

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 26

WCC No. 2002-0501

LARRY McELDERRY

Petitioner

vs.

ST. PAUL FIRE & MARINE INSURANCE COMPANY

Respondent/Insurer.

SUMMARY TO
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Summary: Following a settlement conference with the settlement master of the Workers' Compensation Court, the claimant, who was personally present during the conference and also represented by counsel, repudiated a putative settlement agreement reached during the conference. The matter was then transferred to District Court Judge Jeffrey M. Sherlock for a determination as to whether a binding settlement had been reached.

Held: The claimant agreed to a binding and enforceable settlement agreement during the settlement conference.

Topics:

Settlements: Oral Agreements. Where an unconditional oral agreement is made to settle a workers' compensation claim which is in litigation, the agreement is binding and enforceable.

Settlement Conferences: Oral Agreements. Where an unconditional oral agreement is made during a settlement conference to settle a workers' compensation claim which is in litigation, the agreement is binding and enforceable.

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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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

LARRY McELDERRY,
Petitioner,

v.

ST. PAUL FIRE & MARINE INS. CO.,
Respondent/Insurer for
EXCALIBUR CABLE
COMMUNICATIONS,
Employer.

Cause No. WCC-2002-501

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

A hearing on Respondent St. Paul Fire & Marine Insurance Company's (hereinafter St. Paul) motion to enforce settlement agreement was held on April 18, 2005. Petitioner Larry McElderry (hereinafter McElderry) was represented by James P. O'Brien. St. Paul was represented by Joe C. Maynard and James R. Hintz. This District Court is handling this matter at the request of the Workers' Compensation Court. As such, this Court is acting, for this motion only, as the Workers' Compensation Court.

1 This matter arises out of McElderry's back injury incurred on
2 December 15, 2000. At that time, McElderry was employed by Excalibur Cable
3 Communication Company as a satellite dish installer. At the time of the injury,
4 McElderry's employer was enrolled under Plan II of the Workers' Compensation Act
5 with the insurer being St. Paul. McElderry filed a claim for workers' compensation, and
6 St. Paul accepted the claim and paid benefits.

7 Prior to the December 2000 injury, McElderry had a number of lower
8 back injuries. As a result of one of McElderry's earlier injuries, he was assigned a 19
9 percent impairment rating and was paid \$50,000.

10 After the December 2000 injury, McElderry's two treating physicians, Dr.
11 Catherine Capps and Dr. John I. Moseley, both placed McElderry at maximum medical
12 improvement. Dr. Capps did this in October 2001, and Dr. Moseley did so in
13 January 2002.

14 A settlement conference was held in Helena, Montana, on June 18, 2002.
15 Present were Charles G. Adams, attorney for McElderry; McElderry; and McElderry's
16 wife. Also present were Joe C. Maynard, attorney for St. Paul; Cathy Anderson, St.
17 Paul's representative and claims adjuster; and Jay Dufrechou, the law clerk to Workers'
18 Compensation Judge Mike McCarter. Dufrechou was acting as mediator at the
19 settlement conference.

20 The issue presently before this Court is whether a binding agreement was
21 reached at the June 18, 2002, settlement conference. At the hearing before this Court,
22 Charles Adams testified that the parties did reach an agreement as was evidenced by
23 Exhibit 3. Exhibit 3 is a settlement agreement that was sent by Joe Maynard to Adams.
24 According to Adams, Exhibit 3 is an accurate rendition of the parties' agreement and is a
25 common form used by practitioners and which is located on the Workers' Compensation

1 website. Adams testified that after the settlement was orally agreed upon, McElderry
2 was upset because he did not want to close out his medical benefits entitlement. Adams
3 informed McElderry that the offer was that St. Paul would pay him \$15,000 to “walk
4 away.” This would close out McElderry’s medical entitlement, would close his
5 entitlement to any future benefits from St. Paul, and would release all claims between
6 the parties, including McElderry’s right to later sue the insurance company, its adjusters
7 or its attorneys. Adams indicates that he described the agreement as such to McElderry
8 and received McElderry’s approval of the agreement.

9 Cathy Anderson also testified at the hearing. Anderson was the claims
10 adjuster on McElderry’s claim for Crawford and Company. Anderson indicated that, at
11 the settlement conference, she did not actually sit in the same room with McElderry.
12 McElderry, his wife and Adams were in one room, and she and Maynard were in another
13 room with Dufrechou shuttling between them. According to Anderson, she felt the
14 parties had reached an agreement at the settlement conference and that Exhibit 3
15 accurately reflected the parties’ agreement.

16 Also testifying was Joe Maynard, a Billings attorney with many years of
17 experience in defending workers’ compensation claims. According to Maynard, he did
18 not feel that McElderry had much of a case, since McElderry was exceeding his lifting
19 parameters when the accident occurred, and since McElderry’s impairment did not
20 exceed the 19 percent impairment that he received from his Nevada injury. Maynard
21 indicated that when he went to the settlement conference, he was not prepared to offer a
22 whole lot of money. He testified that McElderry’s first offer of \$50,000 with keeping
23 the medical benefits open was rejected as being “ridiculous.” At the end of the day,
24 Maynard felt the parties had reached an agreement pursuant to the settlement
25 conference. The nature of the agreement was later memorialized in Exhibit 3, which

1 basically called for St. Paul to give McElderry \$15,000 “new money” and that the parties
2 would have no further claims against each other. McElderry would be giving up his
3 compensation, medical and rehabilitation benefits under the Workers’ Compensation
4 Act, along with his right to sue the insurance company or its adjusters.

