No. _____

SUPREME COURT OF THE UNITED STATES

Robert L. Allum,

Petitioner,

vs.

MONTANA STATE FUND and
STATE OF MONTANA

Respondents.

On Petition for a Writ of Certiorari to
the Supreme Court of the State of Montana

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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DA 22-0625

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 121

ROBERT L. ALLUM,

Petitioner and Appellant,

v.

MONTANA STATE FUND,

Respondent and Appellee.

APPEAL FROM: Montana Worker's Compensation Court, Cause No. WCC No. 22-5873
Honorable David M. Sandler, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert L. Allum, Self-represented, Belgrade, Montana

For Appellee:

Thomas L. Bell, Special Assistant Attorney General, Montana State Fund, Helena, Montana

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Submitted on Briefs: March 29, 2023

Decided: June 20, 2023

Filed:

Clerk

App "A"

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Robert L. Allum (Allum) appeals from the October 20, 2022 Judgment and Orders Approving Settlement, Dismissing Claims for Benefits with Prejudice, Vacating Trial, Certifying Judgment as Final, and Notice of Entry of Judgment issued by the Workers' Compensation Court (WCC).

¶2 We address the following restated issue on appeal:

> *Whether the WCC erred in dismissing Allum's constitutional claims based on lack of jurisdiction as once Allum's benefits-related claims were resolved and dismissed, his constitutional claims became stand-alone claims not in the context of a dispute concerning benefits under the Workers' Compensation Act or related to the applicability of any statutory provision, rule, or order of the agency to that dispute.*

¶3 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 On November 18, 2013, Allum was injured at work. On December 13, 2013, the Montana State Fund (State Fund) accepted liability for Allum's knee injury. In February 2020, Allum notified the State Fund that he also asserted a back condition resultant from his knee injury. Allum thereafter filed a petition seeking hearing on his injury claims and challenging the constitutionality of the Montana Workers' Compensation Act (WCA) and the WCC.[1] Prior to trial, Allum and the State Fund settled his injury claims signing a Joint

[1] State Fund asserted Allum's constitutional challenges to be precluded by res judicata, as he had brought the same constitutional claims in three prior WCC proceedings, and were also precluded by Allum's failure to file notice of his constitutional challenges as required by M. R. Civ. P. 5.1(a). As we determine the issue on other grounds, it is not necessary to address these arguments.

Petition and Stipulation for Entry of Judgment on October 18, 2022.[2] On October 20, 2022, the WCC approved the parties' settlement agreement. The WCC noted the settlement resolved all disputes involving workers' compensation benefits but did not resolve Allum's constitutional claims which "remain[ed] open to the extent permitted by law." The WCC then concluded, pursuant to § 39-71-2905(1), MCA, that Allum's constitutional claims were not open as the WCC, as a limited jurisdiction court, lacked jurisdiction to address Allum's now stand-alone constitutional challenges outside the context of a dispute over benefits. Allum appeals.

STANDARD OF REVIEW

¶5 "[A] court's determination as to its jurisdiction is a conclusion of law." *Thompson v. State*, 2007 MT 185, ¶ 14, 338 Mont. 511, 167 P.3d 867 (citation omitted). We review a workers' compensation court's conclusions of law to determine whether the court's conclusions are correct. *Thompson*, ¶ 14 (collecting cases).

DISCUSSION

¶6 *Whether the WCC erred in dismissing Allum's constitutional claims based on lack of jurisdiction as once Allum's benefits-related claims were resolved and dismissed, his constitutional claims became stand-alone claims not in the context of a dispute concerning benefits under the Workers' Compensation Act or related to the applicability of any statutory provision, rule, or order of the agency to that dispute.*

¶7 We have previously determined the WCC is a court of limited jurisdiction—"an administrative tribunal governed by MAPA and allocated to the Department of Labor and

[2] Pursuant to the settlement, Allum received $48,750 and agreed to dismiss his benefit claims.

App "A"

Industry for administrative purposes." *Thompson*, ¶ 24. As such, it has only the power conferred to it by statute. *Thompson*, ¶ 24. We find this case to be directly analogous to *Thompson*. In *Thompson*, three individuals each filed claims for benefits in the WCC. They then jointly filed a Petition for Declaratory Judgment seeking a declaration that the WCA claimant disclosure statutes violated their constitutional rights to privacy and deprived them of property without due process of law. *Thompson*, ¶ 1. On appeal, this Court determined that as the petition for declaratory judgment did not demand benefits or a declaratory judgment concerning the applicability of WCA statutes to a particular dispute over benefits, as a limited jurisdiction court with only the authority to issue rulings concerning disputes under the WCA and only as to the applicability of any statutory provision, rule, or order of the agency to that dispute, the WCC did not have jurisdiction to issue a declaratory judgment ruling. *See Thompson*, ¶¶ 16-35.

¶8 While Allum's constitutional claims were not brought in a separate declaratory judgment petition as they were in *Thompson*, once his benefits-related claims were dismissed, like the declaratory judgment claims in *Thompson*, all that remained were stand-alone constitutional claims. Pursuant to statute, the WCC has "exclusive jurisdiction to make determinations concerning disputes under [the WCA, Title 39, chapter 71, MCA]." Section 39-71-2905(1), MCA. As such, the WCC has the authority to issue rulings regarding constitutional challenges to the WCA or WCC "only in the context of a dispute concerning benefits under the Workers' Compensation Act and only as to the applicability of any statutory provision, rule, or order of the agency to that dispute." *Thompson*, ¶ 25.

As Allum resolved all of his benefit disputes, via the WCC-approved settlement, as a matter of law the WCC did not have jurisdiction over the remaining stand-alone constitutional challenges. The WCC's conclusions of law were correct.

CONCLUSION

¶9 Because Allum resolved all of his benefit disputes, the WCC did not have jurisdiction over his remaining stand-alone constitutional challenges.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ BETH BAKER
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ JIM RICE

App "A"

FILED
October 20, 2022
Office of
Workers' Compensation Judge
Helena, Montana

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2022-5873

ROBERT L. ALLUM

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

JUDGMENT AND ORDERS APPROVING SETTLEMENT, DISMISSING CLAIM FOR BENEFITS WITH PREJUDICE, VACATING TRIAL, CERTIFYING JUDGMENT AS FINAL, AND NOTICE OF ENTRY OF JUDGMENT

¶ 1 The trial on Petitioner Robert L. Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim, which was the only dispute over benefits in this case,[1] was scheduled to start on Thursday, October 27, 2022.

¶ 2 On October 11, 2022, Respondent Montana State Fund (State Fund) notified this Court that it had reached an agreement with Allum to settle their dispute over whether Allum's low-back condition should be accepted as part of his 2013 workers' compensation claim.

