IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2021 MTWCC 20

WCC No. 2021-5438

KELLY WINEGARDNER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION TO ENFORCE SETTLEMENT

Summary: While litigating Respondent's denial of liability for her concussion claim, Petitioner offered to settle for $30,000. Respondent accepted her offer and sent her a standard, written settlement agreement. However, Petitioner then had second thoughts. After finding photographs of herself from shortly after her accident, which she thinks are strong evidence supporting her claim that she hit her forehead and suffered a concussion, Petitioner refused to go through with the settlement. Petitioner now opposes Respondent's motion to enforce the settlement, arguing that they did not reach a binding settlement because she did not sign the written settlement agreement.

Held: This Court granted Respondent's Motion to Enforce Settlement because Petitioner did not expressly make signing a written settlement agreement a condition to a binding settlement. Thus, under established Montana law, Petitioner and Respondent entered into a binding settlement agreement the moment Respondent accepted her offer because they agreed to all of the material terms to settle a disputed claim.

¶ 1 Respondent Montana State Fund (State Fund) has moved to enforce a purported settlement agreement.

¶ 2 Petitioner Kelly Winegardner, who is now a self-represented litigant, opposes State Fund's motion, asserting that she did not enter into a binding settlement agreement.

¶ 3 Winegardner requested a hearing. At a pre-hearing status conference, this Court clarified that the purpose of the hearing would be to take testimony and hear argument only on the issue of whether there was a binding settlement and not on the issue of whether Winegardner had a compensable injury. Therefore, Winegardner withdrew her request for a hearing and both parties agreed to submit the motion on their briefs and supporting exhibits.

FACTS

¶ 4 Winegardner filed a claim against State Fund, alleging that she hit her head and suffered a concussion on July 15, 2019, in the course of her employment with a dentist.

¶ 5 On July 26, 2019, Winegardner received the First Report of Injury and Occupational Disease (First Report) from State Fund, with instructions to sign it and return it. Winegardner disputed the description of her accident and injury, which states, in relevant part, "Unplugging laser and came back to pick up peddle for laser and hit head on corner of counter when getting up." Winegardner called State Fund to report that this description is incorrect, as she maintains that she did not hit her head while getting up. Rather, she maintains that she hit her forehead while bending down. She told State Fund's representative that she was "walking swiftly toward a wall and hit her forehead on the corner of a counter as she bent forward to pick up a foot pedal from the floor." Based upon State Fund's representative's assurance that the description would be corrected, Winegardner signed the First Report and mailed it back to State Fund.

¶ 6 On August 20, 2019, State Fund denied Winegardner's claim on the grounds that her medical records did not contain any objective medical findings of an injury.[1]

¶ 7 Winegardner suspected that State Fund's denial was based on the incorrect description in the First Report. She called State Fund and left a voice mail "to confirm they had corrected the description of injury within the first report of injury form, and questioned if her claim was denied due to that error."

¶ 8 In October of 2019, Winegardner retained attorney Michael Bliven "to appeal [State Fund's] denial of her claim, and have the description of her injury corrected."

¶ 9 In the winter and spring of 2020, Winegardner and State Fund attempted to settle Winegardner's claim. However, at that time, they were unable to reach an agreement. In June of 2020, Winegardner had offered to settle her claim for $35,000, while State Fund had offered $8,500.

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[1] Section 39-71-119(1), MCA, states, in relevant part: " 'Injury' or 'injured' means: (a) internal or external physical harm to the body that is established by objective medical findings . . . ." This Court has ruled that, under this definition, a claimant cannot prove an injury solely with subjective reports of symptoms. *See, e.g.*, *TG v. Mont. Sch. Grp. Ins. Auth.*, 2018 MTWCC 1, ¶ 32 (citation omitted) (explaining, "Dr. Weinert's diagnosis is based entirely on TG's subjective complaints of increased pain in her neck and arm, which is insufficient by itself to establish a compensable injury under the Workers' Compensation Act.").

¶ 10 On March 19, 2021, in lieu of paying medical benefits it had agreed to pay under § 39-71-608, MCA, State Fund offered to increase its offer to settle Winegardner's claim to $15,000.

¶ 11 On March 22, 2021, Winegardner filed a Petition for Hearing. She alleged that her treating physician, Rachel Zeider, MD, who first saw her more than five months after her accident, had noted objective medical findings of a concussion and had opined that it was caused by her industrial accident. In her prayer for relief, Winegardner requested that this Court rule that she suffered a compensable injury and that she was entitled to benefits.

