

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 40

WCC No. 2007-1955

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MONTANA STATE FUND

Petitioner/Insurer

vs.

RANDALL SIMMS

Respondent/Claimant.

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ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND GRANTING  
PETITIONER'S MOTION TO COMPEL

**Summary:** The parties signed a settlement agreement. Respondent accepted a post-signature payment for the agreed-to amount from Petitioner, but neither party submitted the settlement agreement to the Department of Labor and Industry for approval. Respondent moves for dismissal of the present case, arguing that the Court lacks jurisdiction to hear Petitioner's petition for a declaratory ruling because no "settlement" occurred. Respondent further alleges that the Court lacks jurisdiction since the settlement agreement purported to settle Respondent's claim in its entirety, when the parties had only disputed and mediated the issue of his entitlement to domiciliary care benefits. Petitioner also moves this Court to compel Respondent to respond to its First Combined Discovery Requests. Respondent responds that he believes the Court should first rule on his motion to dismiss, since the motion would dispose of the case if the Court grants it.

**Held:** Respondent's motion to dismiss is denied. The parties entered into a binding settlement agreement and this Court has jurisdiction to review its validity. Since the motion to dismiss is denied, Respondent must respond to Petitioner's discovery requests.

**Topics:**

**Settlements: Existence.** A legally binding settlement exists where the claimant and insurer signed a settlement agreement, the insurer issued a check in the agreed-to amount, the claimant cashed the check, and this Court entered a stipulation for dismissal with prejudice, even though the

Department of Labor and Industry did not approve the agreement as required by § 39-71-741, MCA.

**Settlements: Contracts.** Settlement agreements are contracts and must be construed and enforced as such. A settlement agreement is binding at the time the parties agree to settle the case and need not have Department approval before it is a legally binding settlement agreement.

**Jurisdiction: Workers' Compensation Court.** Where an insurer disputes a claimant's entitlement to the benefits he received, and where that dispute has been mediated, this Court has jurisdiction to resolve the dispute under § 39-71-2905, MCA.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 28-2-401.** This Court applies contract law to determine whether a settlement agreement is valid and enforceable. Section 28-2-401, MCA, states that an apparent consent to contract is not real or free when obtained through duress, menace, fraud, undue influence, or mistake. This Court has frequently entertained cases involving allegations of mutual mistake of fact, and the Montana Supreme Court has never challenged this Court's jurisdiction to do so. It stands to reason that if this Court has the jurisdiction to review the validity of a settlement under one of the enumerated bases of § 28-2-401, MCA, it therefore must have the jurisdiction to review settlements under the others.

**Jurisdiction: Subject Matter Jurisdiction.** This Court applies contract law to determine whether a settlement agreement is valid and enforceable. Section 28-2-401, MCA, states that an apparent consent to contract is not real or free when obtained through duress, menace, fraud, undue influence, or mistake. This Court has frequently entertained cases involving allegations of mutual mistake of fact, and the Montana Supreme Court has never challenged this Court's jurisdiction to do so. It stands to reason that if this Court has the jurisdiction to review the validity of a settlement under one of the enumerated bases of § 28-2-401, MCA, it therefore must have the jurisdiction to review settlements under the others.

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¶ 1 Respondent Randall Simms (Simms) moves this Court for an order dismissing Petitioner/Insurer Montana State Fund's (State Fund) case on the grounds that this Court lacks jurisdiction over this matter.<sup>1</sup> State Fund opposes Simms' motion.<sup>2</sup> State Fund also moves this Court to compel Simms to respond to its First Combined Discovery Requests.<sup>3</sup> Simms responds that he believes the Court should first rule on his motion to dismiss, since the motion would dispose of the case if the Court grants it.<sup>4</sup>

### DISCUSSION

¶ 2 Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an "insuperable bar" to recovery, such as the running of the applicable statute of limitations. For purposes of the motion, all well pleaded allegations of the petition are deemed true.<sup>5</sup>

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<sup>1</sup> Simms' Motion to Dismiss for Lack of Jurisdiction, Docket Item No. 63.

<sup>2</sup> Petitioner's Response to Respondent's Motion to Dismiss for Lack of Jurisdiction, Docket Item No. 72.

