and telephone number, answered questions, and told Archer to call her with questions or concerns.³⁵

¶ 19 Within a week of the accident, Hellbusch knew that Hartung had a “slight learning disability.”³⁶

¶ 20 Hellbusch kept in frequent contact with Hartung and Archer throughout her handling of his claim.³⁷ Hellbusch’s claims notes reflect that Hartung regularly spoke to Hellbusch about issues on his claim.³⁸ From Hellbusch’s perspective, Archer was “very” active in communicating Hartung’s needs. Archer agreed that she frequently communicated with Hellbusch:

Q. Do you know who Cheryl Hellbusch is?

A. Yes.

Q. Who is she?

A. She was the person that we dealt with all the claims and things through State Fund.

Q. Was she the adjuster or examiner on Cloy’s Workers’ Compensation claim?

A. I’m assuming that’s what you call her.

Q. All right.

A. She’s the one that I dealt with primarily, and Cloy dealt with doctors and the paperwork that was necessary for the different things that Cloy needed.³⁹

¶ 21 Throughout Hartung’s claim, Archer read him documents and discussed them with him.⁴⁰

¶ 22 A medical advisor for State Fund informed Hellbusch on August 31, 2009, that Hartung’s impairment rating for a right-hand amputation would be at least 54%.⁴¹

³⁴ Ex. 18-109 to 18-110.

³⁵ Ex. 18-110.

³⁶ Ex. 18-106.

³⁷ See generally Ex. 18.

³⁸ *Id.*

³⁹ Archer Dep. 30:19 – 31:5.

⁴⁰ Archer Dep. 18:24 – 19:10, 27:7 – 28:22.

⁴¹ Ex. 18-109.

¶ 23 On October 13, 2009, Archer contacted Hellbusch by e-mail and requested an advance of Hartung’s benefits so he could move from his former employer’s ranch, board his horses, fix his truck, and for other expenses.⁴² Hellbusch agreed to a \$20,000 advance.⁴³ Hartung signed the Petition for Advance and Archer witnessed it.⁴⁴

¶ 24 Hartung saw Edward H. Trontel, PhD, a clinical psychologist, for the first time on October 28, 2009, for help with the “great anxiety and emotional distress” arising out of his accident and amputation.⁴⁵ Dr. Trontel obtained a thorough history from Hartung.⁴⁶ Dr. Trontel noted that Hartung had a “preexisting learning disability,” but that “[c]ommunication of ideas was relevant, coherent, and progressive.”⁴⁷ However, Dr. Trontel noted: “The patient[’s] level of comprehension was uncertain, inasmuch as Mr. Hartung tended to miss complex constructions. That is, it was uncertain if he suffered from circumscribed reading difficulties or more generalized verbal processing difficulties, if not globally low abilities.”⁴⁸

¶ 25 Hartung returned to Dr. Trontel on November 3, 2009.⁴⁹ Archer accompanied Hartung, and Dr. Trontel noted she was “understanding of her husband’s cognitive limitations.”⁵⁰ Dr. Trontel recorded that Hartung “said he was a ‘hands-on learner’ and was confused in situations in which complex language and writing were necessary.”⁵¹ Dr. Trontel also noted:

Surprisingly, he revealed that he was on SSDI for reasons that were unclear. It was believed that his learning difficulties were responsible, as was anxiety, and his psychometric IQ might be lower than immediately apparent. His mother was his co-payee, and he had been awarded benefits in the distant past. Because he valued work, he sought employment, with payment offsets occurring. An attempt will be made to solicit the consultative exami[na]tion, if available, and testing will be considered,

⁴² Ex. 18-100.

⁴³ Ex. 18-99.

⁴⁴ Ex. 22; Archer Dep. 26:24 – 27:12.

⁴⁵ Ex. 3-1 to 3-4.

⁴⁶ Ex. 3-1 to 3-3.

⁴⁷ Ex. 3-1, 3-2.

⁴⁸ Ex. 3-2.

⁴⁹ Ex. 3-5.

⁵⁰ *Id.*

⁵¹ *Id.*

although his sensitivity to failure and exposure of limitations militates against doing so, at present.⁵²

¶ 26 Hartung returned to Dr. Trontel on November 24, 2009.⁵³ Dr. Trontel reported that Hartung was using cognitive behavioral strategies to avoid conflict.⁵⁴ Dr. Trontel noted that Hartung's mentation was within normal limits but that he had "attentional and comprehension difficulty."⁵⁵ Dr. Trontel diagnosed Hartung with "Learning Disorder NOS," but stated he had "insufficient information" to specify the extent of it.⁵⁶ On Hartung's next visit, Dr. Trontel noted, "Consider testing to better define his intellectual functioning, but doing so will be threatening, so it will be deferred."⁵⁷

¶ 27 Hartung was scheduled to see Dr. Trontel on December 29, 2009.⁵⁸ However, Hartung notified his nurse case manager that he did not want to return.⁵⁹ Dr. Trontel therefore released him, but noted that he was willing to see Hartung "at any time."⁶⁰

¶ 28 On January 14, 2010, Hartung signed an Attorney-Client Retainer Agreement with his attorney to pursue tort claims arising out of his injury.⁶¹ Hartung agreed to pay a 33⅓% contingency fee, and to "reimburse all costs expended by the attorneys in the prosecution of this case, regardless of whether a recovery is made."⁶² Hartung's attorney read the Attorney-Client Retainer Agreement to him and went over it with him.⁶³ Hartung's mother accompanied him to his attorney's office, as he was not yet married to Archer. At that time, Hartung did not retain his attorney to represent him on his workers' compensation claim.⁶⁴

¶ 29 Hartung's attorney read to Hartung and reviewed with him the Complaint and Demand for Jury Trial she drafted on his behalf, which named several defendants,

⁵² *Id.*

⁵³ Ex. 3-6.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Ex. 3-7.