¶ 12 On April 12, 2021, State Fund filed its Response to Petition for Hearing, in which it contended: "State Fund is not liable for Petitioner's July 15, 2019, work accident because Petitioner has not established injury or causation by objective medical findings." State Fund alleged that the medical providers who saw Winegardner the day after her accident, and in the following weeks, reported normal physical examinations and that their diagnosis of "concussion without loss of consciousness" was based entirely on Winegardner's subjective reports of symptoms. State Fund disputed that Dr. Zeider's diagnosis was substantiated by objective medical findings on the grounds that the tests on which Dr. Zeider relied are only to be used in the "acute stage" of a potential concussion and "not valid testing for [a] concussion months down the road." State Fund also alleged that Dr. Zeider's causation opinion was without an adequate basis because Winegardner's reports of her symptoms shortly after her injury to Dr. Zeider were far more severe than she reported to the medical providers in the weeks after her accident. Moreover, State Fund alleged that Winegardner reported physical signs of injury to Dr. Zeider, such as bruising and abrasions on her head, that were not actually present after her accident. State Fund also alleged that if Winegardner suffered a concussion, it was not liable for wage-loss benefits after July 29, 2019, because the medical providers who saw Winegardner had released her to full duty on that day.

¶ 13 In response to State Fund's most recent offer of settlement, Winegardner authorized Bliven to offer $30,000. Winegardner asserts that she told Bliven that the settlement was conditioned upon a "correct description of her injury," by which she meant that State Fund would correct the description to say that she hit her forehead while bending down and suffered a concussion, and upon the "contents of the agreement." Bliven conveyed to State Fund Winegardner's offer to settle her claim for $30,000. He did not convey any conditions.

¶ 14 On April 15, 2021, State Fund's attorney, Pamela Rabold, responded by e-mail, with an offer to settle Winegardner's claim for $20,000.

¶ 15 On April 16, 2021, State Fund moved this Court under § 39-71-605, MCA, for an order compelling Winegardner to attend an examination with a neuropsychologist.

¶ 16 On Friday, April 23, 2021, Rabold e-mailed Bliven to convey State Fund's offer to settle Winegardner's claim for $25,000.

¶ 17 Later that day, Bliven replied to Rabold's e-mail, stating: "The only authority I have at this time is . . . $30,000 to settle the case – on a disputed basis."

¶ 18 Rabold e-mailed Bliven back a few hours later, notifying him that State Fund was accepting Winegardner's offer. Rabold stated: "I have been authorized to settle the claim on an initial disputed basis for $30K. I will prepare a [stipulation] and proposed order and shoot them to you today or Monday."[2]

¶ 19 Forty minutes later, Rabold e-mailed Bliven a proposed Stipulation and Joint Petition for Entry of Judgment Approving Settlement, which set forth that Winegardner and State Fund were settling her claim on a disputed initial compensability basis for $30,000.[3]

¶ 20 That evening, Bliven called Winegardner to notify her that State Fund had accepted her $30,000 offer. Bliven told her that he could not file the written settlement agreement with this Court without her signature and asked her to come to his office the following Monday afternoon, April 26, 2021, "to review the settlement agreement with him and make any necessary changes prior to filing with the court."[4] According to Winegardner, she had "reluctantly agreed to settle and was assured nothing will be final until documents were reviewed [and] signed the following Monday[,] April 26, 2021."

¶ 21 Over the weekend, Winegardner had second thoughts about settling her claim. She searched her old cell phones for photographs of herself after her accident. She found photographs of herself from shortly after her accident, which she asserts show an "indent in [her] forehead." She thought that the photographs were strong evidence that she hit her forehead while bending down and would serve as objective medical findings of a concussion. Because she thought that State Fund had denied liability based on the description stating that she hit her head while getting up, as opposed to while bending down, which she asserts is a "huge difference," she thought that, after seeing the photographs, State Fund would change the description of her injury to say that she hit her forehead and likely accept liability for her claim.

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[2] Section 39-71-741(2)(a), MCA, allows a lump sum settlement of all benefits on a disputed initial compensability basis when "there is a reasonable dispute over compensability."