<sup>3</sup> Montana State Fund's Motion to Compel Responses and Brief in Support (State Fund's Motion to Compel), Docket Item No. 69.

<sup>4</sup> Simms' Brief in Response to State Fund's Motion to Compel (Simms' Response to Motion to Compel), Docket Item No. 73.

<sup>5</sup> *Fleming v. Int'l Paper Co.*, 2005 MTWCC 35, ¶ 4. (Citations omitted.)

¶ 3 In his opening brief, Simms asserts, without citation to legal authority, that the 2003 statutes control his case because he filed his petition to resolve a dispute over domiciliary care benefits in 2004.<sup>6</sup> However, in workers' compensation cases, the statutes in effect on the date of the accident or injury control, with no exception for procedural statutes.<sup>7</sup> Simms' industrial accident occurred on May 3, 1999. Therefore, the 1997 statutes control this case.<sup>8</sup>

### **Issue One: Whether a settlement agreement exists.**

¶ 4 Simms asserts that his claim is not a "settled claim" as that term is defined in § 39-71-107(8), MCA (2003), and he therefore has an open claim under the Workers' Compensation Act (WCA). According to Simms, § 39-71-2905, MCA, does not accord the Court jurisdiction in the present case because there is no settlement in dispute. Simms alleges that although he and State Fund signed a settlement agreement, State Fund issued a check in the agreed-to amount, Simms cashed the check, and this Court entered a stipulation for dismissal with prejudice, no settlement was reached because the parties did not get the agreement approved by the Department of Labor and Industry (Department) as required by § 39-71-741, MCA. Simms argues that State Fund's payment to him of \$610,000 "can best be characterized as a voluntary lump-sum advance payment toward the 15 or 16 types of benefits listed in the Stipulation."<sup>9</sup>

¶ 5 Simms argues that, since he and State Fund only reached an "agreement to settle," but did not actually settle his claim, many of the grounds upon which State Fund would place this Court's jurisdiction do not apply because they pertain specifically to settlements.<sup>10</sup> Simms alleges no contract grounds exist upon which the Court's jurisdiction may rest

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<sup>6</sup> Brief in Support of Simms' Motion to Dismiss for Lack of Jurisdiction (Opening Brief) at 3, Docket Item No. 64.

<sup>7</sup> *Fleming v. Int'l Paper Co.*, 2008 MT 327, ¶¶ 26-28, 346 Mont. 141, 194 P.3d 77. (Citations omitted.)

<sup>8</sup> Although there were minor changes to the statutes applicable to this dispute, the outcome of Simms' motion to dismiss would be no different irrespective of whether the Court applied the 2003 or the 1997 statutes.

<sup>9</sup> Simms' Supplemental Reply Brief in Support of Motion to Dismiss (Simms' Supplemental Reply Brief) at 2, Docket Item No. 84.

<sup>10</sup> Simms' Supplemental Brief in Support of Motion to Dismiss at 3-7, Docket Item No. 83.

because no “settlement” occurred and therefore no contract exists under the WCA.<sup>11</sup>

¶ 6 State Fund disputes Simms’ contention that the parties had never settled his case but only “agreed to settle” it. Simms signed a contract which stated, in pertinent part, “This settlement includes but is not limited to permanent total disability benefits, temporary total disability benefits, [etc.]”<sup>12</sup> State Fund further argues that case law indicates that this Court has the authority to rescind or void settlement agreements whether or not those settlement agreements were Department – or Court – approved.<sup>13</sup>

¶ 7 Simms’ assertion that no settlement agreement exists until it is approved by the Department is contrary to all existing case law. In *Garcia v. Department of Labor & Industry*,<sup>14</sup> the petitioner (Garcia) appealed the Department’s refusal to approve a settlement petition between Garcia and his employee (Maniaci), who allegedly suffered an industrial injury while Garcia was uninsured. Garcia and Maniaci executed a petition for full and final compromise settlement on a disputed liability basis. They submitted the settlement to the Department for approval.<sup>15</sup> The Department rejected the settlement, in part because the Uninsured Employers’ Fund was not a party to it. Garcia appealed the Department’s decision to this Court.<sup>16</sup>

¶ 8 After Garcia appealed the Department’s rejection of the settlement, Maniaci wrote to this Court and stated that she wanted to withdraw from the settlement agreement and that she no longer agreed with the agreement’s terms.<sup>17</sup> This Court held:

Settlement agreements are contracts and must be construed and

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<sup>11</sup> Simms’ Supplemental Reply Brief at 6.

