Montana Law Week

THE WEEKLY DIGEST OF MONTANA LAW

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Contents

Supreme Court - Civil

PROBATE: Girlfriend did not exceed POA when she transferred dying boyfriend's money... boyfriend had capacity to enter valid deathbed marriage and to create and amend a valid unwitnessed will (placing burden to prove lack of intent or capacity on contestants harmless error)... Townsend affirmed.

Kimberly Smith and Dan Cook dated throughout high school in Missoula. He moved to Billings and operated a heating & air conditioning business, and she married and moved to Tennessee. They stayed in touch and resumed their relationship in 1999. He closed his business in 10/00 and moved to Tennessee. They moved to Missoula in 2001. They occasionally discussed marriage but did not mingle assets. He was diagnosed with cancer in 1/16. Kim testified that they then began discussing end-of-life issues and trusts and wills. On 2/17, after a PET scan, Dan learned that his disease was incurable with a life expectancy of 2 weeks to 2 months. As of 2/23/16 his assets included a First Security Bank checking account naming his father Wilfred as pay-on-death beneficiary, a money market account naming his father, mother Bernice, and brother Terry as pay-on-death beneficiaries, a medical savings account naming no beneficiaries, a health savings account, a MetLife Annuity, an SG Long account naming his father as beneficiary, an Allianz Variable Annuity, and a TD Ameritrade account. His father died in 2015. In 2/16 Kim began preparing a power of attorney, will, and trust for Dan, using her own will, her mother's will and trust documents, and templates found online. She testified that she and Dan discussed them while she worked on them and they intended to review them with a lawyer but "ran out of time." On 2/22/16 Dan signed papers to move his Ameritrade account to his SG Long account. On 2/24 he signed a durable power of attorney, last will & testament, and revocable living trust. His will was a "pour over," putting everything in the trust upon his death. Kim was named PR. The will was not signed by 2 witnesses. Dan was named primary trustee while competent, with Kim as trustee upon his death or incapacity. The trust named Bernice, Kim, Terry, and Dan's brother James beneficiaries. Bernice was to receive $3,000/mo to allow her to live in her home. Jim was to receive $50,000. Terry was to receive $250,000. Kim was to receive $300,000 plus monthly dividends and interest earned by the trust at her discretion. Kim and her sister Michelle Barthelmess were present when Dan signed the will, trust, and POA about 3:30 p.m. Kim testified that she checked at the hospital for a notary but none was available, so she called Michelle, who notarized the documents. Michelle testified that Dan was upright in bed and Kim showed each document to him and described it. They discussed the trust before he signed it. He signed a document, Michelle notarized it, and they moved to the next one. Kim testified that Dan was in a serious mood and knew what he was signing. Michelle testified that Kim was not pressuring him to sign documents and if anything, Dan was pressuring Kim to get things done.

Other friends of Dan who had spent time with him during his final days testified that he was not confused, he knew who his family was and what he wanted after he died, and he did not appear pressured in any way. Many testified that he was not the kind of guy you could push around. Michelle testified that Kim emailed her the evening of 3/4 to bring an amendment to Dan's trust as soon as possible because he was "really worried about getting this amendment done" and signed. Michelle printed it the next morning, brought it to the house, and Dan signed it. The amendment changed Terry's distribution from $250,000 upon Dan's death to $50,000 outright and the remaining $200,000 only if he sold or closed his store within 18 months of Dan's death. Kim, Bernice, and Jim were present later that day at a meeting where Dan discussed his wishes. Bernice testified that he could not really converse, did not look alert, and did not know what was happening. Terry arrived the next day. Kim testified that Dan was not confused and was engaged with Terry. Terry and Dan argued. Terry testified that Dan was "out of it" and not able to communicate well. Kim explained the trust to Terry. According to Terry, Dan was not participating in the discussion. On 3/6 Dan asked Kim to marry him. She testified that they had been talking about marrying for a few days. That afternoon Dan's best friend Mike arrived. He testified that Dan was talkative and coherent. Dan told Mike that he wanted to marry Kim and they discussed things he wanted Mike to have when he died.

Also on 3/6, Pastor John Daniels met with Dan and Kim and discussed the marriage. He testified that Dan was aware that his death was impending. Arrangements were made for

Daniels to come again in a day or two to perform the ceremony. Kim obtained a marriage license application 3/7. Dan signed it and Michelle notarized it. Mike testified that he saw Dan sign the application and he was not pressured. Missoula Co. Clerk of Court Shirley Faust testified that the license was issued 3/7. She testified that both parties do not need to be present before the clerk to apply for a license and that clerks ask the applicant if they are under the influence of liquor or drugs. If one party does not appear, the non-appearing party attests to the answers typed on the application. Pastor Daniels returned to the house 3/7. Although Dan was initially not alert or awake enough to participate in the ceremony, he awoke after a short time and Daniels felt that he had the capacity to enter into a marriage. He performed a ceremony that required a formal inquiry and affirmation or declination. Dan responded to the questions, but Daniels did not recall if he verbally answered or gestured, but "my sense was clearly he was saying 'yes.'" He testified that if he had seen indications that Dan was confused or not of sound mind he would not have married them. Mike testified that while Dan's responses were short, they indicated agreement and he fully understood what was happening and wanted to participate.

Dan died 3/8 at age 61. Terry filed a petition for formal probate of will and appointment of himself as PR. He disputed validity of the marriage, will, trust, and revised trust on the grounds that Dan lacked mental capacity. Kim petitioned for appointment as PR, alleging that under the will, all of Dan's assets are devised to the trust and that she was his surviving spouse and named PR in the will.

Judge Townsend held a bench trial. Family physician Eric Kress testified on behalf of Bernice and James (Cooks) based on the medical records. He estimated that Dan's illness would make it difficult to make complicated medical decisions and likely would have made him susceptible to undue influence, and that the meds he was given can cause confusion, disorientation, sleepiness, and susceptibility to undue influence. He opined that the notations "oriented times 4" were likely the result of clicking a box in a computerized form, which he did not view as persuasive evidence of a proper assessment. However, he agreed that Dan's mental status was not tested conclusively and there was material in the records that could support a finding of competency. He added that people in an end stage could go in and out of lucidity and agreed that information about Dan's mental status could be provided by friends and family who saw him while he was in the hospital and hospice.

William Stratford testified on behalf of Kim based on the records, opining that Dan was competent to execute a will and trust 2/24 because he understood "the nature and quality of his bounty and where he wanted it to go." He believed that Dan was competent and had the capacity to understand his assets and where he wanted them distributed on 3/5 when he signed the trust amendment. Based on his interviews of Daniels and persons at the wedding, Stratford believed that Dan knew "what he was doing, which was getting married." He testified that Dan's meds were prescribed at a reasonable, normal dose and not expected to change his mental status.

