

ORIGINAL

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04/13/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0120

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0120

MICHAEL L. MILLER,

Petitioner and Appellant,

v.

MONTANA STATE FUND,

Respondent/Insurer and Appellee.

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APPELLANT'S BRIEF

On appeal from the Montana Workers' Compensation Court

of the State of Montana, County of Lewis and Clark

Cause No. 2020-5145 Claim No.031984045647

Honorable David M. Sandler Presiding

Appearances:

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TABLE OF CONTENTS

3. Table of Authorities
4. Statement of the Issues
5. Statement of the Case
6. Statement of the Facts
7. Summary of Argument
8. Standard of Review
9. Argument (a-f)
10. Conclusion
12. Certificate of Service
13. Certificate of Compliance
14. APPENDIX/Attachments

TABLE OF AUTHORITIES

DOCKET 39	2021 MTWCC
	The order Miller is Appealing WCC No 2020-5145
DOCKET 41	Deny & Petition for Reconsideration
ARM 24.5.337	Paragraph 2, Page 1, Page 5
MCA 39-31-204	Paragraph 1, Page 1, Page 3
MCA 39-31-702	Paragraph 1,5, Page 1, Exhibit A, Page 7
MCA 39-31-741	
Rule 60 (d) Other Powers To Grant Relief. (1), (2) and (3),	Exhibit A, Page one

STATEMENT OF ISSUES

Did WCC err in not seeing the use of 1985-1987 laws on Miller's settlement in 1988? 1983 WC Laws should have been used, as that was the year Miller was injured. Exhibit A, Page 3, 3A, 7 Paragraph 1,5, Page 8 Line 7, 9,12

Exhibit B, Page 2, Paragraph 26 McCarter's Decision in 1998

Exhibit B, Page 2, Paragraph 27 McCarter's Decision in 1998

Exhibit A, Page 2d From SS, page 3 of 3

Exhibit A, Page 5 Brown v. Richard A. Murphy, Inc.

Kruzich v. Old Republic Ins. Co.

Did State Fund err by not applying interest on money Miller received in 2001 that should have been his in 1988? Exhibit B, page 1

STATEMENT OF THE CASE

WCC decided the case of 1998 without merit because of statute of limitations.

WCC decided time barred in 2021. But using Rule 60 (d) (1) (3) it could still be judged, in both 1998 and 2021 cases. Exhibit A, Page one.

STATEMENT OF FACTS

Rule 60 (d) Other Powers To Grant Relief

1) Position of Trust MCA 39-71-204 allows Court to relieve Miller from judgement. Rule 60 (d) 1. Entertain an independent action to relieve a party from a judgment, order, or proceeding. Exhibit A, page One

2) Miller was not involved in Medical settlement, even though he was in the building. Rule 60 (d) 2. Grant relief to a defendant who was not personally notified of the action. Exhibit A, page One

3) Fraud on Miller's 1988 settlement so there was also fraud on the Work Comp Court. Rule 60 (d) 3. Set aside a judgment for fraud on the court. Exhibit A, page One

Miller states that there was No Statute of Limitations on Rule 60(d)

SUMMARY OF ARGUMENT

Miller has a long history with State Fund. As a brain-injured old cowboy, (Lawyers cost too much) he has been fighting for the compensation he is due. State Fund has fought him all the way. Miller is right, but State Fund uses Law against him, instead of treating him Fairly. (MCA 39-71-204 POSITION OF TRUST) (MONTANA CONSTITUTION SECTION 16. THE ADMINISTRATION OF JUSTICE)

STANDARD OF REVIEW

Judge McCarter said in 1998 case that Miller had a case, but was past statute of limitations.

Brown v. Richard A Murphy, Inc.

SC of MT, Nov 02, 1993, 261 Mont. 275

Kruzich v. Old Republic Ins. Co.

SC of MT, June 10, 2008, 2008 MT 205

State Fund used laws of 1985-87 instead of 1983, when Miller was injured, to calculate settlement of 1988. State Fund used annuity and discounted Social Security. Miller uses Rule 60(d) to appeal all of his Examples.

State Fund never added interest to money Miller received in 2001, on money that belonged to him in 1988 (Exhibit B, Page 1) No case law on this.