⁵⁸ Ex. 3-8.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Ex. 43-1.

⁶² *Id.*

⁶³ Hartung Dep. 36:5 – 37:6; Ex. 43-1.

⁶⁴ See ¶¶ 31, 53 below.

including his employer and the manufacturer of the auger.⁶⁵ Hartung generally understood that the Complaint and Demand for Jury Trial alleged that the defendants “were wrong” in what they had done, causing him to lose his hand.⁶⁶

¶ 30 Because of Hartung’s reading difficulties, Archer read to Hartung many of the documents dealing with his lawsuit.⁶⁷ Likewise, his attorney read to him the discovery requests served upon him in the litigation, and his answers and responses.⁶⁸ Hartung then attested to his discovery answers and responses under a clause stating, “That the Plaintiff has had the foregoing document read to him and that the facts and matters contained therein are true, accurate and complete to the best of my knowledge and belief.”⁶⁹ Archer also read Hartung the questions on a questionnaire he needed to fill out for his application for Social Security disability benefits.⁷⁰ Archer explained that she did not know the answers to many of the questions.⁷¹ Hartung dictated the answers to Archer, who then wrote down his responses.⁷²

¶ 31 On February 18, 2010, Hartung’s attorney requested Hartung’s medical records from State Fund.⁷³ Hellbusch called Hartung to confirm that his attorney was not representing him on his workers’ compensation claim. Hellbusch testified she told Hartung that there was “no need” to hire an attorney because: she did not dispute his injury; they were “not fighting about anything”; she was going to “give him everything that [she] possibly can, within the limits of the law”; and because an attorney would take a fee out of his benefits. Hellbusch then wrote a claims note stating that Hartung’s attorney was not representing him on his workers’ compensation claim “and the claimant has relayed that he does not want her on the WC aspect of this claim as he is totally satisfied with our services and we have a good relationship.”⁷⁴

¶ 32 On February 23, 2010, Hellbusch spoke with Hartung and Archer via telephone.⁷⁵ During this conversation, Hartung and Archer requested another advance against his

⁶⁵ Hartung Dep. 37:20 – 38:9; Ex. 16-1 to 16-14.

⁶⁶ Hartung Dep. 38:10-16.

⁶⁷ Archer Dep. 18:24 – 19:7.

⁶⁸ Hartung Dep. 39:1 – 40:16; Ex. 16-40, 16-45.

⁶⁹ Ex. 16-40, 16-45.

⁷⁰ Archer Dep. 47:7 – 48:11.

⁷¹ Archer Dep. 47:16-24.

⁷² Ex. 17-62, 17-73; Archer Dep. 47:22-24.

⁷³ Ex. 18-85.

⁷⁴ Ex. 18-85.

⁷⁵ Ex. 18-84.

impairment award.⁷⁶ Hellbusch agreed to a \$13,000 advance.⁷⁷ Hartung signed the Petition for Advance and Archer witnessed it.⁷⁸

¶ 33 Hartung and Archer married in May 2010.⁷⁹ Archer managed their money, although she “went through his money with him and had him sign the checks.”⁸⁰

¶ 34 On May 5, 2010, Hartung’s treating physician, Douglas S. Reagan, MD, reported that Hartung was no longer seeing his psychologist and that, “I think he probably will be able to return to full duty.”⁸¹

¶ 35 On May 26, 2010, Hartung met with Hellbusch in Kalispell and told her that he was having trouble driving his truck, which had a manual transmission.⁸² Hellbusch wrote to Dr. Reagan, asking whether an automatic transmission was medically necessary.⁸³ Dr. Reagan responded that it was indeed medically necessary for Hartung to get an automatic transmission for his truck.⁸⁴ Hellbusch looked into the cost of converting Hartung’s vehicle to an automatic transmission and obtained an estimate for \$3,000 to \$4,000.⁸⁵ Hartung then agreed to settle “transportation issues” for \$4,000.⁸⁶ Hartung signed the Petition for Settlement, and Archer witnessed it.⁸⁷

¶ 36 Hartung returned to Dr. Trontel on November 24, 2010.⁸⁸ Dr. Trontel noted that Hartung had been under stress because of his injury, the litigation, and because his grandmother and a friend had died.⁸⁹ The doctor noted, “His level of comprehension or general intelligence compromises his ability to use information in the interest of organizing his thoughts and plans. He simply reacts with anxious anger—predicated on the notion

⁷⁶ *Id.*

⁷⁷ Ex. 48.

⁷⁸ *Id.*; Archer Dep. 28:21-24.

⁷⁹ Archer Dep. 18:22-23.

⁸⁰ Archer Dep. 19:11-20.

⁸¹ Ex. 4-22.

⁸² See Ex. 18-76.

⁸³ *Id.*

⁸⁴ Ex. 4-24.

⁸⁵ Ex. 18-73 to 18-74; Ex. 28-1 to 28-3.

⁸⁶ Ex. 28-3.

⁸⁷ Ex. 28-1.

⁸⁸ Ex. 3-9.

⁸⁹ *Id.*

of unfairness—whenever he is uncertain. Voc rehab will likely be difficult because of his intelligence, as is med care and management.”⁹⁰

¶ 37 Norman W. Johnson, CRC, testified at trial. This Court found Johnson to be a credible witness. Johnson is a certified rehabilitation counselor.⁹¹ He holds a master’s degree in clinical psychology.⁹² Johnson’s work experience includes being a special education teacher for the Charlo Public School System from 1969 to 1972.⁹³ Johnson testified that to graduate with a master’s degree in clinical psychology, he had to be certified in giving I.Q. tests and is still certified.