Townsend held that Dan was competent to give Kim power of attorney and that she did not exceed its authority; Dan had testamentary capacity when he signed his will, trust, and trust amendment; his will was not formally witnessed but there was clear & convincing evidence that he intended it to constitute his will; he was not subjected to specific acts of undue influence; and he consented to marriage. She ordered that his will be confirmed and admitted to probate and that Kim be appointed PR. Cooks appeal.

Townsend did not err in finding that Kim did not abuse her powers under the POA. Cooks argue that Townsend impermissibly ratified Kim's POA without addressing Montana law prohibiting agents from using POAs for personal benefit unless expressly prescribed. They claim that Dan signed a POA naming Kim the agent under a "general grant," but did not provide authority to transfer his assets for her benefit while he lived or appeared competent. They maintain that Townsend ignored Kim's alleged self-dealing, claiming that she improperly used Dan's POA for her benefit by issuing a check for $150,051 from his checking account and depositing it into his SG account, which she managed and of which she was primary beneficiary. She also used the POA when signing a letter for wire transfer of $30,000 from Dan's SG account to her individual account. They argue that the POA does not allow her to personally benefit from its use. However, the POA did not prohibit or limit her authority. It states:

> My agent(s) has the power to exercise or perform any act, power, duty, right, or obligation for whatever that I now have or may hereafter acquire relating to *any* person, matter, or transaction.... I grant to my agent full power and authority to do everything necessary in exercising any of the powers herein granted as fully as I might do if personally present ... hereby ratifying and confirming all that my agent shall lawfully do or cause to be done by virtue of this power of attorney and the powers granted herein. (Emphasis added.)

§72-31-352 provides that "an agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent." The POA expressly authorized Kim to exercise any power which Dan possessed, relating to "any person." Her transfer of $150,051 to his RBC account was made in his name and did not specifically benefit her. The $30,000 transfer to her personal account did benefit her, but Dan approved it as a gift. The POA does not prohibit her personal benefit from its use, and she testified that she always received authorization from Dan prior to any transfers. (Cooks argue that evidence as to Dan's wishes are inadmissible hearsay, but they did not object at trial).

Cooks argue that Townsend erred in concluding that Kim and Dan entered into a valid marriage, claiming that he did not have the capacity because he was intoxicated by drugs. §40-1-402(1)(a). However, 402(2) goes on to provide that "a declaration of invalidity under subsections (1)(a) through (1)(c) ... may not be sought after the death of either party to the marriage." Terry did not challenge the marriage until 6/14/16 when he filed his petition for probate. Cooks argue that applying this subsection would be against public policy in strengthening and preserving

integrity of marriage, but we interpret a statute according to its plain meaning. §1-2-102. (Even if the bar did not apply, their argument that Dan did not have capacity to enter the marriage is undermined by the testimony of Daniels, Stratford, and others which they failed to overcome.)

A will must be in writing, signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction, and signed by last least 2 individuals. §72-2-522. A testator generally enjoys a presumption of mental competence when a will is admitted to probate pursuant to §522. Upon admission of a duly executed will, "contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation." §72-3-310. However, even if a will does not satisfy the 3 elements, §72-2-523 provides:

> Although a document or writing added upon a document was not executed in compliance with 72-2-522, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:
> (1) the decedent's will;
> (2) a partial or complete revocation of the will;
> (3) an addition to or an alteration of the will; or
> (4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

§523 applies because the will was not signed or witnessed by 2 individuals. "No presumption that the decedent was competent to execute a will exists where §72-2-523 applies." *Brooks* (Mont. 1996). The burden to prove capacity shifts to the proponent of the will. Cooks are correct that Townsend improperly shifted the burden to them to prove that Dan lacked capacity to execute the will. She found that "contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation" and that "the presumption is that the donor was competent and of sound mind and undue influence or incompetence must be proven like any other fact," and that "Terry has not carried his burden of proof as to undue influence, lack of testamentary capacity, invalidity of marriage or other grounds for invalidating Dan's Will." She failed to recognize that the burden to prove lack of testamentary intent or capacity shifts when §523 applies. However, her incorrect interpretation does not require reversal, as Cooks urge. The evidence at trial -- including testimony of Kim, Michelle, Stratford, and witnesses who visited Dan, describing him as alert, coherent, and understanding what was happening -- was sufficient to allow Kim to carry her burden of showing that he had the mental capacity to enter the will when he first executed it 2/24 and when he amended it 3/5. Cooks' only evidence to the contrary is testimony of Kress, who did not meet with Dan or interview those who had, and Terry's testimony, which Townsend found unreliable due to its conflict with his deposition. Any error by Townsend was harmless.

McGrath, Shea, Baker, Gustafson, Sandefur.
***Estate of Cook,* DA 19-525, 9/22/20.**

Robert Terrazas & Dana Henkel (Terrazas Henkel), Missoula, for Cooks; Donald Snavely (Snavely Law Firm), Missoula, for Kim.

COS MANDAMUS: No duty to record a COS bearing a certification of exemption from sanitary review for which subdivider was not approved, mandamus petition properly dismissed... Vannatta affirmed.

John Richards applied for a Boundary Line Relocation exemption to the Subdivision & Platting Act from Missoula Co. Community and Planning Services. Although the division would contain entirely new lot lines, the number of new lots would remain the same. Richards indicated that the intended use was "residential" and the purpose was to "to create five building parcels that comply with growth policy." The request was approved at a 5/9/19 public meeting. Richards also sought an exemption to the Sanitation Act. He raised ARM 17.36.605(2)(a) (2014) which allows parcels where "no facilities will be constructed" to be exempted from Sanitation Act review. On 5/14, Civil Chief Dep. Co. Atty. Anna Conley responded via email to a question from Richards's counsel regarding the County's position on the division. She replied that "the plain language of that exception makes it clear that it is not applicable here" because "it is undisputed that Mr. Richards intends to pursue residential development." She noted that one of the reasons for sanitation review was consumer protection, "ensuring subsequent purchasers of the divided lots are aware of septic options on the lots." CAPS wrote Richards 5/17/19 confirming that he had been approved for the Boundary Line Relocation exception. The letter, which was also sent to Clerk & Recorder Tyler Gernant, went on to state that "this approval only entitles the applicant to the Subdivision and Platting Act exemption(s) noted above." Under the "Agency Comment" section, it stated that the "Missoula City County Health Department commented that the project will require sanitation review or the citation of a qualifying exemption per 76-4 MCA" and:

> All exempt divisions of land are subject to DEQ review of parcels less than 20 acres, unless shown to be exempt from review under Title 76, Chapter 4. The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of §76-4-122(2). The landowner is responsible for obtaining necessary sanitation approvals.