[3] This Court regularly reviews disputed settlements and enters stipulated judgments pursuant to the parties' settlement agreement. The State Fund's proposed Stipulation and Joint Petition for Entry of Judgment Approving Settlement is on a standard form that attorneys use as a written settlement agreement at this Court.

[4] Although this Court has ruled that a claimant's signature on the settlement agreement is "not required" for there to be a binding settlement, it has, since 2003, had claimants sign settlement agreements to eliminate cases in which the claimant contends that she did not authorize her attorney to enter into a settlement. *Geery v. Travelers Ins. Co.*, 2003 MTWCC 8, ¶ 25. That issue is not present in this case, as Winegardner acknowledges that she authorized Bliven to make an offer to State Fund to settle her case for $30,000.

¶ 22 On April 26, 2021, Bliven e-mailed Jackie Poole, Clerk of this Court, with a copy to Rabold, to advise that Winegardner's case had settled and that the parties would soon be filing the written settlement agreement. Because the case had settled, Bliven told Poole that he would not be filing a response to State Fund's motion for an order compelling Winegardner to attend the IME. Poole replied, confirming that the case had settled and notifying Bliven and Rabold that she was vacating the Scheduling Order.

¶ 23 A few minutes after Bliven notified this Court that the case had settled, Winegardner e-mailed Bliven, informing him for the first time that, in light of her discovery of the photographs, she did not want to settle her claim. She stated:

> I've got exciting news!! Over the weekend my daughter & I spent several hours going through old phones for photos of my head after the injury. We found at least three that clearly show the indent in my forehead! Also, I have a list of witnesses I'd like to add if possible. And a few would like to submit an affidavit as soon as possible. So, in lieu of all that and after careful consideration & contemplation, I've decided to proceed with IME & not settle this case as we'd discussed on Friday. I'm so thankful we found the pictures before settling! Finally, the [State Fund] will have some of the proof they need to accept my claim.

¶ 24 On May 3, 2021, Bliven emailed Rabold, stating, in relevant part, that Winegardner had "concerns" about the written settlement agreement. Rabold replied to Bliven's email the next day, questioning what concerns Winegardner could possibly have, given that the "stipulation is pretty much boilerplate language throughout."

¶ 25 On May 12, 2021, Bliven emailed Rabold, informing her that Winegardner did not want to go through with the settlement.

¶ 26 In response, on May 13, 2021, Rabold, who understood that Winegardner wanted the description of her injury changed, sent Bliven an e-mail stating, in relevant part, "if Ms. Winegardner wants acceptance of the claim as part of the settlement – and part of [the] settlement only – State Fund would include that in the settlement documentation." Rabold then sent Bliven an amended proposed Stipulation and Joint Petition for Entry of Judgment, stating that the settlement included State Fund's acceptance of Winegardner's concussion claim and that the $30,000 payment was to "resolve their dispute over [Winegardner's] entitlement to medical, indemnity, and vocational benefits in the claim."[5]

[5] Section 39-71-741(2)(d), MCA, states that such settlements are permitted, as it states, "except as otherwise provided in this chapter, all other settlements and lump-sum payments agreed to by a claimant and insurer." And subsection (e) allows parties to settle "medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability."

¶ 27 On May 24, 2021, Winegardner filed a Status Report with this Court, in which she stated: "Petitioner through counsel advises she does not wish to settle her claim based on her previous objections to settlement, and new evidence she found after the time of agreement to settlement, and further that she did not believe any settlement would be final until signed."

LAW AND ANALYSIS

¶ 28 The issue before this Court is whether the parties reached a binding agreement to completely settle Winegardner's claim for $30,000.

¶ 29 Citing the Montana Supreme Court's decision in *Hetherington v. Ford Motor Co.*,[6] and this Court's decision in *Baker v. Fireman's Fund Ins. Co.*,[7] State Fund argues that it reached a binding settlement agreement with Winegardner the moment it accepted her offer to settle her claim for $30,000 on a disputed basis. State Fund asserts that they entered into a binding agreement at that point because Winegardner did not condition the settlement upon a signed, written agreement. State Fund also cites the Supreme Court's decision in *Kluver v. PPL Montana, LLC*, in support of its argument that neither plans to reduce the settlement agreement to a formal, written contract nor lack of absolute certainty and completeness in every detail render a settlement agreement unenforceable.[8]

¶ 30 Winegardner argues that she did not reach a binding settlement agreement with State Fund because she did not sign the written settlement agreement, which she contends was a condition to a binding agreement. She points out that Bliven instructed her to come to his office to read the written settlement agreement, make necessary changes, and to sign it. She also points to the acknowledgment in State Fund's proposed Stipulation and Joint Petition for Entry of Judgment, which states, in relevant part, "I understand the terms of the Settlement and request approval of the same." Winegardner reasons that she would not have needed to read the written settlement agreement with Bliven, make changes, acknowledge that she understood its terms, nor sign it if she and State Fund had already entered into a binding settlement agreement.