¶ 38 Johnson first became involved in Hartung’s case on September 1, 2009.⁹⁴ In the subsequent two years, Johnson spent over sixty hours of billable time on Hartung’s case. He met several times with Hartung, once with Archer, and kept Hartung’s attorney apprised of his vocational rehabilitation efforts through telephone calls and correspondence.

¶ 39 As part of his vocational rehabilitation services, Johnson tried to administer the Wonderlic Personnel Test.⁹⁵ However, the test was written at a sixth grade reading level, which was beyond Hartung’s reading ability and Johnson therefore ended the test.⁹⁶ Johnson also administered the Wide Range Achievement Test: Fourth Edition.⁹⁷ The results showed Johnson that Hartung had a 2.0 grade level reading ability, a 1.4 grade level sentence comprehension, a 2.4 grade level spelling ability, and a 1.1 grade level math computation ability.⁹⁸ Hartung ranked in the 0.1 percentile of those tested except for spelling, where he ranked in the 1.0 percentile.⁹⁹

¶ 40 Johnson thought Hartung’s mental and physical disabilities would impact his productivity, and noted that Hartung was “not academically inclined,” but opined that Hartung was employable, and that he could learn several jobs with on-the-job training.¹⁰⁰

⁹⁰ *Id.*

⁹¹ Ex. 49-1.

⁹² Ex. 49-2.

⁹³ *Id.*

⁹⁴ Ex. 12-293.

⁹⁵ Ex. 12-104, 12-105.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Ex. 12-105.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Johnson's report of September 2, 2010, pointed out that, despite his efforts at finding Hartung a position compatible with his background and skills, Hartung's primary goal was not to work for someone else but "to get a small place of his own and run a few head of cattle."¹⁰¹ Archer confirmed that was Hartung's goal.¹⁰²

¶ 41 Johnson sent Hartung to a literacy program, but Archer explained that "when Cloy got there he felt like they were treating him like he was stupid, using Dr. S[eu]ss books . . . [a]nd he was not appreciative of that and came home angry and did not want to ever go back, because he felt demeaned"¹⁰³ Archer then agreed to help him with his reading, but Hartung eventually "los[t] interest."¹⁰⁴ Based on her experience as a teacher, Archer believed she could have taught Hartung to read better if he would have made the effort to succeed.¹⁰⁵

¶ 42 Johnson told Hartung he should talk to his attorney "on anything that had to do with any settlement offers" from State Fund. Johnson testified he did so because he "knew [Hartung] needed help understanding settlement offers." Hartung responded that he "ran things by" his attorney and Archer.

¶ 43 In July 2011, Dr. Reagan and Bruce R. Belleville, MD, MPH, FACOEM, CIME, found Hartung to be at maximum medical improvement (MMI).¹⁰⁶ Dr. Belleville determined that Hartung had a whole person impairment rating of 57%¹⁰⁷ and Dr. Reagan agreed.¹⁰⁸ Dr. Reagan approved several job analyses.¹⁰⁹

¶ 44 On August 10, 2011, Hellbusch sent Hartung a letter advising that since he was at MMI, State Fund was converting his temporary total disability benefits to permanent partial disability (PPD) benefits.¹¹⁰ Hellbusch calculated the total value of Hartung's PPD benefits to be \$82,059, less the \$33,000 in advances State Fund had paid.¹¹¹ Hellbusch based her calculation on the following factors under § 39-71-703, MCA: age=0%;

¹⁰¹ Ex. 12-96 (emphasis omitted); Hartung Dep. 54:10-24.

¹⁰² Archer Dep. 37:23 – 38:16.

¹⁰³ Archer Dep. 35:24 – 36:8.

¹⁰⁴ Archer Dep. 36:24 – 37:2.

¹⁰⁵ Archer Dep. 37:10-22.

¹⁰⁶ Ex. 1-19; Ex. 4-55.

¹⁰⁷ Ex. 1-20 to 1-21.

¹⁰⁸ Ex. 4-57 to 4-58.

¹⁰⁹ Ex. 12-227 to 12-244, 12-249 to 12-257.

¹¹⁰ Ex. 32-1 to 32-2.

¹¹¹ Ex. 32-1.

education=0%; wage loss=20%; restrictions=3%; and impairment=57%.¹¹² The letter stated that State Fund would pay the “full benefit amount of \$49,059.00”¹¹³ at the rate of \$273.53 per week.¹¹⁴ The letter also stated Hartung could “settle [his] claim,” and stated that if he did so, “the settlement proceeds will be paid in a lump sum discounted at the present value amount.”¹¹⁵

¶ 45 On September 1, 2011, Hellbusch called Hartung to see if he wanted to settle his claim.¹¹⁶ At that time, Hartung was content receiving his benefits bi-weekly, but stated that he would let Hellbusch know if he changed his mind.¹¹⁷

¶ 46 Hartung’s PPD checks were less than he expected because State Fund was recouping the advances.¹¹⁸ Archer discussed the problem with Hellbusch and discussed a settlement.¹¹⁹ Archer and Hartung then talked about settling his claim, and Hartung decided he wanted the lump sum. Archer explained:

I talked with Cloy about the settlement, because what was happening to his bi-weekly payments is that State Fund was taking money out of his bi-weekly payments to take -- pay back the 33,000. And Cheryl had no idea why it was doing that, and she thought she had fixed it but it kept on doing it. So when Cloy found that out and he was looking at his bank statements and things with me, he was wondering why that was happening, and I told him I didn’t know why. And that’s when he had decided that he wanted to get the full lump sum and put it in his savings, which is what we did.¹²⁰

Archer testified that Hartung understood that after settling, he would still be able to go to his prosthetics doctor.¹²¹ She did not provide any other testimony regarding Hartung’s ability to understand the settlement agreement, or his actual understanding of it.

¹¹² *Id.*

¹¹³ *Id.* (emphasis omitted).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Ex. 18-35.