In a 7/5/19 email, Daniel Fultz at the Health Dept. also informed Richards's consultants that his division was subject to sanitation review and noted that Richards had

> asserted, at a meeting, that he has email correspondence with DEQ staff that provides language to place on the survey, so that it is not subject to sanitation review. As you are all aware, our normal process and requirement is that any exemption language is included on the face of the survey, and that most exemptions are required to have an approval letter from our office. I'm unsure of what MCA he was referring to as he did not want to provide it. He also stated that he would not provide any correspondence from DEQ.

A 7/11/19 email from County Health to Richards's consultants stated that "17.36.605(2)(a) is not an appropriate exemption citation for the tracts. The owner has indicated that the intention is to develop them, most likely with residential homes. That will require installation of sanitary facilities." It went on:

> Before the Department certifies (by signing the survey) that this boundary line relocation complies with the Act, each proposed tract will have to gain sanitation approval, or an applicable exemption must be cited on the survey. The Clerk and Recorder is not allowed to file surveys that do not comply with the Sanitation Act (see MCA 76-4-122).

Richards's consultants responded: "Clearly we (Eli) anticipated this response. We were citing that exemption purely upon the request of our client. Thanks for the thorough response, hopefully it clarifies some things for [Richards]." In a follow up email, County Health provided examples of uses that might qualify under the exemption, such as park, pasture, conserved land, open space, and property entirely within a floodplain. It also reminded that the exemption "cannot be used to evade the Sanitation Act."

Richards attempted to record a COS of his proposed division with Gernant's office with the following language affixed:

> I further certify that [the tracts] are exempt from sanitation review by the Department of Environmental Quality under the provisions of ARM 17.36.605(2)(a), to wit: "A parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel."

The COS was not signed by County Health. Gernant's office relies on a County Health signature to ensure truthfulness and accuracy of the claimed exemptions from sanitation review. The checklist for recording a COS contains a line for "City-County Health Department" and "Certificate of Approval" to be initialed by the relevant official when approved. These lines were not initialed for Richards's COS and Gernant's office did not record the COS.

Richards petitioned 8/26/19 for mandamus to compel Gernant to record his COS. Judge Vannatta ordered that Gernant record the COS or show cause for failing to do so. Gernant moved to dismiss. Richards argued that his COS complied with instruction in a 5/29/19 email from James Kujawa of DEQ. The exhibit contained what appears to be a forwarded email from Kujawa, apparently part of the correspondence with DEQ that Richards had previously alluded to in communications with County Health. He pointed to language in the email citing ARM 17.36.605(2) (2014) as the rule "for placing the sanitary restrictions on the lots" and stating that "what must be written on the COS" is language certifying that the tracts are exempt from Sanitation Act review, thereby "placing a sanitary restriction on the lot or lots, that will have to be removed at some time in the future." He claimed that because he had placed such certifying language on his COS, he had complied with DEQ instructions and was entitled to have his COS recorded. The County responded that the email exhibit was accompanied by no foundation, did not show the inquiry to which Kujawa was responding, and failed to show that Richards was entitled to claim any such exemption. The email text consists of several block quotes of legal provisions, separated by minimal explanation by Kujawa. The text begins abruptly, without greeting, and the exhibit is not accompanied by an affidavit attesting that the exhibit is a true, correct, or complete copy of the original message.

Richards's sur reply contested characterization of the certifying language on his COS as "false," arguing that he

> has certified that he does not plan to build anything on any of the parcels. He acknowledges that, at such time that a subsequent purchaser may wish to build on a recorded parcel, however, that purchaser will be required to obtain their own sanitary review if and when such an event occurs.

Following argument, Vannatta dismissed the mandamus petition, finding that Gernant was not under a clear non-discretionary legal duty to record Richards's COS. Richards appeals.

Richards does not explain how his supposed compliance with what he claims were "instructions" in the Kujawa email is relevant. His legal duties are governed by Montana law, which is not affected by this email. Nothing in the email suggests that his proposed division had been reviewed by the appropriate authority or approved for an exemption under ARM 17.36.605-(2). In fact, its text makes no mention of his specific tracts but only some general statements about the review process, citing various legal provisions. Further, without foundation its evidentiary value is minimal. His attempt to rely on this vague communication -- shared for the first time in litigation -- after repeated and detailed explanation by the reviewing authority that he was not entitled to the exemption, rings hollow.

His 2nd argument seems to be that because he affixed to his COS language certifying that the tracts are exempt from sanitation review by DEQ, he has complied with §76-4-122(2) requirements such that Gernant should be compelled to record the COS. However, the Legislature cannot plausibly have intended §76-4-122(2) to impose a clear legal duty on a clerk to record a COS bearing a "certification" that the subdivision is exempt when the reviewing authority has made clear that it is not and has therefore declined to issue an approval. The Clerk & Recorder's Office relies on the signature of County Health on a COS to ensure the truth and accuracy of sanitation review exemptions. Pursuant to Resolution 2016-004, Gernant's office must verify that all required signatures have been obtained and notarized and confirm that a COS is accompanied by a checklist with the initials of officials from each approving department listed. This procedure allowed Gernant to determine that Richards's COS did not contain a truthful and accurate certification of exemption from Sanitation Act review.

Because Richards has not shown that Gernant was under a clear legal duty to record a COS bearing a certification of exemption from sanitary review for which he was not approved, Vannatta correctly dismissed his mandamus petition.

McGrath, Sandefur, Baker, Gustafson, Shea.

***Richards v. Missoula Co. Clerk & Recorder Gernant,* DA 19-723, 9/22/20.**

Shandor Badaruddin (Moriarity & Badaruddin), Missoula, for Richards; Missoula Co. Civil Chief Dep. Anna Conley.

SOLAR POWER: PSC's determinations as to 80 MW solar project arbitrary & unlawful... Manley affirmed.

The PSC and NWE appeal Judge Manley's order reversing and remanding PSC's order setting terms & conditions of MTSUN's proposed 80 MW solar project near Billings.

It is indisputable that PSC's methodologies combined with the reduced contract length had the effect of discouraging development of MTSUN's "qualifying facility" (one between 3 and 80 MW), which is contrary to PURPA. It is clear that at nearly every step of setting terms of MTSUN's PPA, PSC chose arbitrary and unlawful methodologies that resulted in deflating the economic feasibility of the project. Thus Manley did not err in concluding that PSC's determinations were arbitrary and unlawful. Manley relied on record evidence in determining existence of a legally enforceable agreement and the avoided-cost rates. He did not engage in impermissible rate setting. His decision is affirmed and MTSUN is entitled to the rates and contract terms set forth in this Opinion.

McGrath, Shea, Gustafson, Sandefur, Baker.

Rice and McKinnon specially concurred: While the legal issues are different than in *Vote Solar* (Mont. 2020), there is significant overlap in the records that require that we join the Court's ultimate outcome as a matter of stare decisis.