5 Thereafter, Maynard sent to Adams Exhibit 2, which was a transmittal
6 letter sending the proposed settlement agreement (Exhibit 3). When McElderry
7 received Exhibit 3, he made various changes that are shown on Exhibit 5. On Exhibit 5,
8 McElderry crossed out language indicating that the parties had reached a full settlement
9 and indicated that it was a partial settlement. He also crossed out various lines in
10 paragraphs 1 and 2 that would have resolved all of the issues between the parties.

11 Thereafter, Adams withdrew from further representation of McElderry.

12 On July 30, 2002, there occurred a status conference between Dufrechou,
13 Maynard and McElderry. At that conference, memorialized in Dufrechou’s
14 memorandum received into evidence as Exhibit 7, McElderry indicated that his problem
15 was that “he should not settle his claim for medical benefits.” There is no reference in
16 Dufrechou’s memorandum that McElderry was upset at giving up any bad faith claim he
17 may have against the insurance company or its adjuster.

18 The Court has also reviewed the notes made by Dufrechou during the
19 settlement conference. (Ex. 12.). Further, the Court has reviewed Dufrechou’s typed
20 memorandum of June 18, 2002, wherein he indicates that the case was settled for
21 \$15,000 and closing all benefits. (Ex. 13.) Exhibit 14 is Dufrechou’s handwritten notes
22 to the file indicating that the case was settled for \$15,000.

23 According to McElderry, he never agreed to close out any claim he may
24 have concerning the handling of his claim. McElderry’s wife, Bonnie, agreed with
25 McElderry in that she did not feel that the claims handling issues had been resolved at

1 the June 18, 2002, settlement conference.

2 From the foregoing Findings of Fact, the Court enters the following:

3 **CONCLUSIONS OF LAW**

4 1. This Court has jurisdiction of this matter.

5 2. If the parties have entered an oral agreement for the settlement of a
6 case with an unconditional offer and an unconditional acceptance, then the parties have
7 entered into a binding and enforceable contract, even it be oral. Hetherington v. Ford
8 Motor Co., 257 Mont. 395, 399, 849 P.2d 1039, 1042 (1993).

9 3. In this case, there was an unconditional offer and an unconditional
10 acceptance. The settlement agreement that was ultimately reached used common terms
11 and conditions frequently use by practitioners of workers' compensation matters. St.
12 Paul made an offer to pay \$15,000 to McElderry for release of all claims that he might
13 have. McElderry, through his attorney, accepted the offer without voicing any conditions
14 to its acceptance. Thus, an enforceable oral settlement agreement was formed.

15 4. The Court notes that it reaches this conclusion for a several
16 reasons. First is the testimony of McElderry's attorney, Charles G. Adams. According
17 to Adams, he had to withdraw as McElderry's attorney since his client refused to go
18 through with an agreement that he (the client) had earlier made. Of equal interest to this
19 Court is the fact that McElderry seems to be changing the reason for his discontent with
20 the settlement agreement. At the hearing, McElderry indicated that he did not want to
21 release his claim against the insurance company or its claims adjuster for their claim
22 handling practices. However, Adams indicated that shortly after the settlement
23 conference, McElderry indicated that he was upset by his having to give up his future
24 medical benefits. This is the same concern that McElderry gave to Dufrechou pursuant
25 to the parties' status conference on July 30, 2002. (Ex. 7.) Further, reviewing the notes

1 of Dufrechou, there is no indication that McElderry's acceptance of the agreement was,
2 in any way, conditional on his retaining his right to sue the insurance company. On at
3 least two documents, Dufrechou felt that the case was settled. (Exs. 13, 14.)

4 5. Further, and perhaps most important, the type of settlement
5 McElderry says the parties reached in June 2002 does not make any sense. Why would
6 St. Paul pay McElderry \$15,000 for what it considered a "ridiculous" claim, and still be
7 subject to McElderry's bad faith claim?

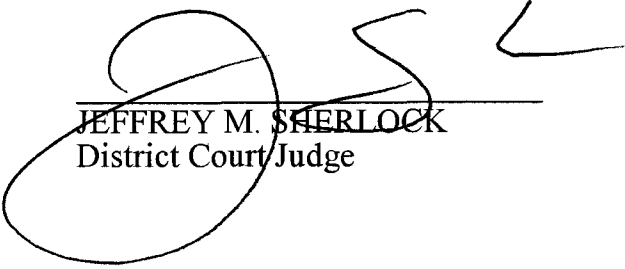
8 6. Therefore, the Court concludes that McElderry agreed to settle his
9 workers' compensation claim and any other claims he had for the sum of \$15,000 and
10 the other terms noted above and as shown in Exhibit 3.

11 From the foregoing Findings of Fact and Conclusions of Law, the Court
12 enters the following:

13 **ORDER**

14 Pursuant to the settlement agreement and this Order, the parties are
15 hereby ORDERED and DIRECTED to execute their settlement agreement, evidenced by
16 Exhibit 3, within 15 days of the date of this Order. Upon such occurrence, St. Paul shall
17 pay to McElderry the sum of \$15,000, less Charles G. Adams' lien, within 10 days of
18 McElderry signing the settlement agreement.

19 DATED this 22nd day of April, 2005.

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21 
22 JEFFREY M. SHERLOCK
23 District Court Judge

24 pcs: The Clerk of Court is directed
25 to mail conformed copies
to counsel of record.

T/JMS/MCELDERRY V ST PAUL FIRE & MARINE INS WCC ORDER.WPD