¹¹⁷ *Id.*

¹¹⁸ Archer Dep. 42:15-20.

¹¹⁹ Archer Dep. 40:14 – 41:18; 42:21-22.

¹²⁰ Archer Dep. 42:17 – 43:3.

¹²¹ Archer Dep. 44:9-12.

¶ 47 On September 26, 2011, Hartung and Hellbusch reached an agreement to settle his claim, leaving medical benefits open, for \$50,000.¹²² Hellbusch made a claims note explaining the settlement:

The claimant would like to settle the indemnity portion of this claim. We have agreed to 50 thousand dollars total which will be paid to the claimant once signed and approved by ERD. His 703/Impairment amount totals \$82,059.00 minus the prior impairment rating lump sum advancement given to him; as well as any perm partial imp payments he will have been paid before the settlement get's [sic] approved. I've added a couple of weeks to get the total payout to the 50 thousand dollar figure; and have agreed not to take any present value. The final settlement documents were emailed to [Archer] who is the spouse of the claimant; and they will sign; witness; and get them sent back asap. The remaining recovery reserve will be resolved once the settlement has been approved and paid.¹²³

¶ 48 The Petition for Settlement is on the Department of Labor & Industry's standard form.¹²⁴ The Petition for Settlement states: "The claimant and insurer have agreed to settle all compensation payments due the claimant under the Workers' Compensation Act. The claimant shall accept the lump sum of: Eighty three thousand dollars (\$83,000.00) less permanent partial disability benefits paid to date."¹²⁵ The Petition for Settlement also states, "Further medical and hospital benefits are reserved by the claimant" and, "[m]edical benefits remain open."¹²⁶ The Settlement Recap Sheet, signed by Hartung, states: "This settlement of the 50 thousand resolves Temporary Total, Temporary Partial, Perm Total and Perm Partial disability and Rehabilitation Benefits."¹²⁷ Hellbusch testified that neither Hartung nor Archer contacted her to ask questions about the settlement or to state that they did not understand it. Hartung signed the Petition for Settlement and Archer witnessed his signature.¹²⁸

¶ 49 Although Archer read the settlement petition, she testified that she did not understand that the settlement was for Hartung's wage loss benefits.¹²⁹ She thought it

¹²² Archer Dep. 40:20 – 41:18.

¹²³ Ex. 18-34.

¹²⁴ Ex. 10-1.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Ex. 10-2 (emphasis omitted).

¹²⁸ Ex. 10-1.

¹²⁹ Archer Dep. 43:11-14.

was just a settlement of Hartung's medical benefits, and that the reference to "Medical benefits remain open" was a reference to Hartung's prosthetics doctor.¹³⁰

¶ 50 On October 4, 2011, the Department of Labor & Industry approved the settlement.¹³¹

¶ 51 David J. Mahoney, PhD, conducted a psychological examination of Hartung on March 6, 2012.¹³² Dr. Mahoney administered the Wechsler Adult Intelligence Scale-IV test, which showed that Hartung's cognitive ability was in the "extremely low range."¹³³ Dr. Mahoney, however, noted that Hartung provided "normal attention and focus," and that his "concentration seemed steady."¹³⁴ Dr. Mahoney also stated Hartung was "candid about discussing his frustrations with other professionals who, in the past, did not appreciate what he had gone through, or emphasized pushing him toward improvement before he was ready."¹³⁵ Dr. Mahoney noted, "All in all, Cloy's thought and language was logical and goal directed."¹³⁶ Dr. Mahoney also stated:

The claimant demonstrates normal judgment in all areas of his life. His reality testing is realistic. His insight is gained by making natural connections and situations and thoughts. Cloy reports decision making difficulty, but was unable to describe the nature of the decisions. It is simply hard to think sometimes. From his efforts to explain it sounds like, on occasion, he does not know what to choose and considers it difficult to making [sic] decisions.¹³⁷

Dr. Mahoney also explained, "His support system is primarily his wife. She holds a full-time job and manages his current benefits. Cloy demonstrates an adequate level of social maturity and responsibility. His social judgment is normal. At the present time, there is ample dependency on his wife that he relies on, but he would not if he was single."¹³⁸

¶ 52 The Flathead County District Court dismissed Hartung's tort case in early 2012.¹³⁹

¹³⁰ Archer Dep. 43:15 – 44:4.

¹³¹ Ex. 33-1, 33-2.

¹³² Ex. 13-89 to 13-96.

¹³³ Ex. 13-92.

¹³⁴ Ex. 13-91.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Ex. 13-92.

¹³⁹ See Ex. 44.

¶ 53 On April 16, 2012, Hartung retained his attorney to represent him in his workers' compensation claim.¹⁴⁰ Hartung signed the standard Attorney Retainer Agreement published by the Department of Labor & Industry.¹⁴¹ Hartung agreed to the contingency fee schedule, under which his attorney would receive 20% of the additional compensation benefits received due to the efforts of his attorney, and 25% if the case came to a hearing before this Court.¹⁴²

¶ 54 Hartung and Archer divorced in December 2012.¹⁴³ Hartung consented to a Petition for Summary Dissolution of Marriage, and understood that it divided their assets and debts between Archer and himself.¹⁴⁴ Neither he nor Archer were represented by an attorney, and he felt that he was treated fairly in the divorce.¹⁴⁵

¶ 55 On June 21, 2014, Hartung married Evelyn Pauline Long.¹⁴⁶ Her parents own an outfitting business and she works for the business, preparing for pack trips into the Bob Marshall Wilderness Area.¹⁴⁷ Hartung also works for the business, driving pack animals to the drop-off point and saddling some of the animals.¹⁴⁸

¶ 56 Don Agan, MA, testified at trial. This Court found him to be a credible witness. Agan has been a certified vocational rehabilitation counselor since 1991. He holds a master's degree in applied sociology and has approximately 25 credit hours in special education. Over the years, Agan has worked with students in special education settings and with employers employing people with developmental disabilities, focusing on assessment, evaluation, and program development.