***MTSUN v. PSC and NWE,* DA 19-363, 9/22/20.**

Michael Uda & Christine McMurry (Uda Law Firm), Helena, for MTSUN; Zachary Rogala, Luke Casey, and Justin Kraske (PSC); Ann Hill (NWE).

ELECTIONS: Montana Green Party properly excluded from ballot because it was not associated with signature gathering by Republican Party... Reynolds affirmed (other grounds).

Petition circulators began collecting signatures in 1/20 to qualify the Montana Green Party to hold a primary election to select nominees and obtain ballot access in the 2020 general election. Montana Green Party leaders disclaimed the petition. It was unclear who was organizing and funding the signature gathering. The Montana Democratic Party reached out to signers encouraging them to withdraw their signatures. Some 150 signers asked to be removed. The SOS announced 3/6 that the Montana Green Party had qualified for the primary. Shortly before the primary, Montana Green Party leaders disclaimed the candidates running under its banner. News reports 3/24 broadcast that the petition had been organized by the Montana Republican Party, contracting with Advance Micro Targeting. The expenditure was credited on disclosures as an in-kind contribution to "Montanans for Conservation," which filed as an independent committee rather than a minor party qualification committee pursuant to §13-37-602. It was not changed to a minor party qualification committee until 3/23. The MRP is the sole contributor to Montanans for Conservation. After these news reports, the MDP redoubled its efforts to contact petition signers and hundreds requested to withdraw. The SOS declined to honor requests submitted after 3/6. The MDP and 4 signers sued for an injunction against the petition. Judge Reynolds issued the injunction. The SOS appeals.

Although a minor political party committee may expend funds and time in an effort to qualify a minor party for primary elections using a minor party petition, that petition must be presented by the political party seeking to nominate its candidates through a primary election pursuant to §13-10-601(2)(a). The record established that the Montana Green Party did not authorize Montanans for Conservation to present the petition to election administrators on its behalf.

"We will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason." *Talbot* (Mont. 2016). "If the boundaries of our opinions were circumscribed by the inadequacies of the briefs submitted on appeal, then in many cases we would be issuing opinions that set bad precedent and confuse, rather than clarify, the law." *Leichtfuss* (Mont. 2005). "The Court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *US National Bank of Oregon* (US 1993). It is abundantly clear from the record and briefing that the Montana Green Party was not in any way associated with gathering signatures or presenting the petition to election administrators. Quite simply, an unauthorized political party or entity cannot present a petition to require a different political party to put the different party's candidates on the ballot. Reynolds's injunction against giving effect to the petition is affirmed.

Gustafson, McGrath, McKinnon, Shea, Sandefur.

Baker and Rice dissented: The Majority does not address the questions presented on appeal, Plaintiffs' responses to the SOS's arguments, or Reynolds's findings & conclusions, concluding instead that the petition effort was void from the get-go because the Montana Green Party was not behind it. The principle it relies on -- that this Court may affirm a trial court if it reached the right result for the wrong reason -- does not displace the principle that we will not decide an issue not raised before the trial court or briefed on appeal. But addressing the case on the issues and arguments presented, we would reverse Reynolds.

***Montana Democratic Party et al v. SOS Stapleton,* DA 20-396, 9/23/20.**

Peter Michael Meloy (Meloy Law Firm), Helena, and Matthew Gordon (Perkins Coie), Seattle, for Plaintiffs; Matthew Meade (Smith Oblander & Meade), Great Falls, and Chief SOS Legal Counsel Austin James for the SOS; Anita Milanovich (Milanovich Law), Butte, and Emily Jones & Talia Damrow (Jones Law Firm), Billings, for Amicus MRP; Chris Gallus (Gallus Law), Helena, and Edward Greim (Graves Garrett), Kansas City, for Amici petition signers Lorrie Campbell and Jill Loven in support of allowing the Green Party to remain on the ballot.

MARITAL: District Court has jurisdiction over contempt issues and continuing jurisdiction over property issues in protracted post-decree assets/debts allocation dispute... Eddy affirmed (IOR I-3(c)).

Todd and Aimee Schmidt married in 2002. He petitioned for divorce in 2010. Judge Lympus issued a decree in 10/12. Aimee appealed. *Schmidt* (Mont. 2014) affirmed and remanded for correction of a clerical error in retirement benefits. An amended decree was issued 10/16/14 requiring Aimee to make a $34,023 equalization payment to Todd and return certain personal property. Aimee appeals.

Todd asserts that Aimee's appeal should be dismissed without consideration of the merits under the unclean hands doctrine at §1-3-208 which provides that one may not take advantage of one's own wrongs -- that one who seeks equity must do equity. We agree. Aimee has exhibited an extraordinary refusal to recognize the authority of the judicial system and has

both openly and tacitly refused to comply with court orders. Rather than provide Todd with the personal property allocated to him, she engaged in lying, manipulation, deceit, and ultimate refusal to comply with orders. She needlessly sought multiple "clarifications" of very clear, concise orders regarding items of personal property. She was ordered to pay the Discover credit card bill. She did not. As Todd remained liable to Discover until it was paid off, to protect his own credit he made payments on it. Rather than pay the obligation or even work with Todd to protect his credit, she complained that she does not understand how the unpaid balance continues to increase or how Todd is damaged by the funds he has expended toward the Discover obligation. Although Todd was not awarded the residence, he remained obligated on the mortgage until it was satisfied through refinancing or otherwise paid. Rather than make the mortgage payments or even work with Todd and the bank to effectuate a reasonable solution, Aimee placed Todd in an untenable position -- if he did nothing by her continued non-payment he would continue to become further indebted on the mortgage. Given her non-compliance in paying the mortgage, he had little option other than to work with First Interstate Bank to minimize deficiency on the obligation. Rather than accept her responsibility in losing her equity in the home and causing Todd to pay the bank in connection with the short sale of the home, she complained that she never wanted the residence in the first place -- continuing to not accept the judicial allocation of the estate, which was affirmed by this Court.

Aimee has failed to turn over any of the personal property awarded to Todd. She has made no payment on the property equalization judgment. She failed to pay the debts assigned to her. To avoid compliance with the amended decree, she has needlessly multiplied proceedings to where Eddy in essence found her to be a vexatious litigant and precluded her from filing additional documents without approval of the Court. We agree with Todd -- Aimee comes before this Court with unclean hands alleging that the District Court inequitably modified the decree.

While dismissal of Aimee's appeal may be justified based on her complete and utter lack of any good faith effort to comply, as well as her intentional non-compliance with the allocation of assets & debts affirmed by this Court, we also find no error by the District Court.