<sup>12</sup> State Fund’s Response to Simms’ Supplemental Briefing in Support of Motion to Dismiss at 6, Docket Item No. 87.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Garcia v. Dep’t of Labor & Indus. Employment Relations Div. / Uninsured Employers’ Fund*, 1997 MTWCC 59.

<sup>15</sup> *Garcia* at 2.

<sup>16</sup> *Garcia* at 2-3.

<sup>17</sup> *Garcia* at 3.

enforced as such. Where the parties reach an express, complete, and unconditional settlement agreement, the agreement is enforceable.

The agreement in this case . . . was ineffective without Department approval.

However, except for the approval of the Department, the agreement . . . is unconditional. . . . The settlement agreement constitutes a contract . . . Upon Department approval, the agreement is enforceable.<sup>18</sup>

This Court further concluded that the parties were bound by the agreement and could not repudiate it.<sup>19</sup>

¶ 9 In *Geery v. Travelers Ins. Co.*,<sup>20</sup> a claimant attempted to repudiate a settlement agreement which he alleged his attorney had entered into without the authority to do so.<sup>21</sup> This Court found that the claimant cashed the proffered check with the knowledge that the payment was intended to fully and finally settle his claim.<sup>22</sup> The Court then concluded that the claimant's action in cashing the settlement check ratified the agreement, and noted that the agreement could therefore only be set aside due to fraud or mistake of fact.<sup>23</sup>

¶ 10 Relying on *Hetherington v. Ford Motor Co.*,<sup>24</sup> this Court has held that a settlement agreement orally agreed upon during a settlement conference is binding on the parties.<sup>25</sup> In *Hetherington*, the surviving family members of an accident victim agreed to accept a settlement offer from two defendants. The plaintiffs' counsel advised the defendants that

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<sup>18</sup> *Garcia* at 4. (Citations omitted.)

<sup>19</sup> *Garcia* at 4.

<sup>20</sup> *Geery*, 2003 MTWCC 8.

<sup>21</sup> *Geery*, ¶ 2.

<sup>22</sup> *Geery*, ¶ 22.

<sup>23</sup> *Geery*, ¶¶ 26-27.

<sup>24</sup> *Hetherington*, 257 Mont. 395, 849 P.2d 1039 (1993).

<sup>25</sup> *McElderry v. St. Paul Fire & Marine Ins. Co.*, 2005 MTWCC 26.

the settlement offer had been accepted. Days later, the plaintiffs fired their attorney and stated that they no longer wished to settle the case.<sup>26</sup> The plaintiffs hired new counsel and proceeded with the lawsuit. Defendant Ford pled an affirmative defense, alleging the plaintiffs had agreed to settle.<sup>27</sup> The district court denied Ford's motion for summary judgment on its affirmative defense. The Montana Supreme Court reversed the district court, holding that summary judgment should have been granted in Ford's favor. The Supreme Court noted, "An agreement is binding if made by an unconditional offer, and accepted unconditionally."<sup>28</sup> The Supreme Court concluded that the lack of a signed contract did not obviate the binding nature of the parties' agreement.<sup>29</sup>

¶ 11 Also pertinent to the present case is my decision in *Murer v. Montana State Fund*.<sup>30</sup> In *Murer*, this Court had established September 26, 1992, as the cutoff date for determining eligibility for *Murer* common fund benefits. Claims which were settled before that date were not eligible. Twenty-six claimants entered into settlement agreements with State Fund before September 26, 1992, but their settlement agreements were not approved by the Department of Labor and Industry until after September 26, 1992.<sup>31</sup> The issue before the Court was whether the effective date of a settlement agreement is the date the parties sign it, or the date the Department approves it.<sup>32</sup> Relying on *Garcia*, I concluded that neither the 26 claimants nor State Fund could have unilaterally repudiated the agreement after signing but before the Department's approval or disapproval. I explained: "Although DLI's determination operated as a condition precedent to enforcement of the agreement, this condition did not serve to render the agreement invalid prior to DLI's approval."<sup>33</sup> Accordingly, I held that the dates on which the respective parties entered into their

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<sup>26</sup> *Hetherington*, 257 Mont. at 397-98, 849 P.2d at 1041.