¶ 57 Agan was retained by Hartung within two to three weeks of trial, and met with him once for approximately four to five hours. Agan opined that, Hartung was not capable of physically and mentally performing regular, full-time employment. Agan explained that Hartung's low scores on the Wide Range Achievement Test, his low full-scale I.Q., and his permanent disability made job placement difficult. Agan testified that Hartung had extremely low verbal processing capability, but that Hartung was generally able to answer

¹⁴⁰ Ex. 34.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Archer Dep. 23:7-9; Ex. 46.

¹⁴⁴ Hartung Dep. 42:13 – 45:3; Ex. 45.

¹⁴⁵ Hartung Dep. 45:25 – 46:8.

¹⁴⁶ Hartung Dep. 46:15 – 47:5; Ex. 47.

¹⁴⁷ Hartung Dep. 47:10 – 48:16, 49:23 – 50:11.

¹⁴⁸ Hartung Dep. 50:21 – 51:22.

his questions during their meeting, though Hartung's wife occasionally helped him. Agan did not offer an opinion as to whether Hartung could understand the settlement agreement.

CONCLUSIONS OF LAW

¶ 58 Hartung bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.¹⁴⁹

Issue One: Whether Petitioner's claim should be reopened and temporary total disability benefits reinstated or permanent total disability benefits paid from the date of termination to the present.

¶ 59 Hartung argues that he is entitled to set aside his September 27, 2011, Petition for Settlement under two theories. First, Hartung maintains that the settlement agreement is void because he did not have the mental capacity to contract when he entered into it.¹⁵⁰ Second, he maintains that the settlement agreement is void, or that he can rescind it, because State Fund obtained his consent through undue influence.¹⁵¹ State Fund argues that Hartung has failed to meet his burden of proof under either theory.¹⁵²

Lack of Mental Capacity

¶ 60 A settlement agreement is a contract; therefore, contract law is used to determine whether a settlement agreement is valid and enforceable.¹⁵³ Section 28-2-202, MCA (2009), states as follows:

Contracts of persons entirely without understanding. A person entirely without understanding has no power to make a contract of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family.

¶ 61 The Montana Supreme Court discussed the evidence that a person needs to present to prove that he is without understanding in *Wilkes v. Estate of Wilkes*.¹⁵⁴ In

¹⁴⁹ *Ricks v. Teslow Consol.*, 162 Mont. 469, 483-84, 512 P.2d 1304, 1312-13 (1973) (citations omitted); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 201, 598 P.2d 1099, 1105-06 (1979) (citations omitted).

¹⁵⁰ Petition for Hearing at 2, Docket Item No. 1; See also Petitioner's Trial Brief, Docket Item No. 26.

¹⁵¹ Petition for Hearing at 2; See also Petitioner's Trial Brief.

¹⁵² Trial Brief of Respondent Montana State Fund (Respondent's Trial Brief) at 3, 5-9, Docket Item No. 27.

¹⁵³ *Gamble v. Sears*, 2007 MT 131, ¶ 24, 337 Mont. 354, 160 P.3d 537 (citing *Wolfe v. Webb*, 251 Mont. 217, 223, 824 P.2d 240, 244 (1992)).

¹⁵⁴ 2001 MT 118, 305 Mont. 335, 27 P.3d 433.

Wilkes, Mary, who was developmentally disabled and 41 years younger than her fiancé Lawrence, met with Lawrence and his lawyer two days before their wedding, ostensibly so that she could sign a living will and a power of attorney.¹⁵⁵ The lawyer also presented her with a premarital agreement, which provided that they would keep their property separate and “free from any claim of the other by virtue of the forthcoming marriage.”¹⁵⁶ The attorney who prepared the agreement testified that he explained its effect to Mary.¹⁵⁷

¶ 62 After Lawrence died, Mary challenged the validity of the premarital agreement on the grounds that she was incapable of understanding it and could not have given the required consent.¹⁵⁸ Her lay witness testimony showed that she had graduated high school but had attended special education classes.¹⁵⁹ She could read and write, but did so “poorly.”¹⁶⁰ She could operate a motor vehicle although she did not possess a driver’s license.¹⁶¹ She was unemployed, received Social Security disability benefits, and it was unclear as to whether she could have retained a job.¹⁶² The court explained, “[h]er level of proficiency beyond that is difficult to assess because Mary did not offer any expert witnesses who could attest to her skills and intelligence level.”¹⁶³

¶ 63 The district court ruled against her, explaining the “burden of proof rests with Plaintiff to establish her incompetence and the Court simply is not satisfied that the burden has been met . . . and [therefore] there is no reason to believe that she would be incapable of understanding her rights under a Prenuptial Agreement”¹⁶⁴

¶ 64 In applying general contract principles to the question of whether Mary had the mental capacity to understand the terms of the premarital agreement, the Montana Supreme Court explained:

According to general principles of contract law, the essential elements of a contract are: (1) identifiable parties capable of contracting, (2) consent of the parties, (3) a lawful object and (4) sufficient cause or consideration. “Any person who manifests assent to a transaction has full

¹⁵⁵ *Wilkes*, ¶¶ 5, 7.

¹⁵⁶ *Wilkes*, ¶ 7.

¹⁵⁷ *Wilkes*, ¶ 15.

¹⁵⁸ *Wilkes*, ¶¶ 8, 11.