ARGUMENT

1. I have been fighting with State Fund for 38 years. I have been lied to, taken advantage of, and misled by State Fund for years. Argument Michael L. Miller 2000-0059, 3-84-04564-7.
2. I, Michael Miller, was brain-injured on October 23, 1983, while working for Bill Galt in White Sulphur Springs, Montana. I spent 3 weeks in a coma and 3 months in hospital in Billings learning how to walk and talk again.
3. I had been working a day job for Galt Ranch the day I got hurt and was covered by State Fund Worker's Comp. I came back to White Sulphur Springs to my leased ranch (Schendel Ranch) when I was well enough to leave the hospital, on which I made about \$40,000 a year in 1983. My own income was never considered when they decided what my life was worth. Paragraph 2, ARM 24.5.337
4. 39-71-702 Paragraph 4. Social Security wasn't applied for until 1989. \$441 a month. So, State Fund zeroed out my Social Security amount according to 1987 work comp law, it should have been without Social Security reduction because Miller never applied. Unilateral mistake of law. Exhibit A, page 7, Paragraph 4. Work Comp Court overlooked Rule 60 (d)

5. 39-71-702 Paragraph 5 COLA should have been applied. Two years (July 1988 – July 1990) 10 % interest, then COLA at 13% per year for 10 years) (then 10% for 20 years) Exhibit A, page 7, paragraph (5). Universal Mistake of Law.

6. 39-71-702 (Exhibit A, page 7, paragraph (1) shows permanent total disability benefits must be paid for the duration of worker's total disability. State Fund lied to Miller's lawyer telling him that there was not \$250,000 in his case. Lawyer dropped to \$200,000, State Fund said No, but took 2/3 of amount to \$132,145.10, then added \$67,500 in 2001.

7. Miller's lawyer in 1988 was not a Work Comp attorney. State Fund lied to him and Miller about what amount Miller could claim. Miller thought if he asked for \$250,000 instead of more State Fund would be more likely to give such a small amount instead of asking for \$500,000. Miller thought (mistakenly) that State Fund would act according to MCA 39-71-204 POSITION OF TRUST, but NO. (Exhibit B, page 9, page 1-17) Dr. Stratford a MD., P.C. from Missoula. A report Miller never saw until 2020, Anne Arrington CRC, CCM. Exhibit B, page 12 (1-5)

8. State Fund settled at 643+ weeks of \$205.33 payments. Should have been 1404 weeks plus \$69,250 = \$357,357.32. State Fund's figures in 1988 (Exhibit A, page 3) State Fund paperwork, that Miller never saw until he filed to reopen in 1998. 2001 MTWCC21, WCC 2000-0059, State Fund use Annuity figure, which was

illegal in 1983 case law. Miller figures Exhibit A, page 6 at 10% interest + COLA
= \$5,638,311.95

9. Miller contends he is entitled to rescind 1988 settlement because of mutual mistake of fact and universal mistake of law (Brown vs. Murphy, Inc. November 2, 1993, 261 Montana 275. Miller was entitled (unilateral mistake of fact) to \$357,357.32. State Funds own figures in June 17, 1988. (Exhibit A, page 3) State Fund lied to his lawyer that there was not \$250,000 in his case. State Fund used 1987 laws to show a much lower settlement offer instead of law of 1983. Also Rule 60 (d) 1 & 3

10. Miller was told by a very reliable source that State Fund could change figures and statements on a PDF file. A PDF file is what Miller received on a disc in August 2020. The amount \$250,000 that Miller asked for was deleted, also the 7% discount that State Fund used to affect his settlement figures. He, the person at Work Comp Court that Miller talked to, told him that doing this was possible in a PDF file.

11. State Fund used 1985 work Comp laws to figure Miller settlement in 1988, and should have used 1983 Work Comp law. Rule 60 (d)

1. State Fund reduced settlement figure less than present value. Exhibit A, page 3, paragraph 4.

2. Social Security was totaled out Exhibit A, page 7, 39-71-702

3. COLA was not figured in Exhibit A, page 7, paragraph 5 of 39-71-702

12. If I had gotten \$250,000, the ranch would have been successful. Exhibit A, page 3, Montana State Fund (SF) finally settled with me in fall of 1988. I originally asked for \$250,000 and SF lied to me and my lawyer, they said there was not that kind of money in my case, but SF's figures show that my case was actually worth \$357,357.12, not the \$132,145.10 they finally gave to me, less than the present value discount amount. They not only lied to me about what my case was worth but illegally discounted my disability to less than present value. 39-71-741, MCA, Exhibit A, page 3.

13. Miller's main argument is the Medical Settlement in 2001. Miller and his wife Amy were not in the room to discuss the settlement. Galt came out and said \$67,500 was all, take it or leave it.

