IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2026 MTWCC 2

WCC No. PI-2025-0000776-WCI

SCOTT C. SIMONE

Petitioner

vs.

OLD REPUBLIC INSURANCE COMPANY

Respondent/Insurer.

APPEALED TO MONTANA SUPREME COURT – DA 26-0217 03/31/26
Settled on Appeal 05/22/26

ORDER DENYING MOTION FOR RECONSIDERATION

INTRODUCTION

¶ 1 At the core of this dispute, Petitioner seeks to establish that the Respondent acted unreasonably, in violation of Mont. Code Ann. § 39-71-2907.[1]

¶ 2 The parties reached a settlement agreement in this matter and requested the Court issue an order incorporating the settlement agreement. The Court did so. The agreement and subsequent court order provided that payment of the proceeds would be made within 30 days. Although the payment was placed in the mail eight days before the agreed date, the check took thirteen days to transit the mail system.

¶ 3 Petitioner argues the Respondent's actions were unreasonable under Mont. Code Ann. § 39-71-2907, entitling him to penalties. To meet his burden of proof, Petitioner seeks to incorporate the timelines set forth in Mont. Code Ann. § 39-71-107(7)(b) to establish the standard by which unreasonable conduct will be measured.

¶ 4 The Court previously found Petitioner had not met his burden of establishing unreasonable conduct. The original motion was denied. Petitioner now seeks

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[1] Mont. Code Ann. § 39-71-2907 was renumbered Mont. Code Ann. § 3-9-112, Laws of 2025. For purposes of this decision, the Court will reference the Montana Statutes in effect at the time of the filing of the Joint Petition for Approval of Settlement and Stipulation (April 24, 2025).

reconsideration of the underlying order, advancing some of the same arguments previously presented and attempting at this late stage to introduce new theories of recovery.

¶ 5 Petitioner advances five theories in support of reconsideration: (1) that Mont. Code Ann. § 39-71-107 applies beyond its plain language to all settlements; (2) that Respondent acted unreasonably under Mont. Code Ann. § 39-71-2907; (3) that refusal to impose administrative timelines in a court proceeding violates equal protection; (4) that payment does not render the motion to compel moot; and (5) that the Court overlooked material facts.

¶ 6 Whether an action is unreasonable is a question of fact. Petitioner bears the burden of proof. Petitioner presented no evidence supporting a factual conclusion that Respondent acted unreasonably. The evidence presented supports the opposite conclusion. For these reasons, both the original Motion and the Motion for Reconsideration are **denied**.

FACTUAL CHRONOLOGY

¶ 7 On December 14, 2022, Petitioner was injured in the course and scope of his employment.

¶ 8 On April 24, 2025, the parties filed a Joint Petition for Approval of Settlement and Stipulation. The parties stipulated that Respondent would pay Petitioner $42,014.91 in new money on a disputed liability basis and that payment would be made in a lump sum by check within thirty days of the Court's approval.

¶ 9 On April 28, 2025, the Court issued a Stipulated Judgment ordering compliance with all terms of the Joint Petition.

¶ 10 On May 16, 2025, the claims adjuster requested issuance of the settlement check. On May 20, 2025, the check was placed in the mail. May 28, 2025, marked thirty days from the Court's order. The check arrived on June 2, 2025, thirteen days after mailing and three days after the deadline, two of which were a weekend.

RELEVANT LAW

Motions for Reconsideration

¶ 11 A motion for reconsideration before the Workers' Compensation Court is governed by Mont. Admin. R. 24.5.337, which permits reconsideration only if the Court overlooked a material fact, overlooked a decisive issue, or issued a decision conflicting with a statute or controlling authority.

> 24.5.337 MOTION FOR RECONSIDERATION (1) A party may move for reconsideration of any decision of the Workers' Compensation Court only upon the following three grounds:

(a) that the court overlooked some fact material to the decision;

(b) that the court overlooked some issue presented by the party that would have proven decisive to the case; or

(c) that the court's decision conflicts with a statute or controlling [authority] . . . .[2]

Statutory Framework

¶ 12 Mont. Code Ann. § 39-71-107 governs insurer conduct in Department-approved settlements. Subsection (7)(b) requires payment within thirty days of the Department issuing an order approving settlement. "Department" is defined as the Department of Labor and Industry. Subsection (10) distinguishes Department-approved settlements from court-ordered settlements.

