

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

**2003 MTWCC 8**

**WCC No. 2002-0566**

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**TODD GEERY**

**Petitioner**

**vs.**

**TRAVELERS INSURANCE COMPANY**

**Respondent/Insurer.**

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**DECISION AND PARTIAL JUDGMENT**

**DISMISSING CLAIM FOR COMPENSATION BENEFITS**

**Summary:** Claimant filed a petition requesting both compensation and medical benefits with respect to a September 6, 1998 industrial injury. The insurer moved for partial summary judgment with respect to the claim for compensation benefits, alleging it was barred by a settlement agreement and judgment in a prior action brought by the claimant. That agreement released the insurer from further liability for compensation benefits in return for payment of \$8,000. The motion was denied since claimant alleged that he did not sign the settlement agreement and did not authorize his attorney to do so. Without addressing difficult issues regarding reopening the prior judgment, the Court determined that an evidentiary hearing should be held to determine whether claimant authorized his attorney to execute the agreement and, if he did not, whether his acceptance of the \$8,000 constituted a ratification of the agreement. An evidentiary hearing was thereafter held.

**Held:** As a matter of fact, the Court finds that the claimant was advised about the terms of the settlement agreement and authorized his attorney to execute the settlement agreement. Even had he not authorized his attorney to do so, he accepted the benefits of the settlement agreement with full knowledge that the payment to him was a full and final settlement of his claim for compensation benefits, therefore he ratified the agreement. Since the agreement is valid, the judgment entered pursuant to the settlement agreement bars his claim for further compensation benefits.

**Topics:**

**Attorneys: Authority.** Where a claimant is apprized by his attorney of a proposed settlement agreement, accepts the terms of the agreement, and approves the agreement, his attorney has authority to execute the documents necessary to effect the agreement.

**Settlements: Authority.** Where a claimant is apprized by his attorney of a proposed settlement agreement, accepts the terms of the agreement, and approves the agreement, his attorney has authority to execute the documents necessary to effect the agreement.

**Judgments: Res Judicata.** Where claimant authorized his attorney to enter into a settlement agreement settling his claim for compensation benefits, and his attorney thereafter executed a stipulation containing the terms of the agreement and authorizing the Workers' Compensation Court to enter judgment in accordance with the agreement, there is no basis for attacking the judgment and the judgment bars any further compensation benefits.

**Settlements: Ratification.** Where claimant cashes a settlement check which he is fully aware is intended to fully and finally settle his claim for compensation benefits, he ratifies the settlement agreement executed by his attorney for payment of the monies as full and final settlement of the claim for compensation benefits.

¶1 Travelers previously moved for partial summary judgment dismissing claimant's request for compensation benefits. The motion was based on a settlement agreement and stipulation signed by claimant's attorney and Travelers' attorney. That agreement was then submitted to this Court in connection with a prior, then pending, petition seeking the same compensation benefits as sought in the present case. Pursuant to the agreement, this Court entered a judgment dismissing that prior petition. *Geery v. Travelers Insurance Co.*, WCC No. 2000-0149, Judgment and Order of Dismissal with Prejudice (October 16, 2000).

¶2 Claimant in this action urges that his attorney did not have authority to execute the agreement and that the agreement and judgment are therefore void. Since Travelers' motion for partial summary judgment raised factual issues concerning the authority of claimant's attorney to execute the settlement and, secondarily, concerning possible ratification of the agreement by the claimant, I denied the motion and ordered an evidentiary hearing. Decision and Order Denying Motions to Compel and For Partial Summary Judgment (October 15, 2002).

¶3 An evidentiary hearing was held on October 25 and November 6, 2002, in Helena. Claimant represented himself. Travelers Insurance Company (Travelers) was represented by Mr. Kelly M. Wills and Mr. Thomas J. Harrington. A transcript of the hearing has not been prepared.

¶4 Claimant and Mr. Howard Toole (Toole), who had represented claimant in the first action, testified. Exhibits 1 through 27 were admitted.

¶15 Having considered the testimony presented at trial, the demeanor and credibility of the witnesses, the exhibits, the deposition, and the arguments of the parties, the Court makes the following:

#### FINDINGS OF FACT

¶16 On July 31, 2000, the claimant filed a Petition for Benefits with this Court. The petition was assigned docket number WCC No. 2000-0149. (Ex. 14 and Court File in WCC No. 2000-0149.)

¶17 In that petition the claimant alleged that on September 6, 1998, while working for Checker Auto Supply (Checker) of Missoula, Montana, he suffered a work-related aggravation of a previous back injury. He further alleged that Travelers insured Checkers at the time of the incident and that he was entitled to permanent partial and rehabilitation benefits.