<sup>27</sup> *Hetherington*, 257 Mont. at 398, 849 P.2d at 1041.

<sup>28</sup> *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042.

<sup>29</sup> *Id.*

<sup>30</sup> *Murer*, 2006 MTWCC 32.

<sup>31</sup> The date of September 26, 1992, determined whether specific claimants' files were deemed closed under a previous ruling of the Court.

<sup>32</sup> *Murer*, ¶ 2.

<sup>33</sup> *Murer*, ¶ 7.

settlement agreements determined the effective settlement dates.

¶ 12 *Garcia, Geery, Hetherington, and Murer* all agree that a settlement agreement is binding at the time the parties agree to settle the case. An agreement need not have Department approval before it is a legally binding settlement agreement. Simms' argument to the contrary is clearly at odds with established case law. I therefore conclude that a settlement agreement exists between Simms and State Fund.

**Issue Two: Whether the Court has jurisdiction to review the settlement agreement.**

¶ 13 Simms asserts that in February 2004, he and State Fund mediated their dispute concerning his entitlement to domiciliary care, but they mediated no other benefit entitlements.<sup>34</sup> Simms asserts that in March 2006, he and State Fund filed a Stipulation for Dismissal with Prejudice in the Workers' Compensation Court, in which they agreed to "stipulate and request that Judgment be entered by the Workers' Compensation Court dismissing with prejudice **any and all claims** by Randall Simms and Carole Simms **as outlined in this agreement[.]**"<sup>35</sup>

¶ 14 In light of these facts, Simms alleges that this Court does not have jurisdiction to enter the declaratory ruling sought by State Fund. Simms argues that since mediation is a jurisdictional prerequisite in the Workers' Compensation Court, and since the only issue the parties mediated was Simms' entitlement to domiciliary care benefits, this Court lacks jurisdiction to issue a declaratory judgment regarding State Fund's claims. Simms argues that the Court has no jurisdiction under § 39-71-2909, MCA, because no benefits were awarded by the Judge. Simms contends:

While Simms and the State Fund discussed and ultimately "settled" their "disputes" over the listed benefits . . . such "stipulation" did not confer jurisdiction on this Court. . . . Therefore, this Court's "approval" of the "settlement" was not an award of benefits by this Court because this Court did not have jurisdiction over any of the benefit "disputes" . . . except the

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<sup>34</sup> Opening Brief at 1-2.

<sup>35</sup> Opening Brief at 2. (Emphasis in original.)



domiciliary care dispute.

Section 39-71-2909, MCA[,] provides, in relevant part, as follows:  
“The judge may, upon the petition of . . . an insurer . . . that the claimant received benefits through fraud or deception, review, diminish, or increase, . . . any benefits **previously awarded by the judge.**”  
([E]mphasis added[.] )

Working backwards, this Court did not “award benefits” in WCC No. 2004-1136 because it did not have jurisdiction over the “disputed benefits” because the “dispute” over these benefits was not included in the petition filed in WCC No. 2004-1136 because the “dispute” over these benefits had not been mediated as required by law. Therefore, this Court does not have jurisdiction in the present case under Section 39-71-2909 to review, diminish, or increase benefits because this Court did not award any benefits.<sup>36</sup>

¶ 15 State Fund argues that one of two things have occurred in this case: (1) either the parties settled Simms’ claim, in which case the Court has jurisdiction under § 39-71-2905, MCA; or (2) State Fund paid Simms a lump-sum advance, in which case the Court has jurisdiction under § 39-71-2909, MCA, because § 39-71-741(c), MCA, requires either the Court or the Department to approve the payment. State Fund argues that this Court’s analysis should begin not with whether any particular ground for jurisdiction is problematic, but whether any ground conferring jurisdiction exists.<sup>37</sup> State Fund points to § 39-71-2905, MCA, and ARM 24.5.301 as the general source of this Court’s jurisdiction,<sup>38</sup> and further notes that ARM 24.5.351 enumerates the Court’s authority to issue a declaratory ruling.<sup>39</sup> State Fund also argues that the Court has jurisdiction under the common law to review the settlement under contract law.<sup>40</sup>

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<sup>36</sup> Opening Brief at 5.