¶ 3 However, on October 17, 2022, Allum filed Petitioner's Trial Brief,[2] in which he again challenged the constitutionality of the Workers' Compensation Court on the grounds

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[1] *See* Pet. For Hr'g, (Injury), Demand For Jury Trial, and Constit. Challenges, Docket Item No. 1 at 9. *See also* Montana State Fund's Proposed Pretrial Order, attached to Pretrial Conf. Mem., Docket Item No. 51 at 2 (stating that the issue to be determined by this Court was, "Whether Petitioner is entitled to have his low back condition accepted as part of this workers' compensation claim.").

[2] Docket Item No. 52.

that the Montana Legislature did not have authority to create it.[3] Moreover, for the first time, and long after the deadline to brief his constitutional challenges,[4] Allum challenged the bill under which the Montana Senate confirmed the undersigned as Judge of the Workers' Compensation Court, arguing that the bill violated the single-subject rule in Mont. Const. Art. XIV, § 11, by impermissibly combining judicial confirmations with an executive branch confirmation and that it was unlawful to appoint a person residing in Kalispell as the Judge of the Workers' Compensation Court because § 39-71-2901(1), MCA, states that the "principal office of the workers' compensation judge must be in the city of Helena."[5] In his Conclusion, Allum asked to present these constitutional challenges "in open court" and to have this Court address them "prior to appeal."

¶ 4 On October 18, 2022, Allum and State Fund filed their Joint Petition and Stipulation for Entry of Judgment.[6] They agreed to fully and finally settle Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim on a disputed compensability basis for $48,750. They acknowledged that their agreement "does not include resolution of any constitutional or jurisdictional claims by Petitioner. Those claims remain open to the extent permitted by law." However, they agreed to dismiss Allum's low-back claim with prejudice and stipulated that this Court would enter judgment based on the terms of their Joint Petition and Stipulation for Entry of Judgment.

¶ 5 While Allum and State Fund agreed that Allum's constitutional and jurisdictional claims "remain open to the extent permitted by law," these claims are no longer "open." Because this Court is a court of limited jurisdiction, with "only such power as is expressly conferred by statute,"[7] the Montana Supreme Court has ruled that, under § 39-71-2905(1), MCA, which gives this Court the exclusive jurisdiction over disputes concerning workers' compensation benefits, this Court does not have jurisdiction over a constitutional challenge unless there is a dispute over benefits and the challenge is within the context

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[3] This Court notes that it has previously rejected Allum's claim that the Montana Legislature did not have the power to create the Workers' Compensation Court or make it a court of record because it is barred by *res judicata* and, in any event, Mont. Const., Art. VII, § 1, gives the Legislature the authority to create courts. *See, e.g.,* Order Den. Pet'rs Summ. J. Mots., Docket Item No. 49, ¶¶ 7-11.

[4] *See* Order Setting Briefing Schedule on Pet'rs Constit. Challenges, Docket Item No. 14, ¶ 2 (setting a deadline for April 15, 2022, for Allum to file a brief setting forth his arguments and authorities on his constitutional challenges).

[5] Although in a different context, this Court notes that it has previously rejected Allum's claims that the Judge of the Workers' Compensation Court is part of the executive branch. *See, e.g.,* Order Den. Pet'rs Summ. J. Mots., Docket Item No. 49, ¶¶ 9, 10. *See also* Order Dismissing Resp'ts State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen for Lack of Subject Matter Jurisdiction, Docket Item No. 4, ¶ 2. This Court also notes that the principal office of the workers' compensation judge is in Helena, a fact that Allum full well knows because he has been there several times, including during his first trial against State Fund.

[6] Docket Item No. 53.

[7] *Thompson v. State of Mont.*, 2007 MT 185, ¶ 24, 338 Mont. 511, 167 P.3d 867 (citation omitted). *See also Liberty Nw. Ins. Corp. v. State Comp. Ins. Fund*, 1998 MT 169, ¶ 11, 289 Mont. 475, 962 P.2d 1167 ("The jurisdictional parameters of the Workers' Compensation Court are defined by statute as interpreted, from time to time, by the decisions of this Court.").

of that dispute.[8] Here, Allum and State Fund have fully and finally settled their dispute over whether Allum's low-back condition should be accepted as part of his 2013 workers' compensation claim, which was the only dispute over benefits in this case, and agreed that this Court is to dismiss that claim with prejudice. Thus, there is no longer a dispute over benefits in this case. Therefore, under § 39-71-2905(1), MCA, this Court no longer has jurisdiction to rule on Allum's challenges because his challenges are now outside the context of a dispute over workers' compensation benefits. Because this Court no longer has jurisdiction over Allum's challenges, this Court will not address them.

¶ 6 Based on the foregoing, this Court enters the following:

JUDGMENT AND ORDERS

¶ 7 IT IS ORDERED AND ADJUDGED that, pursuant to their Joint Petition and Stipulation for Entry of Judgment, Allum and State Fund have fully and finally settled Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim and that the terms of Allum's and State Fund's settlement, as set forth in their Joint Petition and Stipulation for Entry of Judgment, are adopted as the Judgment of this Court.

¶ 8 IT IS FURTHER ORDERED AND ADJUDGED that the full and final settlement of Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim is **approved** and that Allum and State Fund shall comply with the terms of their Joint Petition and Stipulation for Entry of Judgment.

¶ 9 IT IS FURTHER ORDERED that Allum's claim that his low-back condition should be accepted as part of his 2013 workers' compensation claim is **dismissed with prejudice**.

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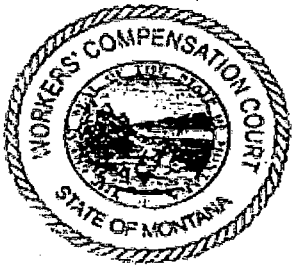
[8] *See Thompson*, ¶¶ 25, 26, 30 (in case in which there was no dispute over benefits, holding that Workers' Compensation Court did not have jurisdiction under § 39-71-2905(1), MCA, to rule that statutes were unconstitutional because the constitutional challenge was made outside the context of a dispute over benefits). *See also Herman v. Mont. Contractor Comp. Fund*, 2020 MTWCC 16, ¶ 53 (ruling that this Court no longer had jurisdiction to decide a constitutional challenge to a statute under § 39-71-2905(1), MCA, and *Thompson* because the insurer had agreed to pay the benefits that had been at issue and, therefore, the claimant's constitutional challenge was no longer in the context of a dispute over benefits); *Robinson v. Mont. State Fund*, 2008 MTWCC 55 (ruling that, under § 39-71-2905(1), MCA, and *Thompson*, this Court did not have jurisdiction to rule upon the claimant's constitutional challenges to statutes and administrative rules because her challenges were outside the context of a dispute over benefits); *Berry v. Mid Century Ins. Co.*, 2020 MTWCC 10, ¶ 86 (ruling that after insurer accepted liability for medical benefits, there was no longer a justiciable controversy because the issue of the medical benefits became a moot question – i.e., "one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy" – because this Court could not grant the claimant any meaningful relief) (citations omitted) (internal quotation marks omitted)). *Cf. Miller v. Liberty Mut. Fire Ins. Corp.*, 2008 MTWCC 18, ¶ 8 (ruling that, under § 39-71-2905(1), MCA, and *Thompson*, this Court had jurisdiction to rule upon a constitutional challenge to an administrative rule because it was within the context of a dispute over benefits).