¶18 The petition was prepared and filed by claimant's attorney, Mr. Howard Toole, who represented claimant throughout the subsequent proceedings in this Court. Claimant hired Toole in 1999 to represent him both with respect to his September 6, 1998 claim and another non-workers' compensation matter.

¶19 After being hired, and throughout his representation of claimant, Toole talked with claimant about his cases on numerous occasions. Those conversations were both by telephone and in person at Toole's office. Toole also copied claimant with at least some of his correspondence, including correspondence indicating a range of possible recovery (e.g., exs. 2 and 3), although claimant could not remember receiving some of the items that were sent to him. The specific communications and copies sent to claimant are not critical to my resolution of the present dispute, but it's fair to say that as a general matter Toole kept claimant informed about his cases and discussed the cases with him.

¶110 On August 25, 2000, Travelers filed a Response to Petition for Hearing. (Ex. 15 and Court File in WCC No. 2000-0149.) In its response, Travelers agreed that claimant had suffered an industrial injury as alleged in the petition and further stated that it had accepted liability for the injury. The response went on to allege that claimant had been paid a 1% award for a 1% impairment, had returned to work, did not suffer a wage loss, and was entitled to neither permanent partial nor rehabilitation benefits. During his testimony in this proceeding, claimant acknowledged that he was aware of Travelers' position that he was not entitled to any further benefits.

¶111 Travelers was represented in the prior proceeding by Mr. Kelly M. Wills (Wills).

¶112 The prior petition was scheduled for trial during the week of October 16, 2000. (Scheduling Order dated August 2, 2000, WCC No. 2000-0149.)

¶13 In early October 2000, Toole and Wills planned to take depositions of various witnesses, including expert witnesses. (Ex. 11.) Claimant's deposition was taken October 4, 2000. A deposition of Gerry Blackman (Blackman), a vocational consultant hired by the insurer, was scheduled for October 9, 2000 at Wills' office. (Exs. 12, 23.) A deposition of Mark Schwager, a vocational consultant hired by Toole on behalf of claimant, was to be taken the next day, October 10<sup>th</sup>. (Ex. 26.)

¶14 Upon arrival at Mr. Wills' office on October 9, 2002, Toole and Wills discussed settlement and arrived at an agreement which was expressly subject to the claimant's approval. They agreed to postpone Blackman's deposition to the next day so Toole could consult with claimant.

¶15 The tentative settlement called for a payment of \$8,000 in final settlement of claimant's claims for further compensation benefits, with medical to be left open.

¶16 Toole testified that he returned to his office and talked to claimant either by telephone or in person at his office and told him the terms of the settlement, including the fact that the settlement would be a full and final settlement of his claim. According to Toole, by the end of the day claimant agreed to the terms.

¶17 Toole and Wills then executed a Stipulation for Dismissal and Order of Dismissal with Prejudice. (Court File in WCC No. 2000-0149.<sup>(1)</sup>) The stipulation was executed on October 12, 2000, and forwarded by Toole to the Court the same day. (*Id.* and Ex. 16.) On October 16, 2000, the Court entered a Judgment and Order of Dismissal with Prejudice in accordance with the terms of the stipulation. (Court File in WCC No. 2000-0149.<sup>(2)</sup>)

¶18 Under the stipulation, all claims "arising out of the September 6, 1998 industrial accident claim" were resolved for the sum of \$8,000, out of which 20% was payable to Toole as an attorney fee. The stipulation reserved medical benefits to claimant, i.e., under the agreement he continued to be entitled to medical benefits with respect to the accident. Finally, it provided for entry of judgment dismissing his petition with prejudice. The full stipulation is set out in Appendix A.

¶19 The judgment entered pursuant to the stipulation provided for payment of \$8,000 in settlement of all claims for the September 6, 1998 injury, with medicals reserved to claimant, and dismissal of the petition with prejudice. A full copy of the judgment is set out in Appendix B.

¶20 Claimant acknowledged he received and cashed a settlement check for \$6,400, however, he denies he was told by Toole that the money he received was in full and final settlement of his claim for further benefits. He testified that when he got the check Toole told him more benefits would be coming to him. I am unpersuaded by his testimony and found Toole the more credible witness. My credibility finding is based on my personal observation of the witnesses and is buttressed by the following:

- Claimant had previously entered into a full and final settlement of a 1992 claim and understands the significance of settling a case on a full and final basis. His testimony established that he was aware that the 1992 settlement precluded him from making any further claim for benefits with respect to the 1992 accident. Indeed, he testified that when Toole attempted to seek further 1992 benefits on his behalf he told Toole that the matter had been settled.
- The check stub accompanying the \$6,400 check which claimant cashed contained the inscription "80% OF FULL AND FINAL SETTLEMEN [sic]." (Ex. 13; Capitalization in original.) Claimant acknowledged that he received the check stub and read the inscription before he cashed the check. He further acknowledged that he was aware that his attorney was entitled to 20% of his benefits. He understood that the \$6,400 he received, along with the 20% his attorney was to receive, represented 100% of what Travelers was paying.
- Claimant testified that even though he read the "full and final settlement" inscription it was not clear to him that the check was in full settlement of his "entire" case. He asserted that it did not occur to him that the check was to close out his entire case because he believed he was not at MMI (maximum medical improvement). He further testified that he thought the money was for weekly benefits due him. I did not find his explanation plausible and was not persuaded by it. Rather I am persuaded that at the time of the settlement and claimant's cashing of the check, he was aware that the \$8,000 paid to him and Toole was in full and final settlement of his claim for further compensation benefits.

¶21 I find that Toole did in fact explain the settlement to claimant; that at the time the settlement was executed claimant was aware his claim for compensation benefits was being fully and finally closed; and that claimant authorized Toole to enter into the settlement on his behalf.

¶22 I further find that claimant cashed the check for \$6,400 with full knowledge that it was intended to fully and finally settle his claim for compensation benefits.

#### CONCLUSIONS OF LAW

¶23 The industrial injury at issue in this case occurred on September 6, 1998. At that time, the 1997 version of the Montana Workers' Compensation Act was effective, therefore that version applies to his claim for benefits. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶24 Claimant in this action is seeking both compensation and medical benefits with respect to his 1998 injury. Travelers previously moved for partial summary judgment, urging that a prior settlement stipulation and judgment of this Court in WCC No. 2000-0149 barred his claim for compensation benefits. I denied the motion because of factual

disputes regarding his attorney's authority to enter into the settlement agreement. Decision and Order Denying Motions to Compel and for Partial Summary Judgment (October 15, 2002). In denying the motion I concluded:

¶6 Claimant is correct that his hiring of an attorney did not confer settlement authority upon the attorney. "An attorney, as such, has no authority to compromise a controversy of his client, no matter what may be the difficulties involved, nor however advantageous the result may be to the client. A general retainer in a case does not imply such authority, and, if a compromise of the controversy be made, it must be made under special authority delegated for that purpose." *Harris v. Root*, 28 Mont. 159, 72 P. 429, 432 (1903); accord *Webb v. First National Bank of Hinsdale*, 219 Mont. 160, 165, 711 P.2d 1352, 1355 (1985).

¶7 Travelers has tendered no evidence showing that claimant in fact authorized his attorney to enter into the settlement, much less shown such fact on an uncontroverted basis. Rather it argues that the facts admitted by the claimant demonstrate he "ratified" the agreement. It says:

. . . Petitioner was notified via U.S. mail about the settlement agreement and the stipulation. See Respt.'s Br., p. 6. As already explained, Petitioner ratified the settlement agreement by allowing the stipulation to be filed, cashing the settlement check and accepting the benefits of the negotiated settlement. . . .

¶8 Travelers' characterization of the facts is inaccurate. First, claimant was only "copied" with a letter that was from his counsel **to the Court**. The letter stated that the stipulation was being enclosed and provided "a complete resolution of all issues pending in the Petition for Hearing in this Matter." It did not indicate that the stipulation was sent to claimant and claimant's affidavit contains an implicit denial that he saw the stipulation prior to entry of judgment. It also did not inform claimant of the nature of the resolution. From all that appears in the letter, the stipulation could have been nothing more than an acknowledgment of liability for benefits alleged in the petition. Such stipulations **have** been filed and approved by the Court.

¶9 Second, Travelers has presented no evidence that claimant signed the settlement check. While it is likely that he did, it is also likely that, in light of the express provision for the 20% attorney fee to be taken from the settlement proceeds, the check was jointly payable to him and his attorney thus claimant may well have signed without understanding the terms and nature of the stipulation or payment.

¶10 Third, there is no showing that claimant accepted the settlement proceeds with the knowledge that the agreement finally settled his entire entitlement to compensation benefits. According to his affidavit, he was told by his attorney that he would be receiving additional benefits.

¶11 Ratification requires proof of three elements. The three elements are:

"(1) acceptance by the principal of the benefits of the agent's acts,

"(2) **with full knowledge of the facts** and,

"(3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangement."

*Moore v. Adolph*, 242 Mont. 221, 223, 789 P.2d 1239, 1241 (1990) (emphasis added).

Travelers has failed to prove as an uncontroverted matter that claimant had "full knowledge of the facts."

¶12 Travelers has therefore failed to establish as a matter of law that the claimant either authorized his attorney to enter into the stipulated settlement or that he ratified the settlement.