¹⁵⁹ *Wilkes*, ¶ 13.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Wilkes*, ¶ 14 (alternation in original) (omissions in original).

legal capacity to incur contractual duties unless he is (1) under guardianship (2) an infant, or (2) [sic] mentally ill or defective.” . . . [A] person is mentally defective for purposes of capacity, when the party, for any reason, is incapable of understanding the force and effect of the alleged agreement. However, a mere mental weakness short of such incapacity will not invalidate a contract because capacity deals with the ability to understand the terms of the document, not a person’s actual understanding. Stated differently, “[c]apacity relates to the status of the person rather than the circumstances surrounding the transaction.”¹⁶⁵

Without expert testimony or medical evidence to support Mary’s claim of incompetence, the court concluded that the district court was correct in finding that there was insufficient evidence to prove that she was incompetent.¹⁶⁶

¶ 65 Like the district court in *Wilkes*, this Court is not persuaded that Hartung was incapable of understanding the force and effect of the settlement of his workers’ compensation claim. Hartung did not have an expert testify about his ability to understand his Petition for Settlement. While the reports from the neuropsychologists who have seen Hartung show that he has a learning disability and “extremely low” cognitive ability,¹⁶⁷ they are equivocal as to whether he has, in the words of the *Wilkes* Court, a “mere mental weakness” or whether he was incapable of understanding the force and effect of the settlement agreement. For example, Dr. Trontel was “uncertain” of Hartung’s limitations, but indicated that Hartung’s “[c]ommunication of ideas was relevant, coherent, and progressive.”¹⁶⁸ Likewise, Dr. Mahoney noted that Hartung scored in the “extremely low range” of a cognitive test, but also stated that Hartung’s thought and language were “logical and goal directed,” and that Hartung “demonstrates normal judgment in all areas of his life.”¹⁶⁹ Hartung points to his poor performance on intelligence tests and argues that his test scores, by themselves, show that he could not have understood the settlement agreement, but there is no evidence as to whether the tests that have been administered to Hartung are sufficient by themselves to measure his ability to understand the settlement. Without an expert to testify as to whether Hartung was capable of understanding the Petition for Settlement, this Court is not persuaded that Hartung was unable to understand it.

¹⁶⁵ *Wilkes*, ¶ 12 (first alteration added) (second alteration in original) (citations omitted).

¹⁶⁶ *Wilkes*, ¶¶ 14-16.

¹⁶⁷ See, e.g., Ex. 13-92.

¹⁶⁸ Ex. 3-2.

¹⁶⁹ Ex. 13-91, 13-92.

¶ 66 Moreover, this Court is not persuaded from the lay witness testimony that Hartung was unable to understand the force and effect of the Petition for Settlement. The witnesses who interacted with Hartung did not testify that Hartung was unable to understand the force and effect of the settlement. Archer was not asked whether she thought that Hartung was capable of understanding the settlement agreement. Likewise, neither Agan nor Johnson, who both had experience working with people with disabilities, opined that Hartung was unable to understand the settlement. Johnson advised Hartung to speak with his attorney regarding any settlement offers because Johnson knew that he would need help understanding a settlement. The only inference that can be drawn from Johnson’s testimony is that Johnson thought that, with his attorney’s help, Hartung **was** capable of understanding the settlement agreement.

¶ 67 Though Hartung does not point to any direct evidence, he argues that the inference to be drawn from the evidence is that Hartung did not understand the settlement agreement. Hartung first argues that Archer’s testimony that she did not understand the settlement agreement shows that he could not have understood it because, he reasons, “If the Petitioner’s highly educated wife did not understand the terms of the settlement petition, the Petitioner, with a full scale IQ of between 53 and 56, cannot be found to have a greater understanding of the terms of the settlement petition.”¹⁷⁰ Hartung also argues that his testimony that he did not recognize the Petition for Settlement and that he did not remember receiving the settlement amount is evidence that he did not understand the settlement agreement. He also points out that because he continued to receive benefits after signing the Petition(s) for Advance, which look similar to the settlement petition, “[i]t is not unreasonable to conclude . . . that whatever the Petitioner’s understanding was of the settlement petition, it was not that by signing it his benefits would stop.”¹⁷¹ Finally, in his closing argument at trial, Hartung argued that he could not have read the Petition for Settlement, that it was not explained to him and, therefore, that he did not have any understanding of it.

¶ 68 Notwithstanding, the *Wilkes* Court stated, “capacity deals with the ability to understand the terms of the document, not a person’s actual understanding.”¹⁷² Although this Court did not observe Archer testify, her answers to deposition questions and her education demonstrate that she is very intelligent and had the ability to understand the terms of the settlement. Hartung’s inability to remember the settlement agreement and receipt of the settlement amount more than three years after the settlement does not mean he was incapable of understanding the settlement agreement at the time he agreed to it. This Court is convinced that Hartung had the capacity to understand the differences

¹⁷⁰ Petitioner’s Trial Brief at 2.

¹⁷¹ *Id.*

¹⁷² *Wilkes*, ¶ 12 (citation omitted).

between the settlement agreement and the advances. The fact that Hartung reads poorly does not mean that he was unable to understand the settlement agreement. Due to Hartung's poor reading ability, he relied on others to read and explain the contents of documents to him, including the documents from his tort case and the agreements under which he retained his attorney. There is no evidence that he was incapable of understanding these documents when they were read to him.

¶ 69 Indeed, this Court agrees with State Fund that Hartung is taking inconsistent positions in arguing that he was incapable of understanding the settlement agreement while, at the same time, at least impliedly agreeing that he was competent to enter into other agreements.¹⁷³ Hartung has never been declared incompetent nor has a guardian or conservator been appointed for him. At the times relevant to this case, Hartung married, divorced, and married again — legal actions that require each party to be competent.¹⁷⁴ In addition, Hartung entered into two contracts with his attorney, on his own, to retain her in both his tort claim, which arose out of the same accident at issue in this case, and his workers' compensation claim, which resulted in this case. These contracts are comparable to the Petition for Settlement in terms of complexity, and both contain financial repercussions for Hartung. This Court agrees with State Fund that if Hartung was competent to enter into the agreements to retain his attorney, which he does not contest, then he was competent to enter into the settlement agreement.