> **39-71-107 Insurers to act promptly on claims -- in-state claims examiners -- third-party agents -- penalties.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.
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> . . .
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> 7) An insurer shall:
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> . . .
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> (b) pay settlements within 30 days of the date the **department** issues an order approving the settlement.
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> . . .
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> (10)(a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full. . . . [3]

¶ 13 Department is a defined term in this statutory framework.

> **39-71-116. Definitions** . . .
>
> **. . .**
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> (11) "Department" means the department of labor and industry.[4]

¶ 14 Mont. Code Ann. § 39-71-2907 permits penalties only when an insurer unreasonably delays or refuses payment. Whether delay is unreasonable is a question of fact.

> **39-71-2907. Increase in award for unreasonable delay or refusal to pay.** (1) The workers' compensation judge may increase by 20% the full

[2] ARM 24.5.337.

[3] Mont. Code Ann. § 39-71-107 (emphasis added).

[4] Mont. Code Ann. § 39-71-116(11).

amount of benefits due a claimant during the period of delay or refusal to pay, when:

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.

(2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(3) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.[5]

Contract Law

¶ 15 Settlement agreements are contracts governed by ordinary contract principles. Montana law distinguishes material from non-material breach. A non-material breach does not excuse performance and generally entitles the injured party only to damages upon proof of actual loss.[6]

PRIOR PROCEEDINGS

¶ 16 Petitioner's original motion raised two issues: whether Mont. Code Ann. § 39-71-107(7)(b) applied to a court order and whether Respondent acted unreasonably. Both issues were briefed, argued, and denied. Petitioner waived claims under Mont. Code Ann. §§ 39-71-611 and -612 during oral argument.

¶ 17 Petitioner then filed a motion for reconsideration raising five issues, including new constitutional arguments not presented below.

ISSUES PRESENTED ON RECONSIDERATION

¶ 18 Does Mont. Code Ann. § 39-71-107 apply beyond its plain language to court-ordered settlements?

¶ 19 Did Respondent act unreasonably under Mont. Code Ann. § 39-71-2907?

¶ 20 Does refusal to adopt rules governing an administrative proceeding in a court order violate equal protection?

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[5] Mont. Code Ann. § 39-71-2907.

[6] *Murphy v. The Home Depot*, 2012 MT 23, ¶ 8, 364 Mont. 27, 270 P.3d 72; *Dambrowski v. Champion Int'l Corp*., 2003 MT 233, ¶ 9, 317 Mont. 218, 76 P.3d 1080 (recognizing that settlement agreements are contracts subject to ordinary contract principles).

¶ 21 Does full payment of the agreed amount render the motion to compel moot?

¶ 22 Did the Court overlook material facts?

ANALYSIS

¶ 23 Issue 1: Applicability of Mont. Code Ann. § 39-71-107.

¶ 24 Mont. Code Ann. § 39-71-107(7)(b) applies only to Department-approved settlements. The Legislature expressly distinguished Department orders from court orders within the same statute. This Court is not the Department, and vice versa. Extending § -107 to court orders would eliminate party autonomy, undermine judicial discretion, and contradict plain statutory language.

¶ 25 A Court's obligation is clear, "we are 'to ascertain and declare what is in terms or in substance contained [in the statute], not to insert what has been omitted or to omit what has been inserted.' " [7]

¶ 26 This statutory subsection, by its plain language, applies to Department-approved settlement agreements.

> **39-71-107. Insurers to act promptly on claims -- in-state claims examiners -- third-party agents -- penalties.** . . .
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> **. . .**
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> (7) An insurer shall:
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> . . .
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> (b) pay settlements within 30 days of the date the department issues an order approving the settlement.[8]

¶ 27 Later in the statute, under (10)(a), the statute speaks to both Department approved or court ordered settlements. The Legislature drew a clear distinction here between two different processes. The Legislature acknowledged, in subsections to the same statute, there are two distinct and separate entities involved in this process. It is significant the Legislature did not require that "settled claims" be paid within 30 days, but only Department approved settlement agreements.