¶13 The more troublesome issue involves *res judicata*. "The doctrine of *res judicata* states that a final judgment on the merits by a court of competent jurisdiction is conclusive as to causes of action or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." *Hollister v. Forsythe*, 277 Mont. 23, 27, 918 P.2d 665, 667 (1996). Thus, unless set aside, the prior judgment bars all claims for compensation except as to future medical expenses.

¶14 While not artfully pleaded, the petition attacks not only the validity of the settlement agreement but the validity of the Court's entry of judgment pursuant to the stipulation. I construe the petition as requesting the Court to set aside or nullify the judgment. However, neither party has addressed the Court's authority to do so. Rule 60 of the Montana Rules of Civil Procedure sets out the grounds and procedure for setting aside a district court judgment. This Court has no similar rule, however, in other instances where its rules are silent it has properly looked for guidance from the Rules of Civil Procedure. *Murer v. Montana State Compensation Mut. Ins. Fund*, 257 Mont. 434, 849 P.2d 1036, 1037 (1993). Neither party has discussed whether the rule can or should be applied, or proposed other standards. Similarly, neither party has discussed whether the alleged lack of authority of the claimant's attorney constitutes extrinsic fraud which gives rise to an independent action to set aside the judgment. See *In re Marriage of Miller*, 273 Mont. 286, 292, 902 P.2d 1019, 1022 (1995). Lacking argument, I decline to rule on the matter.

¶15 Moreover, the *res judicata* issue may be moot if in fact the claimant authorized his attorney to enter into the settlement stipulation or if in fact he ratified the agreement. **An evidentiary hearing regarding authority and ratification should therefore be held.** (Emphasis added.)

¶25 An evidentiary hearing has now been held and I have found as a matter of fact that claimant was aware of the settlement agreement and its contents, and that he authorized

his attorney to execute the settlement. Claimant has argued vigorously that he did not sign the settlement agreement, and indeed he did not. Certainly, as I pointed out during the hearing, claimant's signature on the stipulation would have avoided this whole controversy, and I have since revised Court practice to require the claimant's signature on all settlement agreements filed with the Court. However, claimant's signature was not required. The only requirement, as set forth in my prior Decision and Order, was that claimant authorize his attorney to enter into the agreement. I have found as a matter of fact that he did, therefore the settlement agreement reached in the prior proceeding, as reflected in the Stipulation for Dismissal and Order of Dismissal with Prejudice, is binding on claimant.

¶26 Moreover, even if claimant had *not* expressly authorized his attorney to enter into the settlement, his cashing the \$6,400 check ratified the settlement. All three factors for ratification, as set forth in the prior Decision and Order, are met. First, claimant accepted the benefits of the settlement. Second, when he accepted those benefits he was aware that they were in full and final settlement, thus he had full knowledge of the facts. Third, his action in cashing the check showed his adoption of the agreement.

¶27 Since the claimant authorized the agreement, it can only be set aside for fraud or mistake of fact. Claimant has not alleged or shown a factual basis for setting aside the agreement. He merely claims that he was unaware of the terms of the settlement and did not authorize them, a claim that I have rejected. There is no basis for reopening or setting aside the agreement.

¶28 Since the stipulation is valid, the judgment entered pursuant to the stipulation is *res judicata* with respect to claimant's request for compensation benefits. *Hollister v. Forsythe*, 277 Mont. 23, 27, 918 P.2d 665, 667 (1996). Accordingly, the claimant's request for further compensation benefits is barred.

#### PARTIAL JUDGMENT

¶29 The claimant's request for further compensation benefits, including but not limited to his requests for permanent partial and rehabilitation benefits, is barred by his prior settlement agreement with Travelers and by the judgment entered in his prior action in this Court, WCC No. 2000-0149. Therefore, his claim for compensation benefits is **dismissed with prejudice**.

¶30 The claimant's request for medical benefits is still pending. That matter will be set for trial on the next Missoula docket. A new scheduling order will issue separately.

DATED in Helena, Montana, this 13<sup>th</sup> day of February, 2003.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Todd Geery  
Mr. Kelly M. Wills  
Mr. Thomas J. Harrington  
Mr. Howard Toole (Courtesy Copy)  
Submitted: December 4, 2002

1. The stipulation is also attached to both of the parties briefs regarding Travelers motion for summary judgment in this case. The parties failed to offer it as a specific exhibit during the hearing, however that oversight is understandable in light of their prior submission of the stipulation.

2. As with the stipulation, the judgment is attached to both parties briefs regarding Travelers motion for summary judgment in this case. And as with the stipulation, the parties failed to offer it as a specific exhibit during the hearing, however that oversight is understandable in light of their prior briefs indicating that the fact of the stipulation, as well as its terms, are uncontested.