14. Miller took it, but realized that there should have been a 10% per year since additional amount (Exhibit B page 1) shows 2 years at 10% interest plus 10 years of COLA at 13% interest then 20.5 years of 10% interest. Money would have been Miller's if State Fund had given \$67,500 in 1988 = \$1,622,953.40. Rule 60 (d)

15. Exhibit B, page 9, (page 1-17)

2 reports that showed State Fund's Lack of Trust

Northwest Forensic William Stratford, Exhibit B, Page 9

Anne Arrington Report in 2001, Exhibit B, page 12 (1-5)

Miller never saw until 2020

16. Miller would never have settled for 13 years of money, but State Fund told my Attorney that they were going bankrupt if Miller wanted more money and Miller believed him and State Fund. Shows how gullible Miller was.

17. Miller knows that State Fund took advantage of him (being totally disabled and brain injured). He would like the Supreme court to understand this and rule that State Fund should make Miller whole and reimburse Miller for money he believes that State Fund withheld from him plus interest. If Miller had received the \$250,000 that he asked for, there would be no court case.

18. Unusual or inequitable circumstances in both 1988 settlement and 2001 Medical settlement

- a. State Fund could not use an Annuity in 1988.
- b. No Social Security offset
- c. No COLA applied
- d. No interest on money in 2001

19. Miller never used words like Rule 60 (d) M.R. C. V. P 60(d)....final judgement.” Miller is sorry for being a cowboy and not a lawyer. The two ways of talking, mean the same thing.

20. By not saying unusual or inequitable circumstances Judge Sandler denied third motion for reconsideration.

21. Miller is going to say unusual or inequitable circumstances in both 1988 Lump sum settlement and 2001 medical settlement. I did not want Medical reserved but State Fund did. State Fund accepted back problem and picked up chiropractor in January 1997.

Trying to reopen in August 1998 is not beyond 2 year statute.

22. Miller again states that he should have been a participant in Medical Settlement in 2001. Interest on amount of money withheld from Miller in lump sum Settlement in 1988 is in Exhibit B, Page 1. Miller states this amount of money is his.

23. State Fund has lied to Miller for 32-37 years. Miller wants the Supreme Court to realize this and hold State Fund accountable for State Fund’s unusual and inequitable dealings with him.

CONCLUSION

Supreme Court should decide if Miller has more than his one good Leg to stand on. Miller does not want WCC or State Fund to make any more decisions. This court is my last chance to be made whole as by-laws of WC state Miller wants the total figures on Exhibit A, Page 6 and Exhibit B, page 1.

Exhibit A, Page 6 5,638,311.95

Exhibit B, Page 1 +1,622,953.40

7,261,265.35	x 2/3 (State Fund standard deduction)
	= \$4,840,843.57

Miller knows because of Rule (d) that there is No Statute of Limitations, that the settlement of 1988 should have been Exhibit A, page 6.

State Fund did not give Miller interest on \$67,500 (that they withheld from Miller for 13 years) when they settled Medical in 2001. The interest money a lot more money that should have been Miller's Exhibit B, page 1.

Miller prays upon this Supreme Court to see how State Fund has used and abused him over the last 32-37 years. Because of a life altering accident in 1983, Miller became a ward of the state instead of a tax-paying citizen. Miller healthy would have made approximately \$150,000 a year, at cattle prices of today.

Rule 60(d) should be invoked on State Fund, to make Miller whole as POSITION OF TRUST applies.

CERTIFICATE OF SERVICE

I certify that I filed this

☒ Petition

☐ Motion

☐ Other _____

[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Mark Meyer, Legal Counsel

[Name of opposing counsel]

Special Assistant Attorney General

Montana State Fund

PO BOX 4759

[Address]

Helena MT 59604-4759

Counsel for State Fund

[Other party representing himself or herself]

[Address]

DATED this 12th day of April, 2021.

Michael L. Miller Michael L. Miller

[Signature]

Michael L. Miller

[Print name]



CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

Michael B. Miller
[Signature]



ATTACHMENTS

- | | |
|--------------------------------------|---|
| 1. Exhibit A, Page one | Rule 60(d) |
| 2. Exhibit A, Page 2d, Page 2 | SS Benefits 1989 |
| 3. Exhibit A, Page 3 | WC figures on SS Settlement |
| 4. Exhibit A, Page 3A | Paragraph 3 |
| 5. Exhibit A, Page 5 | Brown v. Richard A. Murphy, Inc. |
| 6. Exhibit A, Page 6 | Miller figures in 1988 Settlement |
| 7. Exhibit A, Page 7 | 39-71-702 |
| 8. Exhibit A, Page 8, Lines 7,9, &12 | SS was not offset? |
| 9. Exhibit B, Page 9 (1-17) | Stratford Letter |
| 10. Exhibit b, Page 12 (1-5) | Arrington Letter |
| 11. Exhibit B, Page 1 | Miller figures on 2001 Settlement |
| 12. Exhibit B, Page 2 | Paragraph 26 is SS offset? |
| | Paragraph 27, why was Lawyer told this? |