¶ 28 It seems reasonable that when the Legislature used the term "Department" and specifically defined the term "Department," that it actually meant the Department, and did not provide for an expansion of the meaning of the language to also include "other adjudicating bodies." When the words of a statute are clear on their face, there is no reason, and it is indeed improper, to look beyond the plain language of the statute.[9]

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[7] *State v. Running Wolf*, 2020 MT 24, ¶ 15, 398 Mont. 403, 457 P.3d 218 (alteration in original) (citing *State v. Gatts*, 279 Mont. 42, 47, 928 P.2d 114, 117 (1996) (quoting § 1-2-101, MCA).

[8] Mont. Code Ann. § 39-71-107(7)(b).

[9] *State v. Heath*, 2004 MT 126, ¶¶ 24, 25, 321 Mont. 280, 90 P.3d 426 (citing *S.L.H. v. State Comp. Mut. Ins. Fund*, 2000 MT 362, ¶ 16, 303 Mont. 364, 15 P.3d 948; *Western Energy Co. v. Dept. of Revenue*, 1999 MT 289, ¶ 11, 297 Mont. 55, 990 P.2d 767.)

¶ 29 Petitioner relies on Mont. Code Ann. § 39-71-107(7)(b) to argue the settlement proceeds were due in 30 days.

¶ 30 However, the application of Mont. Code Ann. § 39-71-107(7)(b) requires that there first be a Department order. There is none. This section does not apply.

¶ 31 Petitioner's analysis, if adopted, would remove the ability of the parties, and the Court, to structure settlement agreements appropriate to each unique case.

¶ 32 Petitioner seeks to extend the statute controlling compliance with a Department order to control over Court orders. To do so would remove the ability of parties to agree to mutually acceptable timelines, and would prevent the Court from ordering shorter or longer timelines as necessary to meet the specific presentation of any given case. This is outside of, and contrary to, the plain language of the statute under discussion. The Court denied Petitioner's claim on this basis.

¶ 33 Petitioner seeks to have this language interpreted and applied beyond its statutory text, creating an immutable rule controlling over the agreement between the parties and the order of the Court. If Petitioner's argument were adopted, parties to a court proceeding would not be allowed to agree to timelines longer or shorter than the 30 days stated in Mont. Code Ann. § 39-71-107. Likewise, Court orders which did not precisely adopt -107 would be *per se* unreasonable.

¶ 34 The parties stipulated to, requested, and received, a Court order setting forth the terms of resolution of the dispute.

¶ 35 They did not proceed in an administrative path before the Department, with its associated administrative framework. One party cannot now argue that the regulatory framework for the administrative process supersedes and controls over a court order in a judicial proceeding that he voluntarily chose and stipulated to.

¶ 36 The settlement agreement became a court order when the parties jointly requested the Court adopt the agreement into its order.

¶ 37 At that point, violation of the terms of the settlement agreement was not subject to administrative action and statutory penalties. At that point non-compliance with the agreement became violation of a court order. The remedy for Petitioner at that time would be a motion to compel, and possibly a motion for sanctions for contempt of court. This is, in fact, exactly the path followed by Petitioner when he moved to compel compliance with the settlement agreement.

¶ 38 Once the settlement was incorporated into a court order, enforcement fell under Mont. Code. Ann. § 39-71-2907 and the Court's contempt powers — not administrative penalties. Petitioner offers no controlling authority justifying departure from this conclusion.

¶ 39 Issue 2: Unreasonable Delay.

¶ 40 Unreasonable delay is a question of fact. “Unreasonable delay is a question of fact to be determined by the trier of fact; we will not reverse the Workers' Compensation Court's decision on awarding a penalty if the decision is supported by substantial credible evidence.”[10]

¶ 41 As the moving party, Petitioner had the burden of proof. Petitioner presented no evidence — no witnesses, no expert testimony, no industry standards, no mail-transit data — supporting a finding of unreasonableness. In short, not a scintilla of evidence was presented on which the Court could make a determination of unreasonable behavior.