¶ 10 IT IS FURTHER ORDERED that Allum's request to present the challenges he makes in Petitioner's Trial Brief in open court is **denied** and that the trial in this case, scheduled to start on Thursday, October 27, 2022, is **vacated**.

¶ 11 IT IS FURTHER ORDERED AND ADJUDGED that all claims and issues in this case that were properly before this Court have been adjudicated and that the rights of the parties have been conclusively determined. Therefore, this Court certifies this Judgment as a final judgment. Pursuant to ARM 24.5.348(2), this Judgment and Orders Approving Settlement, Dismissing Claim for Benefits with Prejudice, Vacating Trial, Certifying Judgment as Final, and Notice of Entry of Judgment shall be considered as the notice of entry of judgment.

DATED this 20th day of October, 2022.



David M. Sandler
JUDGE

c: Robert L. Allum
Tom Bell
Austin Knudsen, Montana Attorney General (courtesy copy)

Submitted: October 18, 2022

DA 20-0113

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 159N

ROBERT L. ALLUM,

Petitioner and Appellant,

v.

MONTANA STATE FUND,

Respondent and Appellee.

APPEAL FROM: Montana Workers' Compensation Court, WCC No. 2019-4705
Honorable David M. Sandler, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert L. Allum, Self-Represented, Belgrade, Montana

For Appellee:

Thomas E. Martello, Montana State Fund, Helena, Montana

Submitted on Briefs: May 27, 2020

Decided: June 16, 2020

Filed:

Clerk

App "C"

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Representing himself, Robert Allum (Allum), appeals from the Workers' Compensation Court's (WCC) Findings of Fact, Conclusions of Law, and Judgment dated January 28, 2020, denying Allum entitlement to retroactive and ongoing temporary total disability (TTD) benefits, additional permanent partial disability (PPD) benefits, and a penalty. Allum, however, does not allege error regarding his TTD and PPD benefits or penalty; rather, Allum asserts the WCC violates Montana's Constitution.

¶3 Allum was advised numerous times by the WCC on the process for bringing a constitutional challenge. Allum refused to file a notice of constitutional challenge, and failed to set forth any statutes he asserts were unconstitutional. Allum also filed two writs of supervisory control to this Court and was similarly advised of the process for bringing a constitutional challenge. Allum never raised a constitutional challenge in the WCC. He now argues that this Court and the WCC lack subject matter jurisdiction because the WCC is unconstitutional.

¶4 This Court has consistently held that it will not consider issues raised for the first time on appeal. "In order to preserve a claim or objection for appeal, an appellant must

App "C"

first raise that specific claim or objection in the [trial] court." *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38. Broad, general objections do not suffice; the objecting party has an obligation to clearly articulate the grounds for the objection so the trial court may address the issue first. "As a general rule, we do not consider an issue presented for the first time on appeal because it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider." *In re D.H.*, 2001 MT 200, ¶ 41, 306 Mont. 278, 33 P.3d 616. By failing to first raise the issue in the WCC, Allum has waived any consideration of the issue on appeal. We decline to address the constitutionality of the WCC under the guise of subject matter jurisdiction. The judgment of the WCC is affirmed.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR

App "C"

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0641

ROBERT L. ALLUM,

Plaintiff and Appellant,

v.

STATE OF MONTANA,

Defendant and Appellee.

ORDER

Before this Court is an opposed motion to dismiss, filed by counsel for the State of Montana, and a response filed by self-represented Appellant Robert L. Allum.

The State argues that Allum's appeal should be dismissed with prejudice because Allum did not file an opening brief on or before February 28, 2022. The State notes that Allum has not sought an extension of time with this Court. M. R. App. P. 26(1). Anticipating Allum's potential arguments in his response, the State argues that Allum has litigated his claims previously before multiple courts, including this Court. The State refers to Allum's issue about the unconstitutionality of the Workers' Compensation Court. *Allum v. Montana State Fund*, 2020 MT 159N, ¶ 4, 400 Mont. 561, 464 P.3d 1012 (*Allum I*). The State points out that it is prejudiced when there is a lack of finality to litigation and contends that dismissal is appropriate. M. R. App. P. 13(3).

Allum responds that he has two motions pending before this Court. He states that he seeks to consolidate constitutional questions, "on whether the affirmative defense, of *res judicata*, if opposed, can serve as a basis for granting a motion for summary judgment." Allum states that "[a]ll parties, herein, and the judicial branch, of the State of Montana, will incur additional time, effort, and expenses litigating the constitutional issues, until *stare decisis* quality decisions are rendered, by the Court, on the issues."

App "D"

Addressing Allum's pending motions, earlier this month this Court denied his motion to recuse the Justices. *See Allum v. State*, No. DA 21-0641, Order (Mar. 8, 2022). Allum then filed a Motion to Suspend Rules and Consolidate Constitutional Questions from Two Cases, and the State has since filed a response in opposition. Allum requests that M. R. App. P. 29 be suspended to allow consolidation of this pending appeal with his workers' compensation claim in the Workers' Compensation Court. He states "that if he files his opening brief, he will lose, the due process appeal rights, on the recusal issue." The State notes that Allum has provided no legal authority or argument for his motion. The State points out that Allum has been instructed about the proper procedure for raising constitutional issues. *Allum I*, ¶ 3.[1]

This Court gives wide latitude to self-represented litigants; however, this latitude cannot circumvent our procedural rules or prejudice the opposing party. *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124 (citing *Billings v. Heidema*, 219 Mont. 373, 376, 711 P.2d 1384, 1386 (1986). This Court received the record from the Gallatin County District Court on January 28, 2022. The State correctly notes that Allum's opening brief was due on February 28, 2022. M. R. App. P. 13(1). Allum has not sought an extension of time in accordance with the Montana Rules of Appellate Procedure. Allum has filed other motions in lieu of filing an opening brief. The State's motion is well-taken and that dismissal is appropriate. Accordingly,

IT IS ORDERED that the State's Motion to Dismiss Appeal is GRANTED and this appeal is DISMISSED with prejudice.