Aimee argues that Eddy's jurisdiction was limited to remedies for contempt -- implementing a maximum $500 fine or incarceration until she complied with the decree. However, a court has continuing jurisdiction over property disposition incident to a divorce. *Ensign* (Mont. 1987). Eddy set forth detailed findings supported by substantial evidence as to why she found Aimee in contempt. Similar to *Lee* Mont. 2000), Eddy did not exceed her jurisdiction when she found Aimee in contempt and formulated remedies designed to compensate Todd for the losses he incurred as a result of her contempt.

We are not persuaded by Aimee's argument, raised for the first time on appeal, that as Todd's motions were pled as motions for contempt and not motions to modify the judgment, Eddy was without jurisdiction to enter judgments compensating Todd for damages he sustained as a result of Aimee's failures to abide by the amended decree. Although Aimee did not preserve this issue for appeal, from our review of the record, Eddy did not modify the amended decree to reallocate more or less than 50% of the estate to either party. While Aimee had the right to dissipate the assets allocated to her and incur additional debts that she alone would be responsible to satisfy, she did not have the right to dissipate assets allocated to Todd or increase debts for which he was responsible to the debt holder. Eddy's orders were designed to effectuate equal division of assets & debts between the parties ordered in the original decree and affirmed by this Court. As Aimee wrongfully retained property belonging to Todd, Eddy correctly determined that she should pay him the value of that property. As Aimee did not pay debts allocated to her, Todd was required by the debt holders to pay them. Eddy correctly determined that Aimee should pay Todd for the amount of the debts shifted to him. It is not appropriate for Aimee to retain 50% of her civil Thrift Savings Plan retirement benefits together with all the earnings on her share accumulating since 2012 when she refused to pay Todd the $34,023 equalization payment determined by this Court. To effectuate the original 50/50 division of assets and debts affirmed by this Court, Eddy correctly reallocated Aimee's TSP by issuing an amended retirement benefits order. The evidence supports Eddy's detailed findings as to the marital assets and debts.

(Fn. We are not persuaded by Aimee's argument, again raised for the first time on appeal, that her civilian retirement account is exempt from execution. Contrary to her assertion, 5 USC 8437(e)(3) provides that a TSP is subject to execution, levy, attachment, or other legal process on an obligation to make payment to another person under 5 USC 8467, which authorizes courts to divide retirement accounts incident to a divorce. Nor are we persuaded by her argument that her retirement account is exempt from execution under §25-13-608, as she is not a judgment debtor and Todd is not a judgment creditor with respect to the reallocation of the retirement account. He is a recipient of marital asserts equitably divided between the parties.)

We are unpersuaded by Aimee's argument, raised for the first time on appeal, that interest accruing on the amounts added to the original judgment and on attorney fees exceeds the statutory rate and should be reduced. Lympus's original decree of 10/23/12 provided for 12% interest on the judgment for the equalization payment owed by Aimee. She did not appeal the rate in her first appeal, nor did she argue that Eddy erred in continuing the same rate applied to the sums added to the judgment in 2016. The fee judgment issued 2/1/17 also contained a 12% rate. Aimee did not contest or otherwise raise any objection to the rate prior to this appeal. Her contentions as to interest provided in the judgments entered to date are not properly preserved for appeal.

(Fn. Aimee also asserts that Eddy in her contempt order improperly ordered interest to be compounded monthly. We do not interpret the order to provide for monthly compounding and to the extent that an argument could be made otherwise, we do not accept it. We interpret the language to mean that interest will be calculated monthly.)

Gustafson, McKinnon, Baker, Rice.

***Marriage of Schmidt,* DA 19-654, 9/15/20.**

Megan Timm (Gravis Law), Kalispell, for Aimee; Penni Chisholm (Chisholm & Chisholm), Columbia Falls, for Todd.

Supreme Court - Criminal

DUI: Overwhelming evidence that Defendant drove into house gas line over claim of accidental rolling by failing to put car in "park," even if counsel was ineffective (he was found effective)... Eddy affirmed (IOR I-3(c)).

On the evening of 7/2/17, Trooper Fetterhoff responded to a 911 call from Valorie Churmage's son-in-law Ashley Ersland, who reported that Churmage had driven her car into the side of the house he shared with his wife, children, and Churmage (who lived in an apartment over the attached garage). He believed that the impact had severed a gas line and that Churmage was intoxicated. Fetterhoff observed damage to the gas line, gas meter box, and the front of Churmage's vehicle. Upon making contact with her he observed a strong alcohol odor, slurred speech, bloodshot eyes, and that she stumbled while walking. She performed poorly on field tests. She admitted driving home after drinking at the Rainbow Bar. She refused to consent to a blood draw, so Fetterhoff obtained a warrant, which revealed .207 BAC. She was charged with DUI. At trial in Flathead Co. Justice Court, Ersland testified that around 7:45 p.m. he was smoking a cigarette outside the house and Churmage's car was not there. He went inside and a short time later heard a thump outside his son's room and then a loud hissing. He looked out and saw Churmage's car against the house. He told his wife to get the children out because he thought the car had broken the gas line. He went into the hall that connects the house and garage and observed, through a window, Churmage sitting in the driver's seat of her car. He ran back into the house to make sure his wife and children had evacuated and then went to the car where he had to coax Churmage to join the rest of the family at a camp trailer some distance from the house. Fetterhoff testified to his observations and Churmage's BAC. Churmage testified that when she arrived home earlier that evening she had failed to secure the car in "park" and hours later when she returned to retrieve items and started back into her home she heard the hissing and turned and saw that the car had rolled off the driveway and down a slope and she thought she would back it up until she realized the hissing was a gas leak. Her primary defense was that she had been at home drinking for a couple of hours before the car hit the gas line and she was not driving it at the time. The jury convicted her of DUI. She appeals, asserting numerous issues including ineffective assistance by Lane Bennett "resulting in a domino effect causing additional actions or inactions in future court procedures and filings" and lack of evidence or witness to refute her testimony that "I did not drive into the gas line."

Having reviewed the record in its entirety, we find no merit to Churmage's claims of ineffective assistance. Assuming, arguendo, that Bennett was somehow ineffective in any or all of the instances she alleges, when considered in light of the overwhelming evidence of her guilt, we find no reasonable probability of a different outcome. We affirm Judge Eddy's holding that she did not receive ineffective assistance.

Shea, McKinnon, Sandefur, Baker, Rice.

***State v. Churmage,* DA 19-480, 9/15/20.**

Valorie Sue Churmage, Kalispell, pro se; Asst. AG Kathryn Schulz; Dep. Flathead Co. Atty. Renn Fairchild.

State Trial Courts

VERDICT: $2,481,594.36, high-speed semi/pickup rear-ender, admitted liability, disputed low back/neck/head.

A 12-0 Billings jury found that the negligence of Highmark Traffic Service's employee was a cause of injury to Steven Shuman and awarded him $124,781.67 past medical expenses, $856,812.69 future medical expenses, and $1.5 million general damages.