¶ 42 Respondent mailed the check eight days before the deadline. The fact that the check arrived late does not establish unreasonable conduct. This is a classic *post hoc* fallacy. A party may act reasonably and still experience an undesirable outcome.

¶ 43 To meet his burden of proof, Petitioner seeks to incorporate the timelines set forth in Mont. Code Ann. § 39-71-107(7)(b) to establish the standard by which unreasonable conduct will be measured. As discussed above, this is a specific requirement applying to a different procedural path. There was no evidence that this establishes the standard of care nor that this is the custom and practice in the industry.

¶ 44 The parties both invite the Court to take judicial notice (reaching completely different conclusions) of usual mail transit times, routine delivery times, and, by inference, what timelines reasonable persons rely upon when conducting business by mail.

¶ 45 What is missing is any evidence in support of either parties’ position. Arguments of counsel are not evidence. No witness testified as to what is, or is not, reasonable in mailing settlement checks. The Court does not find this fact to be within common knowledge, and the Court does not possess any expertise here that would allow it to determine what is reasonable in this area.

¶ 46 Respondent did establish the payment check was requested 13 days prior to the deadline, and mailed 8 days prior to the deadline. This would have been strong rebuttal evidence to the Petitioner’s unsupported claim of unreasonable, but, without contrary evidence, it stands unchallenged, and is compelling.

¶ 47 Arguments of counsel are not evidence. Without factual support, the Petitioner fails to meet his burden, and the Court cannot find a violation of Mont. Code Ann. § 39-71-2907.

¶ 48 Issue 3: Equal Protection.

¶ 49 This issue was not raised in the original motion and cannot be raised for the first time on reconsideration. "As a result, where, as here, new theories are argued under the

[10] *Field v. Sears, Roebuck & Co*., 257 Mont 81, 86, 847 P.2d 306, 310 (*rev’d on other grounds* in *Madill v. State Comp. Ins. Fund*, 280 Mont 450, 462, 930 P.2d 665, 672).

auspices of a motion for reconsideration and ignored by the district court, we will not construe them as properly pled before the district court."[11]

¶ 50 Petitioner now seeks, through the procedural step of a motion for reconsideration, to take a second bite of the apple, and argue new legal theories which would entitle him to relief. This is not proper under a motion for reconsideration. This is fatal to Petitioner's argument.

¶ 51 Even if this issue were properly before the Court, the argument would still fail.

¶ 52 Equal protection analysis in Montana requires a three-step analysis.[12] First, the classes involved must be identified and a determination made whether they are similarly situated. Second, the Court must determine the appropriate level of scrutiny to apply to the challenged legislation.[13] The third step is to apply the level of scrutiny to the classes receiving disparate treatment.[14] In the context of Workers Compensation, the State must show a rational basis for the distinction.[15]

¶ 53 Step 1: What are the classes at issue?

¶ 54 The classes at issue here are, first, petitioners who proceed before the Department, reach a settlement, and have that settlement reviewed and adopted by the Department. The second class consists of parties who elect to proceed before the Court, and obtain a court order resolving their dispute. These classes are not similarly situated. In electing to proceed before the Department the parties follow a specific set of rules, timelines and procedure.

¶ 55 In *Henry v. State Compensation Ins. Fund*,[16] a worker was forced to proceed under the Occupational Disease Act (ODA), and was not allowed to proceed under the Workers' Compensation Act, thereby precluding the remedy of rehabilitation benefits. The classes at issue were workers injured on a single shift, versus workers who were injured on two work shifts.[17] The Court found these classes were similarly situated.[18] The *Henry* court concluded:

> In this case, the issue is whether the elimination of workers suffering occupational diseases from the classification of injured workers having access to rehabilitation benefits bears a rational relationship to the

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[11] *Martz v. Beneficial Mont., Inc*., 2006 MT 94, ¶ 24, 332 Mont. 93, 135 P.3d 790.