¶ 31 State Fund is correct that, under established Montana law, a binding settlement agreement exists. In *Hetherington*, a tort case, the defendants offered the Hetheringtons $185,000 in exchange for releases of all claims.[9] The Hetheringtons accepted the offer and requested "appropriate releases."[10] However, the Hetheringtons had second thoughts and, several days later, they notified the defendants that they would not go

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[6] 257 Mont. 395, 849 P.2d 1039 (1993).

[7] 2012 MTWCC 9.

[8] 2012 MT 321, ¶¶ 36, 38, 368 Mont. 101, 293 P.3d 817.

[9] *Hetherington*, 257 Mont. at 397, 849 P.2d at 1041.

[10] *Id.*

through with the settlement, asserting that it was their understanding that the settlement was not binding until they signed a written settlement agreement.[11]

¶ 32 The Supreme Court held that the Hetheringtons and the defendants entered into a binding settlement agreement the moment the Hetheringtons accepted the $185,000 offer, even though they intended to reduce their agreement to written contracts. The court explained that, under contract law, "An agreement is binding if made by an unconditional offer, and accepted unconditionally."[12] The court also explained that the Hetheringtons and the defendants had agreed to all of the essential terms that were necessary to settle a tort case, which were: (1) the amount of settlement, $185,000; and (2) the release of all claims.[13] The court continued: "Such material elements are capable of being carried into effect and will not violate the intentions of the parties."[14]

¶ 33 The court also held that the settlement agreement was binding the moment the Hetheringtons accepted the defendants' offer because the Hetheringtons did not expressly condition the formation of a binding settlement agreement on a signed contract. The court explained:

> The intentions of the parties are those disclosed and agreed to in the course of negotiations. A party's latent intention not to be bound does not prevent the formation of a binding contract. Such a condition, that it will not be effective until signed, must be part of the agreement between the parties.[15]

Because the Hetheringtons did not condition the formation of the settlement agreement on a signed agreement, the court held that the Hetheringtons and defendants entered into a binding settlement agreement under which the defendants were to pay the Hetheringtons $185,000 in exchange for releases of all claims, with no other conditions or material terms.[16] Thus, the court held that the defendants were entitled to specific performance of the settlement agreement.[17]

¶ 34 This Court applied *Hetherington* to the complete settlement of a workers' compensation claim in *Baker*. Baker and Fireman's Fund Ins. Co. (Fireman's Fund) had many disputes, which included whether to reopen a prior settlement of his wage-loss benefits and whether he was entitled to additional medical benefits, and exchanged

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[11] *Hetherington*, 257 Mont. at 397-98, 849 P.2d at 1041.

[12] *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042.

[13] *Hetherington*, 257 Mont. at 400, 849 P.2d at 1043.

[14] *Id.*

[15] *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042 (citations omitted).

[16] *Hetherington*, 257 Mont. at 401, 849 P.2d at 1043.

[17] *Id.*

several offers to completely settle his workers' compensation claim.[18] During the negotiations, Baker "never expressed or conditioned his acceptance upon his review and approval of a written agreement."[19] Baker eventually told Fireman's Fund that for $40,000, he "would agree to a total closure, including all indemnity and medical benefits."[20] Fireman's Fund accepted his offer.[21] The attorneys drafted a settlement agreement on the standard forms published by the Department of Labor & Industry, providing that Baker was completely settling his claim for $40,000.[22] Nevertheless, Baker refused to sign the written settlement agreement.[23] He then argued that he did not reach a binding settlement with Fireman's Fund because he had conditioned the settlement upon his approval of the written settlement agreement.[24]