<sup>37</sup> State Fund’s Supplemental Briefing Re: Jurisdiction (State Fund’s Supplemental Brief) at 7, Docket Item No. 82.

<sup>38</sup> State Fund’s Supplemental Brief at 8.

<sup>39</sup> State Fund’s Supplemental Brief at 9.

<sup>40</sup> State Fund’s Supplemental Brief at 10-13.

¶ 16 Under § 39-71-2905(1), MCA, a claimant or insurer who has a dispute concerning any benefits under Title 39, chapter 71, may petition the workers' compensation judge for a determination of the dispute after satisfying the requisite dispute resolution requirements. In this case, State Fund disputes Simms' entitlement to the benefits he received. The dispute presently before this Court – whether Simms is entitled to payment of the lump sum he received – has been mediated. This Court has jurisdiction to resolve this dispute under § 39-71-2905(1), MCA.

¶ 17 It is well-established that this Court applies contract law to determine whether an agreement is valid and enforceable.<sup>41</sup> Section 28-2-401, MCA, states that an apparent consent to contract is not real or free when obtained through duress, menace, fraud, undue influence, or mistake. On numerous occasions, this Court has entertained cases involving allegations of mutual mistake of fact. The Montana Supreme Court has heard appeals of those cases, and has never found this Court to have lacked the subject matter jurisdiction to resolve them. The Montana Supreme Court has consistently and repeatedly recognized that this Court is the proper venue to review settlements of workers' compensation claims.<sup>42</sup> It makes no sense to conclude that this Court has the jurisdiction to review the validity of a workers' compensation settlement under one of the enumerated bases of § 28-2-401, MCA, but not another. If this Court has jurisdiction to consider whether “mistake” has rendered an apparent consent neither real nor free, then the Court likewise must have jurisdiction to consider whether “fraud” has done so.

¶ 18 Simms argues that this Court did not have jurisdiction to approve the parties' settlement agreement. That is not the issue in this case. The present issue is whether this Court has jurisdiction to *review* the binding settlement agreement which the parties entered into. I conclude that it does for any or all of the reasons discussed above. Simms' motion to dismiss is therefore denied.

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<sup>41</sup> *Gamble v. Sears*, 2007 MT 131, ¶ 24, 337 Mont. 354, 160 P.3d 537. (Citation omitted.)

<sup>42</sup> See, e.g., *Gamble v. Sears*, 2007 MT 131, 337 Mont. 354, 160 P.3d 537; *Wolfe v. Webb*, 251 Mont. 217, 824 P.2d 240 (1992); *Kienas v. Peterson*, 191 Mont. 325, 624 P.2d 1 (1980).

PETITIONER'S MOTION TO COMPEL

¶ 19 State Fund has filed a motion to compel Simms to answer certain discovery requests.<sup>43</sup> Simms has not objected to State Fund's discovery requests *per se*, but rather argues that State Fund's motion is not well-taken until Simms' motion to dismiss is ruled upon. Simms points out that he would incur time and expense to respond to discovery requests which may be moot if this Court lacks subject matter jurisdiction.<sup>44</sup> Aside from his request that the motion to compel not be granted until the issue of subject matter jurisdiction is resolved, Simms raises no other objections to State Fund's motion to compel. Since I have concluded that this Court has jurisdiction to hear this case, I therefore grant State Fund's motion to compel.

ORDER

¶ 20 Respondent's motion to dismiss is **DENIED**.

¶ 21 Petitioner's motion to compel is **GRANTED**.

DATED in Helena, Montana, this 29<sup>TH</sup> day of December, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Thomas E. Martello  
Bradley J. Luck  
Gene R. Jarussi  
Michael G. Eiselein  
Lawrence A. Anderson

Submitted: June 16, 2009 [Motion to Compel] and September 30, 2009 [Motion to Dismiss.]

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<sup>43</sup> State Fund's Motion to Compel.

<sup>44</sup> Simms' Response to Motion to Compel.