Plaintiff's position. Shuman, operating a semi, was rear-ended at a high speed by a pickup driven by Highmark's employee 5/4/17. Highmark admitted that its employee was negligent and caused the collision, but denied that Shuman was injured. Impact was approximately 60 mph, which was not disputed.

Shuman, a self-employed construction operator and trucker, was 36 and had no relevant pre-existing medical conditions. He refused treatment and transport from the scene, but reported neck, back, and headaches at the ER. Over the next 3 years he underwent a diskectomy at L5-S1, an artificial disk replacement of L5-S1, multiple steroid injections, PT, and Botox treatments for chronic post-traumatic migraine syndrome. His treating surgeon and neurologist opined that his conditions were caused by the collision.

Defense counsel did not request any IMEs, but based their defense on the theory that the collision forces were not sufficient to cause any injury. They had Shuman surveilled for 11 days over the 2 months before trial and used the video to argue in opening and throughout trial that he was not hurt despite having received an artificial disk in his lumbar spine 11 days before trial. They charged the jury in opening to "keep asking yourself what you can trust and who you can trust" and alleged that Shuman had been telling a story to his "cast of friends and acquaintances" as well as "telling his doctors and his experts a story."

Up to the point of closing, Defendant denied that Shuman was hurt and insisted that the first question on the verdict form be whether Plaintiff suffered any injury. Defendant denied requests for admission that his immediate medical care was reasonable & necessary, and contended in the PTO that he could not prove any damage. Had the Defense proven their case, the result would have been a zero verdict for Shuman. As a result, Plaintiff's counsel accurately and truthfully stated in opening:

> So why are we here? You might think we're asking for too much. Why we're here, though, is that they're going to ask you, at the end of this case, to find that Steve wasn't injured. And they're going to ask you to not pay any of his medical bills or very little. And they're going to ask you to pay for no future care. We are going to ask for those other damages, the general damages, the human losses. But that's not why we're here, folks. We're here because they won't even pay

his medical expenses.

Plaintiff's references in opening were based entirely off the defenses, denials, and contentions of the Defense and had nothing to do with *Ridley* payments. Instead, Plaintiff pointed out in arguing against Defendant's motion for a mistrial that prior advance payments were made under a reservation and Defendant had every right to, but refused to, stipulate to certain medical expenses. In closing, Defense counsel admitted for the first time that Shuman was hurt in the collision and suggested that his treatments for his low back should be awarded.

The Defense failed to present any testimony or opinion to contest reasonableness of Shuman's medicals. It did not solicit testimony from his providers or offer any expert opinion on the topic, but attempted to introduce a single bill -- 1 out of 5 -- for Botox treatments where SCL Health had gratuitously written-down his bill for self-pay. Despite the write-down, the single bill was clear that Shuman had incurred the full expense at the time of service and the Defense offered no evidence that future write-downs would be available.

The jury determined in less than 1 hour that Shuman was injured and all of his claimed medical expenses were reasonable, and awarded $1.5 million for general damages.

Defendant's position. Shuman emerged from the accident with no fractures, cuts, scrapes, bruises, or abrasions, declined EMS transportation, was able to drive his semi and trailer from the scene, and walked in and out of the ER that night. His medicals in 2017, as claimed by him, totaled, $15,146.92. The majority of his claimed future treatment damages was attributable to claimed lifetime Botox treatments, which did not start until 2019. Mid-trial, Highmark was precluded from cross-examining his witnesses on an approximate 50% reduction in the cost for the Botox treatment by the treating provider.

Defendant's experts testified as to the force in the collision and that they were insufficient to generally cause the L5-S1 herniation which was the subject of Plaintiff's 2018 & 2020 surgeries. Defendant also highlighted the delay reflected in Plaintiff's treatment records of reports of severe migraine headaches, which did not appear in medical records until over a year after the MVA.

During opening, Plaintiff's counsel stated, "We're here because they won't even pay his medical expenses," which was false. After Defendant moved for a mistrial, Plaintiff's counsel clarified that this was in reference to *Ridley* payments by Highmark's insurer. The Court's proposed cure of having Plaintiff testify that the bills had been paid was rejected and Defendant's motion for a mistrial was denied.

Plaintiff's experts: treating orthopedic surgeon Anthony Roccisano, Billings (video); treating neurologist Kris French, Billings (video); life care planner Linda Nelson; CPA Seth Blades, Billings (present-value calculations); Mariusz Ziejewski, Fargo (rebuttal of Defendant's reconstruction and biomechanical analysis.

Defendant's experts: biomedical engineer Paul Lewis, Roswell, Georgia; reconstructionist Sean Caldwell, Westminster, Colo.

Demand, $1.5 million; offer, $525,000. Jury request, $1.9-$3.8 million; jury suggestion, incurred medicals plus future medicals related to low back plus $10,000-$50,000 for pain & suffering. Gary Zadick, mediator.

Jury deliberated 1 hour 5th day; Judge Davies.

***Shuman v. Highmark Traffic Service,* Yellowstone DV 19-271, 9/18/20.**

Joe Cook (Heenan & Cook), Billings, for Shuman; James Halverson, John Wright, and Thomas Mahlen (Halverson, Mahlen & Wright), Billings, for Highmark (Continental Western Ins.).

Federal Trial Courts

INSURANCE: Duty to indemnify in libel action not ripe for declaratory judgment, stayed pending disposition of libel action or resolution of duty to defend claim... amount in controversy basis for federal jurisdiction satisfied regardless of whether adjudication of indemnity claim is deferred... Cavan.

Mary Cameron, a member of the Red Lodge City Council, purchased a renter's policy with a personal liability limit of $100,000 per occurrence from American Bankers effective 8/7/19. She was sued 10/17/19 in Carbon Co. District Court by Rebecca Narmore alleging defamation by libel and IIED. Cameron tendered defense and indemnification to American Bankers, which agreed to share in her defense with MMIA subject to reservation. American Bankers filed this action seeking a declaration that no coverage exists under the policy for any of the claims asserted against Cameron and that it has no duty to defend or indemnity her. It alleges that the Court has jurisdiction based on diversity and because the amount in controversy exceeds $75,000, measured by the value of defense and indemnification of the claims against Cameron including attorney fees incurred in her defense and any claimed obligation to indemnify her.

It appears that the underlying action remains pending. Thus the issue of American Bankers' duty to indemnify Cameron is not ripe. When a premature duty to indemnify claim is joined with a ripe duty to defend claim, courts have 2 options -- stay the indemnity issue or dismiss the indemnity claim without prejudice. Many courts, including in this District, favor the first approach. The Court is persuaded that the first approach is appropriate here. American Bankers followed the course recommended by the Montana Supreme Court to defend under reservation and file a declaratory judgment action to resolve the coverage question. *Freyer* (Mont. 2013). The interests of judicial economy and efficiency support staying the indemnity claim, pending either disposition of the underlying action or resolution of the duty to defend claim.