¶ 70 Contrary to Hartung's argument,¹⁷⁵ this case does not fall squarely under *Pearson v. Montana Ins. Guaranty Association*.¹⁷⁶ Pearson suffered a traumatic brain injury in an industrial accident, after which he was in a coma for 17 days.¹⁷⁷ He thereafter suffered from dementia, persistent cognitive deficits, and significant amnesia.¹⁷⁸ His memory loss was severe, and one of his medical providers stated he could not live alone.¹⁷⁹ His sister spoke to the nurse case manager and stated she was "very concerned" about his cognitive deficits, memory problems, and confusion.¹⁸⁰ Pearson, who by all accounts was smart and personable before the accident, became unpredictable in the years following

¹⁷³ See Respondent's Trial Brief at 6-7.

¹⁷⁴ See § 40-1-103, MCA (defining "marriage," in relevant part, as a "civil contract to which the consent of the parties is essential"); § 40-1-402(1)(a), MCA (stating that a district court shall decree a marriage as invalid if "a party lacked capacity to consent to the marriage at the time that the marriage was entered into . . . because of mental incapacity or infirmity"); and § 40-4-130(10), MCA (stating that parties to summary dissolution must "read and state that they understand the contents of the summary dissolution brochure [drafted by the Montana Attorney General]").

¹⁷⁵ See Petitioner's Trial Brief at 3-4.

¹⁷⁶ 2012 MTWCC 1.

¹⁷⁷ *Pearson*, ¶ 64.

¹⁷⁸ *Pearson*, ¶¶ 54, 134.

¹⁷⁹ *Pearson*, ¶ 12.

¹⁸⁰ *Pearson*, ¶ 18.

his accident because he cycled between mania and depression.¹⁸¹ At times he slept excessively and at other times would go several days without sleeping at all.¹⁸² At times Pearson was depressed and stayed home and watched television and at other times had a “scary” amount of energy and worked out to the point of exhaustion.¹⁸³ He began drinking excessively and abusing marijuana and cocaine.¹⁸⁴ He exhibited inappropriate and erratic behavior, such as pulling down his pants and underwear and “mooning” the staff and clients at his physical therapist’s office.¹⁸⁵ Pearson went on a “spending spree” during one of his manic episodes and picked up hitchhikers and gave them money.¹⁸⁶ He could not control his temper.¹⁸⁷ He became paranoid and got into fights, one of which resulted in him being arrested and jailed for several days.¹⁸⁸ He was also delusional, thinking that he had acquired “special powers” and that he could use more of his brain than others.¹⁸⁹

¶ 71 Pearson retained a high school friend and college roommate to represent him, but his attorney did not have experience representing injured workers.¹⁹⁰ After the insurer sent a letter stating it was terminating benefits for Pearson’s failure to cooperate with his physicians and vocational rehabilitation counselor, his attorney sent a letter offering to settle for \$86,070.¹⁹¹ The insurer’s attorney replied with a letter stating that Pearson’s attorney had not correctly calculated the value of benefits due.¹⁹² Thereafter, Pearson settled his wage-loss benefits for \$36,000.¹⁹³ When the settlement check arrived, Pearson crumpled it up and threw it away because he was angry about the settlement.¹⁹⁴ After his attorney retrieved it, Pearson cashed it and spent it within two weeks.¹⁹⁵ Following the

¹⁸¹ *Pearson*, ¶¶ 9, 33.

¹⁸² *Pearson*, ¶ 119.

¹⁸³ *Pearson*, ¶ 55

¹⁸⁴ *Pearson*, ¶¶ 46, 55.

¹⁸⁵ *Pearson*, ¶ 135.

¹⁸⁶ *Pearson*, ¶ 45.

¹⁸⁷ *Pearson*, ¶¶ 44, 51.

¹⁸⁸ *Pearson*, ¶¶ 43, 50, 102, 135.

¹⁸⁹ *Pearson*, ¶ 51.

¹⁹⁰ *Pearson*, ¶¶ 36, 37.

¹⁹¹ *Pearson*, ¶¶ 88, 89.

¹⁹² *Pearson*, ¶ 90.

¹⁹³ *Pearson*, ¶ 96.

¹⁹⁴ *Pearson*, ¶ 100.

¹⁹⁵ *Pearson*, ¶ 101.

settlement, Pearson's problems persisted as he continued to cycle from mania to depression.¹⁹⁶

¶ 72 In 2007, Pearson's brother was appointed the conservator of his workers' compensation claim and filed a case to set aside the settlement on the grounds that Pearson was incompetent.¹⁹⁷ In the litigation as to whether the settlement should be set aside, a clinical psychologist/neuropsychologist opined that Pearson's head injury resulted in "mood disorder with bipolar features."¹⁹⁸ The neuropsychologist also testified that Pearson was unable to understand the multi-page settlement agreement at the time he entered into it.¹⁹⁹ The lay witness testimony also supported the neuropsychologist's opinion.²⁰⁰ This Court concluded that Pearson was "of unsound mind" and not competent at the time he entered into the settlement agreement.²⁰¹ Thus, this Court set aside the settlement.²⁰²

¶ 73 This case is distinguishable from *Pearson*. Pearson's mental condition was far more severe than Hartung's. Moreover, Pearson had a conservator appointed, and had an expert testify that he was not competent and could not have understood the settlement agreement. The lay witness testimony also established that Pearson could not make rational and informed decisions when he settled his case. As set forth above, Hartung did not have an expert testify as to his ability to understand the settlement agreement, and the lay witness testimony did not establish that he was completely unable to understand it. Thus, this case falls under *Wilkes* and not *Pearson*.