IT IS FURTHER ORDERED that Allum's Motion to Suspend and Consolidate Constitutional Questions from Two Cases is DENIED as moot.

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[1] This Court denied Allum's writs of supervisory control where he tried to raise constitutional questions as well as circumvent the Workers' Compensation Court's denial of his motions. *See also Allum v. Montana State Fund*, No. OP 19-0597, Order denying writ of supervisory control (Mont. Oct. 22, 2019) and *Allum v. Montana State Fund*, No. OP 19-0695, Order denying writ of supervisory control (Mont. Dec. 9, 2019).

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Robert L. Allum personally.

DATED this 29th day of March, 2022.

Chief Justice

Justices

App "D"

39-71-2901 MCA . Location of office -- court powers -- withdrawal -- substitution -- vacancy.

(1) The principal office of the workers' compensation judge must be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;
(b) provide for the orderly conduct of proceedings before it and its officers;
(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;
(d) compel the attendance of persons to testify; and
(e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (7).

(4) If the office of the workers' compensation judge becomes vacant and before the vacancy is permanently filled pursuant to Title 3, chapter 1, part 9, the chief justice of the Montana supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state district court

App "E"

judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

(5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90 days after appointment under this subsection. This subsection applies only if the workers' compensation judge is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace the judge under Title 3, chapter 1, part 9, may not be instituted.

(6) A substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies. A substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When a substitute judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

(7) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal

App "E"

by the judge or a vacancy and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987; amd. Sec. 1, Ch. 20, L. 2009; amd. Sec. 1, Ch. 39, L. 2015; amd. Sec. 10, Ch. 62, L. 2021.

App E

FILED
February 24, 2022
Office of
Workers' Compensation Judge
Helena, Montana

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 6

WCC No. 2022-5873

ROBERT L. ALLUM

Petitioner

vs.

MONTANA STATE FUND and STATE OF MONTANA, ON BEHALF OF GREG GIANFORTE, GOVERNOR, AUSTEN [sic] KNUDSON [sic], A.G., AND CHRISTI SORENSON [sic], SECRETARY OF STATE

Respondents.

ORDER DISMISSING RESPONDENTS STATE OF MONTANA, GOVERNOR GREG GIANFORTE, ATTORNEY GENERAL AUSTIN KNUDSEN, AND SECRETARY OF STATE CHRISTI JACOBSEN FOR LACK OF SUBJECT MATTER JURISDICTION

Summary: In addition to his claim for benefits against the workers' compensation insurer, Petitioner brings claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State, alleging that they have violated his rights by failing to perform their official duties.

Held: This Court dismissed Petitioner's claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State because this Court does not have subject matter jurisdiction over Petitioner's claims against them. The only claim over which this Court has subject matter jurisdiction is Petitioner's claim for benefits against the workers' compensation insurer.

¶ 1 In addition to Petitioner Robert L. Allum's claim for workers' compensation benefits against Respondent Montana State Fund (State Fund), he alleges that the entity in which the workers' compensation judge presides is not an actual court and that the State of Montana is violating his rights because Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen "have either through malfeasance, misfeasance, or nonfeasance failed, and are failing, to require David M. Sandler

(Sandler), appointed 'workers' compensation judge,' and 'self-proclaimed, WCC Judge,' to comply with the applicable Montana statutes." Allum also alleges that the undersigned is not the current workers' compensation judge on the grounds that his term expired in 2020 and that Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen have not complied with their duties to have a duly appointed and confirmed workers' compensation judge preside over workers' compensation cases.

¶ 2 Before discussing this Court's subject matter jurisdiction, two points need to be made. *First*, Allum's claim that there is no judicial court in Montana to decide disputes over workers' compensation benefits is entirely without merit. The Montana Constitution specifically allows the Legislature to create courts.[1] It has long been recognized that in 1975, when the Legislature established the Office of the Workers' Compensation Judge,[2] it intended to create a judicial court to decide disputes over workers' compensation benefits.[3] Indeed, the Legislature itself calls the entity in which the workers' compensation judge presides the "workers' compensation court"[4] and has expressly made it a court of record.[5] The Legislature has also decreed that, unlike appeals from administrative contested cases, which initially go to Montana's district courts,[6] "an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases."[7] Thus, "[a] full reading of the Workers' Compensation Act reveals that the Court is not simply an administrative law court functioning under the executive branch of government but is a special court created pursuant to Article 7, section 1 of the 1972 Montana Constitution."[8]

¶ 3 *Second*, Allum's allegation that the undersigned is not currently the workers' compensation judge is demonstrably false. In 2014, then-Governor Steve Bullock appointed the undersigned to serve the remainder of then-Judge James Jeremiah Shea's term as workers' compensation judge, which ran until September 8, 2017. On March 10, 2015, the Senate confirmed the undersigned.[9] In 2017, then-Governor Bullock appointed the undersigned to a full six-year term as workers' compensation judge. On

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[1] Article VII, section 1 of the Montana Constitution states, "The judicial power of the state is vested in one supreme court, district courts, justice courts, *and such other courts as may be provided by law.*" (Emphasis added).

[2] 1975 Mont. Laws ch. 537.

[3] *See, e.g.*, 38 Op. Att'y Gen. No 27 (1979) (stating, in relevant part, that based on several factors: "It is my opinion the Legislature intended to create a new court of special limited jurisdiction in enacting the Office of Workers' Compensation Judge . . . .").

[4] *See, e.g.*, § 39-71-2901, MCA (setting forth the powers that the "workers' compensation court" has).

[5] § 3-1-102, MCA.

[6] § 2-4-702(2), MCA.

[7] § 39-71-2904, MCA.

[8] *Seger v. Magnum Oil, Inc.*, 1999 MTWCC 67, ¶ 8.

[9] 64th Legislature, SR0015.

November 14, 2017, during the November 2017 Special Session, the Senate confirmed the undersigned.[10] Thus, the undersigned is currently the workers' compensation judge.