[12] *Satterlee v. Lumberman's Mut. Cas. Co*., 2009 MT 368, ¶ 15, 353 Mont. 265, 222 P.3d 566.

[13] 353 Mont. at 272, 222 P.3d at 571.

[14] 353 Mont. at 273, 222 P.3d at 572.

[15] *Id*.

[16] *Henry*, 1999 MT 126, ¶ 21, 294 Mont. 449, 982 P.2d 456.

[17] *Id*. at ¶ 21.

[18] *Id*. at ¶ 28.

> legitimate governmental objective of returning workers to work as soon as possible. The inescapable answer is that it does not.[19]

¶ 56 The instant case is very different. Here the Petitioner had the option to proceed before an administrative agency, or to proceed before the Court. The Petitioner did proceed before the Court, in fact filed a stipulated settlement with the Court, and received a Court order resolving the case. These two paths do not involve similarly situated petitioners, and the Petitioner was in fact free to choose which class he wanted to belong in. The Petitioner chose his remedy; the State did not impose it on him.

¶ 57 In choosing to proceed before the Court, the parties follow a different path with different rules, timelines, and procedures.

¶ 58 Parties proceeding before the Department and parties proceeding before the Court are not similarly situated.

¶ 59 Step 2: What test is applied?

¶ 60 It is well established in Montana law that the rational basis test applies to classifications made in the context of the workers' compensation system.[20]

¶ 61 Step 3: Does the Legislature have a rational basis for making this distinction?

¶ 62 There are two different paths a petitioner may choose in seeking resolution. One is before an administrative agency with specific timelines, requirements, process, and procedure. The second path is before the Workers' Compensation Court, also with its own specific timelines, requirements, process, and procedure. It is important to note the choice of path lies solely in the discretion of the petitioner.

¶ 63 Neither path is inherently better or worse for the Petitioner, they are just different. In choosing to proceed before the Court, Petitioner's remedy for late payment was to show unreasonable conduct by the Respondent, and thus securing a remedy specifically provided by statute; a remedy that does not appear available to the Petitioner if he had chosen the administrative path to resolution.

¶ 64 The Legislature granted authority to the Department to enforce settlement agreements in proceedings before it.

¶ 65 The Legislature separately granted the Court broad authority to control proceedings before it, and granted the Court, in its discretion, the ability to impose penalties if it finds unreasonable behavior. Penalties imposed by the Court could be less than or could be more than those in a Department proceeding, depending on the specific facts of the case.

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[19] *Id.* at ¶ 38.

[20] *Id.* at ¶ 29.

¶ 66 Giving the adjudicating body the authority to manage the proceedings before it is certainly a rational thing to do.

¶ 67 Different procedural paths carry different remedies for violation of the process. Rational basis review applies, and the statutory distinction bears a rational relationship to legitimate governmental interests. Petitioner's equal protection rights were not violated.

¶ 68 Issue 4: Mootness.

¶ 69 The settlement proceeds have been paid and accepted. The Court cannot compel an act already completed. While penalties for unreasonable conduct may be considered under Mont. Code Ann. § 39-71-2907, the act of payment is complete, and the motion to compel payment is moot.

¶ 70 Issue 5: Alleged Overlooked Facts.

¶ 71 The Court did not overlook material facts. Email exchanges between counsel do not modify a court order. Allegations regarding claims examiner certification are immaterial to the ultimate factual issue: whether the payment timeline was unreasonable.

¶ 72 Petitioner sought to introduce emails potentially to support a modification of the agreement between the parties. The controlling agreement was a Court order. Correspondence between counsel for one party and, curiously ex parte with an employee of a represented party, cannot, by itself, modify a court order.

CONCLUSION

¶ 73 Petitioner failed to meet the standard for reconsideration. Petitioner failed to meet the burden of proof on unreasonable delay. Statutory and contractual principles support the Court's prior ruling.

¶ 74 IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration is DENIED.

DATED this 6th day of March, 2026.

/s/ Lee Bruner
Judge Lee Bruner

c: Eric Rasmusson
Steven W. Jennings