¶ 74 On the weight of the evidence presented, Hartung has failed to carry his burden of proving that he was unable to understand the settlement agreement at the time he entered into it. Thus, he may not void it under § 28-2-202, MCA.

Undue Influence

¶ 75 Section 28-2-1711(1), MCA, provides that a party to a contract may rescind a contract if his consent was obtained through undue influence. Section 28-2-407, MCA (2009), states:

¹⁹⁶ *Pearson*, ¶ 108.

¹⁹⁷ *Pearson*, ¶¶ 109, 110.

¹⁹⁸ *Pearson*, ¶ 111.

¹⁹⁹ *Pearson*, ¶ 114.

²⁰⁰ *Pearson*, ¶¶ 122, 123.

²⁰¹ *Pearson*, ¶ 144.

²⁰² *Pearson*, ¶¶ 144, 156.

What constitutes undue influence. Undue influence consists of:

(1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;

(2) taking an unfair advantage of another person's weakness of mind;
or

(3) taking a grossly oppressive and unfair advantage of another person's necessities or distress.

To establish undue influence, the party must present "specific acts" showing that undue influence actually was exercised on the mind of the party directly to procure execution of the contract.²⁰³ The mere "opportunity for undue influence" is insufficient to prove the actual exercise of it.²⁰⁴

¶ 76 To determine whether the statutory requirements for undue influence have been met, a court may consider: (1) any confidential relationship between the person alleged to be exercising undue influence and the alleged victim; (2) the physical condition of the alleged victim as it may affect his or her ability to withstand influence; (3) the mental condition of the alleged victim as it may affect his or her ability to withstand influence; (4) the unnaturalness of the disposition as it relates to showing an unbalanced mind or a mind easily susceptible to influence; and (5) the demands and importunities as they may affect the alleged victim, taking into account the time, place, and surrounding circumstances.²⁰⁵ However, "[t]hese criteria are nonexclusive considerations available to guide the court in its application of statutory requirements, and may or may not be present in any given undue influence case."²⁰⁶

¶ 77 Hartung argues that there was a "confidential relationship" because he "saw the adjuster as someone who had his best interests at heart."²⁰⁷ He argues that this was the reason he told Hellbusch that he did not want his attorney to represent him on his workers' compensation claim.²⁰⁸ In support of his argument, Hartung points out that Hellbusch

²⁰³ See *In re Estate of Mead*, 2014 MT 264, ¶ 27, 376 Mont. 386, 336 P.3d 362 (citation omitted).

²⁰⁴ *In re Estate of Harris*, 2015 MT 182, ¶ 26, 379 Mont. 474, 352 P.3d 20.

²⁰⁵ *In re Estate of Harmon*, 2011 MT 84, ¶ 20, 360 Mont. 150, 253 P.3d 821 (citation omitted).

²⁰⁶ *Id.* (citation omitted).

²⁰⁷ Petitioner's Trial Brief at 6-7.

²⁰⁸ *Id.*

called him the day after the accident, agreed to advances, and expressed concern for him.²⁰⁹

¶ 78 This Court is not persuaded that there was a “confidential relationship.” When asked at his deposition, Hartung expressed some dissatisfaction with Hellbusch’s claims handling. Moreover, the evidence shows that Archer was involved in Hartung’s claim and in the settlement discussions just as much if not more so than Hartung. There is no evidence that Hellbusch convinced Hartung to settle his claim in a private conversation. This Court does not condone Hellbusch’s efforts to dissuade Hartung from hiring his lawyer to represent him on his workers’ compensation claim, and points out that this could be evidence of undue influence. However, at the time of that conversation, Hartung was already being represented by his attorney for his tort claims arising out of his industrial accident and the settlement of his workers’ compensation claim occurred more than a year after Hellbusch told Hartung he did not need to hire a lawyer.

¶ 79 Hartung also argues that the settlement is evidence of the “unnaturalness of the disposition” of his case because it was inadequate and did not protect his Social Security benefits.²¹⁰ He argues that he was entitled to more benefits because: his diploma does not qualify as 12 years of education under § 39-71-703(5)(b), MCA, because it was obtained via special education classes;²¹¹ he did not receive any consideration to close his vocational rehabilitation benefits; he had consistently told Hellbusch that he was unable to return to work; and because none of his concerns were addressed in the settlement. Hartung therefore argues, “[h]e received no benefit from settling his case” and, “No one in a sound state of mind would knowingly trade an open claim with ongoing benefits for the Petitioner’s current situation. It is only because of his unsound mind and the influence of the adjuster that the Petitioner agreed to settlement terms that were so contrary to his best interests.”²¹² Nevertheless, Hartung does not argue that the settlement fails for lack of consideration nor that it was unconscionable, and this Court agrees with State Fund that since there are legitimate disputes over whether Hartung was entitled to additional benefits, it is not this Court’s role to review the settlement to determine if it was “adequate.”²¹³

¶ 80 This Court is not persuaded that State Fund exerted undue influence upon Hartung to settle his claim, as “undue influence” is defined in § 28-2-407, MCA. This Court is not convinced that Hellbusch’s intended purpose was to take unfair advantage of Hartung nor

²⁰⁹ *Id.* at 6.

²¹⁰ *Id.* at 7.

²¹¹ Petitioner’s Closing Arg.

²¹² Petitioner’s Trial Brief at 7-8.

²¹³ Respondent’s Trial Brief at 7.

that Hellbusch actually took advantage of Hartung's alleged weakness of mind. Accordingly, Hartung may not rescind the settlement agreement under § 28-2-1711(1), MCA.

JUDGMENT

¶ 81 Petitioner has failed to carry his burden of proving he is entitled to reopen or rescind his Petition for Settlement.

¶ 82 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 this 15th day of March, 2016.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Laurie Wallace
Thomas E. Martello
Submitted: January 21, 2015