¶ 4 Turning to the issue of subject matter jurisdiction, the Montana Supreme Court has explained, "Jurisdiction involves the fundamental power and authority of a court to determine and hear an issue. Accordingly, subject-matter jurisdiction can never be forfeited or waived."[11] "The issue of subject matter jurisdiction may be raised by a party, or by the court itself, at any stage of a judicial proceeding."[12]

¶ 5 As stated by the Montana Supreme Court, "The Workers' Compensation Court is a court with limited but exclusive jurisdiction to hear and determine disputes concerning workers' compensation benefits."[13] Although this Court's subject matter jurisdiction is broader than determining the amount of benefits due to an injured employee,[14] it is a court of limited jurisdiction and, as such, its jurisdiction must be conferred by statute.[15] Based on Allum's claim against State Fund, this case falls under the grant of jurisdiction in § 39-71-2905(1), MCA, which states, in relevant part:

> If a claimant, an insurer, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter.

¶ 6 This Court is raising the issue of subject matter jurisdiction on its own because it is evident that this Court does not have subject matter jurisdiction over Allum's claims against the State of Montana, Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen. Under § 39-71-2905(1), MCA, this Court has exclusive

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[10] 65th Legislature, Special Session, SR0001.

[11] *Thompson v. State of Mont.*, 2007 MT 185, ¶ 28, 338 Mont. 511, 167 P.3d 867 (citations omitted).

[12] *In re Workers' Comp. Benefits of Noonkester*, 2006 MT 169, ¶ 29, 332 Mont. 528, 140 P.3d 466 (citation omitted) (alteration in original).

[13] *Moreau v. Transp. Ins. Co.*, 2015 MT 5, ¶ 10, 378 Mont. 10, 342 P.3d 3 (citations omitted).

[14] *See Dildine v. Liberty Nw. Ins. Corp.*, 2009 MT 87, ¶¶ 11-17, 350 Mont. 1, 204 P.3d 729 (holding that Workers' Compensation Court had jurisdiction to decide whether a claimant's attorney was entitled to fees); *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 415, 691 P.2d 823, 825 (1984) (holding that the Workers' Compensation Court has jurisdiction to decide whether a claimant's attorney's lien was valid.); *State ex rel. Uninsured Emp'rs Fund, Div. of Workers' Comp. v. Hunt*, 191 Mont. 514, 519, 625 P.2d 539, 542 (1981) ("Although the Workers' Compensation Court is not vested with the full powers of a District Court, it nevertheless has been given broad powers concerning benefits due and payable to claimants under the Act. It has the power to determine which of several parties is liable to pay the Workers' Compensation benefits, or if subrogation is allowable, what apportionment of liability may be made between insurers, and other matters that go beyond the minimum determination of the benefits payable to an employee.").

[15] *Thompson*, ¶ 24 (citations omitted). *See also Liberty Nw. Ins. Corp. v. State Comp. Ins. Fund*, 1998 MT 169, ¶ 11, 289 Mont. 475, 962 P.2d 1167 (stating, "The jurisdictional parameters of the Workers' Compensation Court are defined by statute as interpreted, from time to time, by the decisions of this Court.").

jurisdiction to decide the disputes between Allum and State Fund over Allum's claim for benefits for his alleged low-back injury, including the jurisdiction to decide whether statutes in the Workers' Compensation Act are constitutional when deciding his claim for benefits.[16] However, Allum's claim for benefits against State Fund is the only claim over which this Court has subject matter jurisdiction because no statute confers upon this Court the power or authority to decide a dispute over whether Montana's Governor, its Attorney General, or its Secretary of State are performing their official duties, nor to order them to take any official action. Likewise, no statute confers upon this Court the power or authority to grant Allum any relief against them and in his favor on his allegations that they are not performing their official duties.[17] Once a court determines that it lacks subject matter jurisdiction over a claim, "it can take no further action in the case other than to dismiss" the claim.[18] Accordingly, this Court dismisses Allum's claims against the State of Montana, Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen for lack of subject matter jurisdiction.

¶ 7 This ruling does not preclude Attorney General Knudsen from intervening on behalf of the State of Montana in this case in the future. If Allum files a Notice of Constitutional Challenge which identifies the statute(s) that he claims to be unconstitutional and serves it on Attorney General Knudsen under M.R.Civ.P. 5.1(a), then Attorney General Knudsen will have 60 days to decide whether to intervene in this case on behalf of the State of Montana, as set forth in M.R.Civ.P. 5.1(b).

¶ 8 For the foregoing reasons, this Court enters the following:

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[16] *See, e.g., Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (affirming Workers' Compensation Court's decision that § 39-71-710, MCA, the statute providing that permanent total disability (PTD) and permanent partial disability (PPD) benefits terminate upon receipt of social security retirement benefits, or eligibility for full social security retirement benefits, was constitutional when applied to claimants receiving PTD benefits); *Reesor v. Mont. State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (reversing Workers' Compensation Court's decision that § 39-71-710, MCA, was constitutional for PPD claimants and remanding for a re-determination of the amount of PPD benefits due); *Miller v. Liberty Mut. Fire Ins. Corp.*, 2008 MTWCC 18 (ruling that Workers' Compensation Court had jurisdiction to hear a constitutional challenge to an administrative rule where a dispute over benefits existed); *Seger*, ¶ 8 (noting that the Workers' Compensation Court "routinely confronts and decides constitutional issues").

[17] *See Liberty Nw. Ins. Corp.*, ¶ 10 (holding that the Workers' Compensation Court did not have subject matter jurisdiction over a misrepresentation claim by one workers' compensation insurer against another under § 39-71-2905, MCA, which provides that the Workers' Compensation Court has jurisdiction over cases involving a dispute over workers' compensation benefits, because the Workers' Compensation Court does not have "jurisdiction over tort actions, even though the tort action might result in a judgment requiring another party to pay, as damages, the amount which an insurer has paid to a claimant under the Workers' Compensation Act").

[18] *Stanley v. Lemire*, 2006 MT 304, ¶ 31, 334 Mont. 489, 148 P.3d 643 (citations omitted).

ORDER

¶ 9 IT IS ORDERED that Respondents State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen are **dismissed** from this case because this Court does not have subject matter jurisdiction over Allum's claims against them.

¶ 10 IT IS FURTHER ORDERED that the caption of this case is amended so that Montana State Fund is the only Respondent.

DATED this 24th day of February, 2022.

(SEAL)

David M. Sandler
JUDGE

WORKERS' COMPENSATION COURT
STATE OF MONTANA

c: Robert L. Allum
Montana State Fund
Governor Greg Gianforte
Attorney General Austin Knudsen
Secretary of State Christi Jacobsen

Robert L. Allum
132 West Magnolia Drive
Belgrade, MT 59714
(406) 580-3912

In Proper Person

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

* * * * *

Robert L. Allum

Plaintiff,

vs.

State of Montana, Montana State Fund, and Does 1-100, inclusive,

Defendants.