¶ 35 This Court ruled that, under *Hetherington*, Baker and Fireman's Fund reached a binding settlement agreement when Fireman's Fund accepted his offer to completely settle his claim for $40,000. This Court explained that a settlement of a workers' compensation claim "is formed when the parties mutually assent to its material terms, at which point it becomes binding notwithstanding the absence of Department of Labor and Industry approval."[25] This Court then concluded that, as in *Hetherington*, the amount of the settlement and the agreement to completely settle the claim were the only material terms[26] and thus, that upon Fireman's Fund's acceptance of Baker's $40,000 offer to "close everything," they reached a binding settlement agreement.[27] This Court also ruled that, as in *Hetherington*, Baker's "latent intent not to be bound" until he signed the written settlement agreement did not prevent the formation of a binding settlement agreement.[28] Thus, this Court explained that "[i]t does not matter that Baker never signed the agreement"[29] and specifically enforced the settlement agreement by ordering Fireman's Fund to pay Baker $40,000 "in a full and final compromise and release settlement of Baker's workers' compensation claim."[30]

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[18] *Baker*, ¶¶ 5-36.

[19] *Baker*, ¶ 66.

[20] *Baker*, ¶ 37.

[21] *Baker*, ¶ 38.

[22] *Baker*, ¶ 41.

[23] *Baker*, ¶ 44.

[24] *Baker*, ¶¶ 45-46.

[25] *Baker*, ¶ 63 (citing *Murer v. Mont. State Fund*, 2006 MTWCC 32, ¶ 8).

[26] *Baker*, ¶ 63.

[27] *Baker*, ¶ 67.

[28] *Baker*, ¶ 66.

[29] Baker, ¶ 67.

[30] *Baker*, ¶ 76.

¶ 36 This case falls squarely under *Hetherington* and *Baker*. Winegardner and State Fund reached a binding settlement when they agreed to the only two material terms that are required to settle a claim on a disputed initial compensability basis, which are payment of a sum certain in exchange for a complete closure of the disputed claim; *i.e*., they reached a binding agreement when State Fund accepted Winegardner's offer to settle her claim for $30,000 on a "disputed basis" – which, given that State Fund had denied liability for her claim, plainly meant a disputed initial compensability settlement under § 39-71-741(2)(a), MCA.

¶ 37 Moreover, as in *Hetherington* and *Baker*, Winegardner and State Fund entered into a binding settlement agreement the moment State Fund accepted her offer because she did not condition the formation of a binding settlement upon signing the written settlement agreement. Her offer just stated: "$30,000 to settle the case – on a disputed basis." As explained in *Hetherington*, Winegardner's "latent intention not to be bound does not prevent the formation of a binding contract. Such a condition, that it will not be effective until signed, must be part of the agreement between the parties."[31] Furthermore, there is no merit to Winegardner's argument that the fact that State Fund drafted a written settlement agreement for her approval and signature, and the fact that Bliven told her that she was required to sign it before it was filed at this Court, is proof positive that the settlement was contingent upon her signature. In *Kluver*, the Montana Supreme Court stated, "[W]here parties intend to form a binding agreement, the fact that they plan to incorporate it into a more formal contract in the future does not render it unenforceable."[32] Because Winegardner and State Fund agreed to all of the material terms necessary to completely settle her claim, they entered into a binding settlement agreement under *Hetherington* and *Baker*.[33]

¶ 38 Because Winegardner is now a self-represented litigant, this Court addresses the three remaining arguments that she appears to make in her brief.

¶ 39 *First*, this Court is not persuaded by Winegardner's implied argument that she did not enter into a binding agreement because she genuinely thought that she would not be bound until she signed the written settlement agreement, even if, as she alleges, Bliven advised her that the settlement was not binding until she signed the written settlement

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[31] *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042 (citations omitted). *See also Baker*, ¶ 66, 67.

[32] *Kluver*, ¶ 36 (citation omitted).

[33] *See also Kluver*, ¶ 35-38 (holding that the settlement reached at a mediation was binding, even though the parties had to draft several additional documents, including deeds, leases and options to real property, and releases of all claims, because the parties agreed to the material terms and their obligations were therefore "clearly ascertainable."); *Lockhead v. Weinstein*, 2003 MT 360, ¶¶ 4, 12-13, 319 Mont. 62, 81 P.3d 1284 (holding that, under *Hetherington*, Lockhead entered into a binding agreement to settle the case the moment his attorney notified Weinstein's attorney that "Lockhead accepts the settlement offer for the sum of $7,500."); *Marta Corp. v. Thoft,* 271 Mont. 109, 113, 894 P.2d 333, 335 (1995) (holding that parties reached binding settlement agreement at a settlement conference because they agreed to the material terms even though they intended to thereafter reduce their agreement to stipulation to be filed with the district court).