Cameron argues that because the duty to defend claim is not ripe it cannot be considered in determining the amount in controversy, and that American Bankers has failed to establish that the duty to defend claim alone meets the jurisdictional threshold. Her argument is unavailing. The amount in controversy is determined from the face of the pleadings as of the time of filing or removal. "Where an insurer is contesting both its duty to defend and its duty to indemnify the insured, the amount in controversy is the sum of the expense of providing a legal

defense plus the value of the claim in the underlying suit." *Society Ins.* (N.D. Ind. 2011). A "subsequent amendment to the complaint or partial dismissal that decreases the amount in controversy below the jurisdictional threshold does not oust the federal court of jurisdiction." *Chavez* (9th Cir. 2018); *St. Paul Mercury* (US 1938). Further, although the indemnity claim is stayed, the cost of potential indemnification is still counted toward the amount in controversy. "Many decisions in this and other circuits count the potential outlay for indemnity toward the amount in controversy, whether or not adjudication about indemnity should be deferred until the state case is over." *Sadowski* (7th Cir. 2006) (collecting cases). "The amount in controversy is not a prospective assessment of a defendant's liability. Rather, it is the amount at stake in the underlying litigation." *Chavez.* Thus the potential cost of indemnification was put in controversy as soon as American Bankers brought this declaratory action against Cameron.

American Bankers alleges that the value of the defense and indemnification of the claims against Cameron exceeds $75,000. A party need not "prove to a legal certainty that the amount in controversy requirement has been met." *Owens* (US 2014). The sum claim controls if it is made in good faith. *Higashiguchi* (9th Cir. 1997). "To justify dismissal, 'it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.'" *Id.; St. Paul Mercury.*

Cameron does not argue that American Bankers' invocation of diversity jurisdiction was in bad faith. She also has not shown to a legal certainty that the cost to defend and indemnify her falls below $75,000. Therefore the amount in controversy is satisfied, regardless of whether adjudication of the indemnity claim is deferred. Her motion to dismiss is denied.

***American Bankers Ins. of Florida v. Cameron,* 44 MFR 231, 9/22/20.**

Jared Dahle (Garlington, Lohn & Robinson), Missoula, for American Bankers; Jacqueline Papez & Jack Connors (Doney Crowley), Helena, for Cameron.

MEDICARE: Challenge of DHHS's ability to recover Medicare conditional payments from wrongful death asbestos-related settlements rejected... Molloy.

This dispute arises out of 11 group settlements Plaintiffs entered into with the State, BNSF, and BNSF's insurers as PRs of 4 Medicare beneficiaries who suffered asbestos-related injuries in Libby. Plaintiffs present 8 claims they classify as "wrongful death only" and 3 claims as "wrongful death with survival." All 11 releases include language addressing both survival and wrongful death claims. Plaintiffs argue that because the statutes had run on 8 of the beneficiaries' claims for medical damages prior to the settlements, they could not have recovered medical expenses in those 8 releases. The remaining 3 claims against CNA appear to have been tolled, meaning those medical expense claims were potentially still viable at the time of settlement. As a result of these settlements, DHHS issued demand letters in 3/13 informing Plaintiffs that Medicare was entitled to recover conditional payments it made on behalf of the deceased beneficiaries pursuant to the Secondary Payer statute. Plaintiffs argued that Medicare has no right to recover from settlement amounts paid on the wrongful death claims of the decedents' family. They therefore paid Medicare $4,978.18 for Wright, $19,893.79 for Peltier, $14,745.03 for Kins, and $6,405.49 for Hagerty subject to a reservation of rights and pursued an administrative appeal, receiving unfavorable decisions. Plaintiffs seek judicial review.

Plaintiffs argue that because the settlements were for wrongful death claims only, which do not include medical expenses under Montana law, the proceeds are the property of the surviving children and spouses and are not subject to recovery under the Secondary Payer statute. As recognized by the ALJ and Council, were the facts in the record consistent with that proposition, Plaintiffs would likely be correct. However, the evidence does not support the facts as argued by Plaintiffs. The salient question is not whether Medicare can recover from Montana wrongful death settlements, but whether substantial evidence supports the determination that the settlements included medical expenses for injuries sustained by Medicare beneficiaries. Plaintiffs' motions for summary judgment are denied, and DHHS's cross-motion is granted.

***Hagerty et al v. DHHS,* CV 19-123-M, 9/23/20.**

Allan McGarvey (McGarvey, Heberling, Sullivan & Lacey), Kalispell, for Plaintiffs; AUSAs John Newman & Victoria Francis.

Workers' Compensation Court

Work Comp Settlements

Plan I

Rick Gelling, injury, 6/02, OD, 4/07, BSB Co., MMIA accepted liability and paid indemnity and medical, indemnity settled for $170,000 new money in 8/10, dispute as to whether Petitioner is entitled to lumbar surgery, $135,000 for all claims ($119,759 MSA), Saidee Johnston for Gelling, Morgan Weber for MMIA

Ruth Peck, right extremity including elbow, 1/18, left shoulder, 12/18, employed by Prairie County, MACo accepted 1/18 claim and paid benefits, denied 12/18 claim, dispute as to liability for 12/18 claim and ongoing treatment for 1/18 claim, $32,000 for all claims, stipulated judgment; Lucas Wallace for Peck, Dean Blackaby for MACo

Florence Slater, lungs, 1/86, disputed, $24,000, Dean Blackaby

Marissa Tucker, knee, 10/18, disputed PT, $22,500, Chris Helmer

Janet Winnie, lower arm, 2/12, $14,000, Kim Schulke

Forrest Black, lungs, 12/02, disputed, $8,000, Dean Blackaby

Wade Kvapil, lungs, 12/02, disputed, $8,000, Dean Blackaby

Arlene Peterson, lungs, 12/86, disputed, $8,000, Dean Blackaby

No lawyer

John Hunt, foot, 8/07, $4,500

Plan II

Jesse Smith, wrist, 4/19, Black Eagle, Zurich accepted compensability and has paid various indemnity and medical, $66,000 to settle indemnity, medical reserved, stipulated judgment; Ben Snipes for Smith, Steve Jennings for American Zurich Ins.

Santos Mota, right knee, 3/18, Billings Wal-Mart, New Hampshire accepted liability and paid medical, indemnity, and impairment, dispute as to the disability caused by the injury, NH contends that Petitioner was provided modified work suitable to his condition by TOI employer which he abandoned before its expiration resulting in his termination, contends it has paid all total disability for which he is entitled, following his right knee TKA operation in 2019 he was approved to return to TOI position of Remodel Associate without restriction and assessed at MMI, Petitioner contends that he cannot perform the position and has permanent wage loss as a result of his accepted condition and is entitled to PPD in addition to his already paid compromised 8% impairment, $24,079 for all claims ($11,579 MSA), stipulated judgment; Alex Evans for Mota, Andy Adamek for New Hampshire Ins.