/

Case No. CV 23-61-BU-BMM

Complaint for Civil U.S. RICO Claims, Fourteenth Amendment Claims, Constitutional Challenges, and Pendant State Claims (Demand for Jury Trial)

COMES NOW the plaintiff, Robert L. Allum (Allum), and for claims for relief against the defendants, State of Montana, Montana State Fund, and Does 1-100, complains, alleges and avers as follows:

PREFACE

Allum has great respect for the rule of law and the esteem and respect, due the judicial positions of judge and justice, therefore, because of the seriousness of

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the following allegations, the specific names of the offending judge or justice will be included, except for the Montana Supreme Court Justices. These Justices, due to their total immersion, into the orchestration and protection, of the nefarious actions complained of, herein, will be referred to collectively, as the "Black Robed Politicians." Allum acknowledges the absolute immunity, afforded the positions of judge and justice, therefore, each judge or justice is not a named defendant, but that does not lessen the moral culpability of each.

The terms "co-conspirator" and "co-associate" will be used interchangeably, since the same actors performed, both R.I.C.O. functions.

PARTIES

1. That at all times, pertinent, herein, the plaintiff, Robert L. Allum (Allum), was, and now is, a resident of the County of Gallatin, State of Montana; was injured, on-the-job, on November 18, 2013, and has received benefits, pursuant to the Workers' Compensation Act, Plan III, Montana State Fund.

2. That at all times, pertinent to this action, the defendant, State of Montana (State), was, and is, a sovereign political entity, of the United States of America.

3. That at all times, pertinent to this action, the legal status of the defendant, Montana State Fund (State Fund), is at issue. State Fund, claims, pursuant to § 39-71-2313 MCA, that State Fund "is a nonprofit, independent public corporation;" but is in violation of the definition, of a "public corporation," as defined, in § 39-

71-116(31):

> Unless the context otherwise requires, in this chapter, the following definitions apply:
>
> (31) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

4. That since the enactment of § 39-71-2313 MCA (En. Sec. 4, Ch. 613, L. 1989),

> the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation,

State Fund, complained of herein, is a nonprofit, independent public corporation, as described with the plain meaning, of said words.

5. That as of January 1, 2016, State Fund (En. Sec. 1, Ch. 320, L. 2015) was/is subject to the laws and regulations, specified under Title 33, Insurance and Insurance Companies and with immunity for "any assessment of punitive or exemplary damages" (§ 33-1-115(3)(a)(vi) MCA (En. Sec. 1, Ch. 320, L. 2015)).

6. That "[t]he members of the board, the executive director, and employees of the state fund are" the only non-state actors, exercising state police powers, as private citizens," not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund" (En. Sec. 6, Ch. 613, L. 1989).

7. That the Legislature, in § 2, Ch. 464, L. 1987, amended § 33-71-116 (9)

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MCA, to read, "[i]nsurer means *** state compensation insurance fund under compensation plan 3, ***."

8. That the Legislature, in § 5, Ch. 464, L. 1987 (SB 315) (§ 39-71-203 *et seq.* MCA), "vested full power, authority, and jurisdiction" in the "division of workers' compensation of the department of labor and industry provided for in § 2-15-1702 MCA 1987" to administer Plan III.

9. That the Legislature, in 1989, created, the current, State Fund-New, Compensation Mutual Insurance Fund (Sec. 4, Ch. 613, L. 1989, SB 428), which is now known as, the defendant, State Fund (post June 30, 1990 benefit claims); and the State Fund-Old (pre- June 30, 1990 benefit claims), administered by State Fund-New, and billed to the Department of Labor and Industry for said services. State of Montana General Fund is liable for the benefit costs of State Fund-Old.

10. That State Fund-New, as alleged in ¶ 3, is not, an "arm of the state," per the requirements, of *Mitchell v. Los Angeles Comm. College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989):

> To determine whether a governmental agency is an arm of the state, the following factors must be examined: **whether a money judgment would be satisfied out of state funds, whether the entity performs central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only the name of the state, and the corporate status of the entity.** *Jackson v. Hayakawa,* 682 F.2d 1344, 1350 (9th Cir. 1982). To determine these factors, the court looks to the way state

law treats the entity (emphasis added). [citations omitted]

11. That State Fund-New fails to meet the requirements of *Mitchell*, *supra*, in § 39-71-2315 MCA, which states:

> (1) **The management and control of the state fund is vested in the board**, subject to the statutory limitations imposed by this part.
>
> (2) **The board is vested with full power, authority, and jurisdiction over the state fund** except that the board may not dissolve or liquidate the state fund. To fulfill the objectives and intent of this part, **the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier and subject to the regulatory authority of the insurance commissioner** * * * (emphasis added).

12. That State Fund-New is expressly given the powers, enumerated, in *Mitchell*, *supra*, necessary to determine that State Fund-New is not an arm of the State, in § 39-71-2316 MCA, which states:

> **Powers of state fund.** (1) For the purposes of carrying out its functions, the **state fund may**:
>
> (b) **sue and be sued;**
>
> (c) **enter into contracts** relating to the administration of the state fund, including claims management, servicing, and payment;
>
> (d) **collect and disburse money received;**
>
> (h) **pay the amounts determined to be due under a policy of insurance issued by the state fund;**

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(i) **hire personnel**;
(n) upon approval of the board, **expend funds for scholarship, educational, or charitable purposes**;
(p) **perform all functions and exercise all powers of a private insurance carrier** that are necessary, appropriate, or convenient for the administration of the state fund.
(2) The state fund **shall include a provision in every policy of insurance issued** pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320 (emphasis added).

13. That § 39-71-2320 MCA separates State Fund-New monies completely from State monies, when the statute states:

> **Property of state fund** -- investment required -- exception. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon **money belonging to the state fund are the sole property of the state fund** (emphasis added).

14. That State Fund-New receives preferential advantages (government cronyism), as evidenced, in § 39-71-2375 MCA:

> (2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, *** **The certificate of authority must be continuously renewed by the commissioner** (emphasis added).

15. That State Fund-New is the only insurance company, issuing workers' compensation insurance, in Montana, whose "**certificate of authority must be**

continuously renewed by the commissioner," by statute.

16. That State Fund-New, based upon §§ 39-71-2321 and 2363 MCA, is not allocated taxpayer funds, from the State's budget.

17. That the intent of the Montana Legislature, as disclosed in testimony, before the Montana House of Representatives, 51st Legislature - Regular Session, Committee On House Labor And Employment Relations, March 20, 1989, was to create, a new entity, State Fund as **"an insurance company"** which is **"going to be a completely autonomous body, running their operation as they see fit."**

18. That Allum is informed, and thereon avers, that State Fund-New is not, and has not, filed as a registered corporation, in the State of Montana.