agreement. In short, Winegardner's ignorance or misunderstanding of the law does not prevent the formation of a binding settlement agreement.[34]

¶ 40 *Second,* this Court is not persuaded by Winegardner's implied argument that there are unmet conditions. At the outset, Winegardner is bound by the $30,000 offer that Bliven conveyed on her behalf which, as set forth above, did not contain any conditions.[35] Moreover, even if Winegardner had made her settlement offer conditioned upon the "contents of the agreement," she is bound because she does not point to any term in the written settlement agreement that is contrary to the material terms to which she agreed.[36] Likewise, even if Winegardner had made her settlement offer conditioned upon "correct description of her injury" – *i.e*., conditioned upon State Fund saying that she hit her forehead and suffered a concussion – State Fund agreed to meet her condition by changing the language in the written settlement agreement to say that she suffered a concussion in her industrial accident and that the $30,000 payment was to "resolve their dispute over [her] entitlement to medical, indemnity, and vocational benefits in the claim."

¶ 41 *Third*, this Court is not persuaded by Winegardner's implied argument that she has grounds to rescind the settlement agreement because she thereafter looked for and found photographs which she claims show an "indent" in her forehead, which she asserts is strong evidence that she hit her forehead and suffered a concussion. Because Winegardner had the photographs in her possession when she offered to settle her claim, she has not set forth grounds to rescind the settlement agreement on newly discovered evidence.[37]

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[34] *See, e.g., Wiard v. Liberty Nw. Ins. Corp.*, 2001 MTWCC 31, ¶ 13, *aff'd* 2003 MT 295, 318 Mont. 132, 79 P.3d 281 (2003) ("If ignorance of the law were an excuse, laws would be applied willy-nilly depending upon the individual's legal knowledge; the result would be legal chaos and there would be no rule of law at all."). *See also Hetherington*, 257 Mont. at 397-98, 401, 849 P.2d at 1041, 1043 (holding that there was a binding settlement upon acceptance of the material terms even though the Hetheringtons thought that settlement was not binding until they signed a written agreement).

[35] *See Lockhead*, ¶ 22 (holding that attorney can bind his client to a settlement agreement), overruling portion of *In re Estate of Goick*, 275 Mont. 13, 909 P.2d 1165 (1996).

[36] *See Marta Corp*., 271 Mont. at 113, 894 P.2d at 335 (holding that a settlement agreement was binding even though the plaintiffs refused to sign the stipulation to be filed with the district court, explaining that while "Appellants argue strenuously, after the fact, that the written stipulation did not meet their wishes and was unacceptable to them, they do not point to any specific instances wherein the written stipulation is contrary to what they agreed to at the May 12 settlement conference. . . . That Appellants no longer wish to be bound by the settlement agreement, as set forth in the written stipulation, does not excuse them from complying with the terms of that stipulation."). *See also Baker*, ¶ 57 (explaining that one factor that led this Court to find that Baker and Fireman's Fund reached a binding settlement agreement was that Baker did not point to "any discrepancies between what had been orally agreed to and what appeared in the written agreement").

[37] *See Kluver*, ¶¶ 7, 42 (holding that the settlement agreement was binding even though the Kluvers thereafter discovered that, due to taxes, their "proceeds from the settlement would not be as great as they had anticipated"). *See also* M.R.Civ.P. 60(b)(2) (stating that a court can relieve a party from a final judgment or order based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)").

¶ 42 In sum, Winegardner and State Fund entered into a binding agreement to completely settle her workers' compensation claim for $30,000. State Fund is therefore entitled to specific performance of the material terms of their settlement agreement. Accordingly, this Court now enters the following:

ORDER

¶ 43 State Fund's Motion to Enforce Settlement is **granted**.

¶ 44 Within two weeks of the date of this Order, State Fund shall issue the settlement check in the sum of $30,000, which shall completely settle Winegardner's claim.

¶ 45 State Fund shall notify this Court that it has sent the settlement check, at which time this Court will issue a final judgment.

DATED this 17th day of December, 2021.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Kelly Winegardner
Melissa Quale
Michael A. Bliven (courtesy copy)

Submitted: October 25, 2021