Andrew Conner, Petitioner claimed that he suffered an injury that caused or exacerbated bilateral CTS while using a 2-handed drill with Express Services in 5/19 in Flathead Co., New Hampshire accepted liability for left CTS, following IME by Larry Iwersen accepted liability for right CTS, has paid related benefits and TTD for bilateral CTS, disputes as to entitlement to past & future medical including authorization for an FCE, nature & extent of injuries and impairment if any, entitlement to past & future indemnity, $15,000 new money for all claims, stipulated judgment; Wayne Olson for Conner, Steve Jennings for New Hampshire Ins.

Joel Belcourt, shoulders, 7/14, 10/19, Arlee, Victory initiated benefits under reservation, Petitioner is at MMI and 0% impairment assigned, released to work without restriction, disputes as to medical causation, $5,000 for all claims, stipulated judgment; Belcourt, pro se, Joe Maynard for Victory Ins.

Savannah Mays, wrist/elbow, 1/20, Discovery Ski Area, Zurich initiated all benefits due & owing, Petitioner underwent ulnar nerve transposition, has achieved MMI, disputes as to a subsequent injury, $2,500 for all claims, stipulated judgment; Mays, pro se, Joe Maynard for American Zurich Ins.

Jacob Brown, lower leg, 4/18, $52,000, Leslae Dalpiaz

Susan Andersen, multiple, 4/20, disputed, $25,000, Leslae Dalpiaz

Mark Murphy, multiple, 1/19, $18,250, Leslae Dalpiaz

Collin Startin, knee, 8/19, $2,500, Leslae Dalpiaz

No lawyer

Sherry Ramuta, 11/17, $16,896, medical reserved

Alexander Stone, lungs, 7/20, disputed, $1,099

Plan III

Benjamin Frederick, low back/upper back/neck, 5/18, DOT, Jefferson Co., MSF accepted claim, paid certain medical and indemnity, disputes as to entitlement to future indemnity and medical, $300,000 new money for all claims, stipulated judgment; Michael Doggett for Frederick, Mark Meyer (MSF)

Kathleen Royston, cervical radiculopathy & neuropathy and ulnar nerve entrapment at the cubital tunnel bilaterally, 4/11, Dr. Steele determined the causation of the OD claim in 3/12, it was determined that these injuries occurred while in course & scope with Student Assistance Foundation, MSF accepted liability for the injury to Petitioner's neck and arms, Petitioner at MMI in 4/16 with 7% impairment which was paid, disputes as to what further treatment is reasonable & necessary and whether Petitioner is PTD as a result of this injury, $160,000 new money for all claims, stipulated judgment; Thomas Murphy for Royston, Melissa Quale (MSF)

Rickey Jeffries, left shoulder, 2/17, left-sided hernia, 5/18, Amazing Painting, Kalispell, MSF accepted claims, paid medical and wage loss, Petitioner placed at MMI for shoulder in 5/18, returned to modified TOI job, placed at MMI for hernia in 4/20 but has not been given impairment, has not returned to work, and is receiving TTD, dispute as to entitlement to PPD for shoulder and PTD for hernia, $75,000 new money for all claims ($500 MSA), stipulated judgment; Kraig Moore for Jeffries, Pamela Rabold (MSF)

Donald Bauersachs, back, 11/81, resultant gastritis from medical, Peterson Farms, Bridger, indemnity was settled in 4/94, disputes as to necessity and extent of future treatment as well as certain home modifications, Petitioner at MMI in 12/83, $24,000 for all claims ($14,759 MSA), stipulated judgment; Bradley Jones for Bauersachs, Melissa Quale (MSF)

Reggie Teske, low back, 5/16, Gary & Leo's IGA, Havre, MSF accepted claim and paid medical and wage loss, Petitioner at MMI in 11/16 and 9/19 and given 3% impairment, dispute as to entitlement to PPD and past-due TTD, $13,000 new money for all claims, stipulated judgment; Thomas Murphy for Teske, Pamela Rabold (MSF)

Sean Curran, right shoulder, 7/18, neck/upper back/right shoulder, 8/19, DOC, Deer Lodge, MSF accepted 7/18 claim, denied 8/19 claim, disputes has to denial of liability for 8/19 claim and entitlement to future indemnity for 7/18 claim, $40,000 for all claims, stipulated judgment; Bernard Everett for Curran, Mark Meyer (MSF)

Marie Weigand, acute thoracolumbar sprain/strain, 5/20, Gary & Leos, Havre, MSF placed claim in $608 status, following review by Dr. Erpelding in 8/20 accepted liability for thoracolumbar sprain/strain which had completely resolved as of the date of the review, disputes as to need for future treatment and entitlement to indemnity, $15,000 new money for all claims, stipulated judgment; Richard Martin for Weigand, Melissa Quale (MSF)

Patrick McMann, left elbow, 12/19, Norpac Sheet Metal, Yellowstone Co., MSF accepted claim and paid certain medical and wage loss, disputes as to liability for future treatment and indemnity, $10,000 for all claims, stipulated judgment; Russ Plath for McMann, Mark Meyer (MSF)

Lee Granger, low back, 12/19, ERGS US Holdings, MSF accepted liability, disputes as to TTD 12/20/19 to 1/23/20, attorney fees & costs, penalty, $2,400 for all claims, stipulated judgment; Alex Evans for Granger, Melissa Quale (MSF)

Darrell Walker, low back, 1/18, disputed PT, $200,000, medical reserved, Russell Plath

Rachel Real, soft tissue, 1/20, disputed, $82,500, Megan Miller

David Johnson, foot, 1/19, $50,000, Spencer Bradford

Evan Shogren, lower back, 1/18, $30,000, Bradley Jones

Keri Ayers, internal organs, 4/17, $25,000, Jay Dufrechou

Ajay Moran, hand, 9/19, disputed, $16,000, Kim Schulke

No lawyer

Lowell Bye, chest, 12/08, $40,000

Joseph Clemons, ankle, 8/19, $11,000

R. Cooper, multiple, 4/74, $115,000

Sean Dolan, upper extremities, 10/18, $8,000

Daniel Fjheld, internal organs, 4/20, disputed, $3,000

Adrian Guidoni, internal organs (exposure to HIV), 3/98, $1,200,000

Amblia Holm, ankle, 6/20, disputed, $1,260

Natalia Kolnik, 1/20, upper back, $1,450

Joshua Palumbo, lower extremities, 10/19, $38,000

Kimberly Pinkerton, upper back, 1/19, $28,000

Raejean Shanko, pelvis, 6/20, disputed, $500

UEF

Jacob Watson, teeth, 6/20, disputed, $24,750, Wayne Olson