19. That Allum is informed, and thereon avers, that State Fund-New is not, and has not, filed as a registered corporation, with the U.S. IRS.

20. That Allum is informed, and thereon avers, that State Fund-New has not been granted "nonprofit tax exempt" status, by the U.S. IRS.

21. That State Fund-New is not subject to the tax on net premiums (Sec. 65(2)(c), Ch. 261, L. 2021)(§ 33-1-115(2)(c) MCA).

22. That Allum is informed, and thereon avers, that State Fund-New does not file a State of Montana Tax Return.

23. That Allum is informed, and thereon avers, that State Fund-New has not filed a U.S. IRS tax return.

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24. That Allum is informed, and thereon avers, that State Fund-New (referred to hereinafter as State Fund) has approximately SIX HUNDRED FIFTY MILLION DOLLARS ($650,000,000.00) in reserves, as of May, 2023.

25. That the Defendants, Does 1-100, inclusive, are fictitious names of corporations, partnerships and individuals, whose true identities are unknown to Allum, at this time, and who are supervisors, affiliates, subsidiaries, representatives, employees, and/or servants of the defendants, State and State Fund, who may have liability to Allum in this action, and whose true names and capacities will be substituted as parties defendant, in this action, upon their discovery by Allum, and upon motion of Allum, for leave to amend this complaint.

JURISDICTION AND VENUE

26. That this controversy is governed by 28 U.S.C. Section 1331 (federal questions), 28 U.S.C. Section 1343 (civil rights violations), 18 U.S.C. Section 1961, *et. seq.* (R.I.CO), Bribery (18 U.S.C. § 201, § 45-7-101 MCA), Conspiracy against rights (18 U.S.C. § 241), Deprivation of rights under color of law (18 U.S.C. § 242), Fraud (Theft) (18 U.S.C. § 1033, § 45-6-301 MCA), Conspiracy to commit a crime (18 U.S.C. § 371, § 45-4-102 MCA), 42 U.S.C. Sections 1983, 1985(3), and 1986 (violation of Fourteenth Amendment "under color of state law"), constitutional challenges to Montana State statutes, and pendant state claims for damages.

ADMINISTRATIVE COMPLIANCE

27. That this action is a new dispute over workers' compensation benefits, between Allum and State Fund, ending with the termination of Allum's benefits, in 2022. The Montana statutory requirements of mediation have been met, and judicial review is now jurisdictionally ripe.

HISTIORY OF MONTANA'S WORKERS' COMPENSATION LAWS

28. That prior to Montana's 1915 workers' compensation laws, injured workers sought relief, through the legal tort system, in Montana's district courts.

29. That Montana's first workers' compensation act, which was constitutional, was the Workmen's Compensation Act of 1915 (Sec. 1, Ch. 96, L. 1915) (1915 WCA). "1915 WCA" will be used, until the 1915 Act was amended, and the name changed, to Workers' Compensation Act in 1979, which will then be referred to as "WCA."

30. That the 1915 Act provided for three different insurance programs, Plans I, II and III (the only Plan addressed, herein). The Act applied to all three plans, through regulations, but only Plan III was administered, by the State of Montana, through the newly created, "Industrial Accident Board," consisting of the Commissioner of Labor and Industry, the State Auditor, and the Chairman of the Board, appointed by the Governor (Part I, Sec. 2(a)).

31. That the State of Montana's 1915 workers' compensation laws were

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based, upon a *quid pro quo* contract, between the employers and employees, with the State administering, said contract, in Plan III. Section 40(u) provided for the employer to pay any deficiencies, resulting from injured workers drawing against the employer's 1915 WCA account. The state had no financial liability.

32. That participation, in 1915 WCA, was voluntary. The employee or employer, individually or jointly, could elect, to be subject to 1915 WCA, and its provisions (Part I, Section 3(c)(d)). If the employer refused to participate in 1915 WCA, the previous tort system applied to all injuries; if the employer agreed to participate, and an employee refused to participate, in the 1915 WCA, said Act applied to the employer and the employees agreeing to participate, but the previous tort system applied to the non-joining employee.

33. The constitutionality, of the exclusivity, of 1915 WCA, and the subsequent denial of the participants' right to a trial by jury, was affirmed by the Montana Supreme Court. The Montana Supreme Court based the constitutionality, of the denial of a trial by jury, on the voluntary nature of participation, in the 1915 WCA ((*Shea v. North-Butte Mining Co.*, 55 Mont. 522, 179 P. 499, 1919 LEXIS 112 (1919)).

34. That the confirmation, that the basis, of the 1915 WCA, was the legal principle of *quid pro quo,* as stated by the Black Robed Politicians, in *Henry v. State Comp. Ins. Fund*, 1999 MT 126, ¶ 12, 294 Mont. 449, 982 P.2d 456:

> It was premised on a compromise whereby workers gave up their right to sue employers in tort for work-related injuries in exchange for a guaranteed compensation system. The injured worker gave up his right to receive full compensation for his injury in exchange for receiving a speedy and certain award; compensation did not depend upon the fault of the employer, nor was it denied based upon the fault of the employee.

35. That the Black Robed Politicians, further acknowledged the importance of *quid pro quo*, in *Hensely v. Montana State Fund*, 2020 MT 317 ¶ 28:

> We noted "that the *quid pro quo* itself serves legitimate purposes, providing 'no fault recovery' for workers and 'predictability of consistent workers[']' compensation payments' for the employer." *Walters*, ¶ 28 (quoting *Satterlee*, ¶ 39) [full citations added for clarity, *Walters v. Flathead Concrete Products, Inc.*, 2011 MT 45, ¶ 28; and *Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶39, 353 Mont. 265, 222 P.3d 566].

36. That the State was a requisite party to the 1915 WCA, Plan III, as evidenced in § 3 (c)(d)(g)(i)(j)(k); § 6(j)(1-4); § 13 (a); § 16; and § 40 (n-q) of the 1915 Act.

37. That the 1915 WCA, Plan III, would be a nullity, if the State was not a party to Plan III. The State agreed to administer workers' compensation, under Plan III, in exchange, for a portion of the insurance premium, from the employer, to cover the State's costs; the employee agreed to the payment schedule of benefits, to come under the Act; the employer agreed to the amount of the insurance premium, to financially support Plan III; and both, the employer and employee,

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agreed to submit all disputes, to the "Board," for resolution; therefore, completing the contract, between the employer, employee, and the State.

38. That the Industrial Accident Board, in § 2(g) had

> "a seal bearing the following inscription: "Industrial Accident Board. State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the Board shall direct. All courts shall take judicial notice of said seal."

39. That 1915 WCA § 6 (hh) defined "'insurer' [as] any insurance company authorized to transact business in this State insuring any employer under this Act." The Industrial Accident Board, because the Board was part of the executive branch, could not be an insurance company. (The Board could only broker *quid pro quo* agreements, between the State, employers and employees, and act as a ministerial body, for said Plan III, *quid pro quo* contracts, collecting fees from employers, paying funds, due injured workers, and act as a non-judicial branch adjudicator, of disputes, between the parties to the contract.)

40. That 1915 WCA § 24 (a) states:

> Whenever this Act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

41. That the purpose and operation, of the § 24 (a) provision, was stated, by the Montana Supreme Court, in *Gaffney v. Ind. Acc. Board* 129 Mont. 394, 287 P.2d 256 (1955), at page 400:

> We state again the holding set forth in *Lindblom v. Employer's Liability Assur. Co.*, [88 Mont. 488, 295 P. 1007, 1010], "**The Workmen's Compensation Act was enacted for the benefit of the employee** * * *." The correctness of this conclusion is universally conceded. The Industrial Accident Board is a state board. **The Act directs that the Board's first duty is to administer the Act so as to give the employee the greatest possible protection** under the purposes for which the Act was enacted. The spirit and intent as well as the letter of the Act must be considered. Compare, *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P.2d 704.
>
> At the threshold it should be noted that **the rule in cases involving the Workmen's Compensation Act is that the Act is to be liberally construed to effect its purposes, and when in doubt the doubt is to be resolved in the employee's favor**. R.C.M. 1947, sections 12-202, 92-838; *Grief v. Industrial Accident Fund*, 108 Mont. 519, 93 P.2d 961. "**Liberal construction of the act is commanded in order that the humane purposes of the legislation shall not be defeated by narrow and technical construction** * * *." *Tweedie v. Industrial Accident Board*, 101 Mont. 256, 53 P.2d 1145, 1148.

42. That Allum is informed, and thereon avers, that the executive branch R.I.C.O. enterprise co-associates, alleged herein, started violating the 1915 Act, §§ 40(u) & (v), which created a monetary deficit; and the legislative branch co-associates started funding, in violation of 1915 Act, sometime during the 1970s and 1980s.

43. That Allum is informed, and thereon avers, that said deficit, as of June 30, 1992, was approximately, Four Hundred Million Dollars ($400,000,000.00).

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FIRST CLAIM FOR RELIEF
R.I.C.O.
18 U.S.C. § 1961

Allum, for his first and separate claim for relief, as to the above-named defendants, complains, alleges and avers:

44. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above, as though fully set forth herein.

I. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (R.I.C.O.) ELEMENTS:

A. The existence of an Association-in-Fact Enterprise:

45. That there has existed, and currently exists, a group of State public officials and employees (state actors), acting under color of law, operating as a R.I.C.O. association-in-fact enterprise, by the co-conspirator/co-associate state actors, starting approximately, in the early to mid-1970s, and currently operating, for the purpose of: (A) conspiring to, and corruptly influencing and attempting to corruptly influence, the outcome of state and federal court proceedings; (B) conspiring to, and defrauding injured Montana workers of (1) the *quid pro quo* contractual rights, established with the Workmen's Compensation Act of 1915; (2) a portion of said injured worker's compensation settlement monies; (3) injured Montana workers' U.S. and Montana constitutional rights, including, but not limited to, due process, trial by jury and a fair and impartial trial; and (C) providing the illusion (façade) for State Fund, that State Fund is a State government

nonprofit, independent public corporation, as a "arm of the state," with full access, to the state police powers and financial assets.

46. That the co-conspirators/co-associates, of said, association-in-fact R.I.C.O. enterprise, included, members of the three branches, of the state government, especially, the Black Robed Politicians, Article VII branch judicial actors, Governors, Attorneys General, Article VI branch executive actors, and legislative members, Article V legislative actors, who aided and abetted, in the R.I.C.O. enterprise by conspiring to, and participating in, the alleged conspiracies and crimes, herein enumerated, through malfeasance, misfeasance, and nonfeasance, with and without willfulness and malice of forethought, in the performance, or lack thereof, of their respective job descriptions and oaths of office.

47. That the co-conspirators/co-associates, of said association-in-fact enterprise, include members of State Fund, and its employees, agents, and representatives, who are conspiring to, and have conspired to, without and with State officials and employees, to violate WCA statutes; and have defrauded injured workers, of a portion of said injured workers' compensation settlement monies; are, and have denied injured workers, including Allum, of their U.S. and Montana Constitutional rights, including the workers' contracted rights under the 1915 WCA *quid pro quo* contract; and are corruptly influencing, and have corruptly

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influenced, the outcome of state and federal court proceedings.

B. The Structure of the Association-in-Fact Enterprise:

1. Mont. Const., Art. VII Judicial Branch (established the jurisdictional bulwark of judicial protection for the operational activities of the R.I.C.O. enterprise):

48. That one of the earliest definable acts, by the judicial branch co-associates, was the creation of the necessary pivotal structure, by the Black Robed Politicians, issuing a "judicial fiat, or *ipse dixit*," for the benefit of the R.I.C.O. enterprise, to violate, and continue to violate, Montana's statutes, especially § 39-71-2901 MCA (En. 92-850 by Sec. 4, Ch. 537, L. 1975). The *ipse dixit*, of the Black Robed Politicians, in creating the "Workers' Compensation Court (WCC)" and "WCC judge," was, necessary, and contrary to Montana statutes and judicial precedents. The co-associates, in the other branches, utilized, said *ipse dixit*, of the Black Robed Politicians, as justification, to commit the crimes and violations, of Allum's, and all injured Montana workers', constitutional rights, under color of law, and deprive Allum, of his wage and medical claim benefits, bargained for, in the 1915 WCA *quid pro quo* contract.

49. That the legislative branch co-associates, in 1975, in violation of the 1915 Act (*quid pro quo* contract), created the "office of workers' compensation judge," in the Department of Administration, with the "judge" appointed by the Governor, and confirmed, by the Senate, in section 82A-1016 R.C.M. 1947, (Ch. 537, L. 1975 (HB 100)).

50. That the new amending legislation, Section 92-852(2) R.C.M. 1947 (Ch. 537; L. 1975 (HB. 100, section 6(2)) (now § 39-71-2904 MCA) required the appeals from the "workers' compensation judge," to be directly filed, with the Montana Supreme Court.

51. That to date, there has not been a constitutional challenge, to § 39-71-2904 MCA, except by Allum.

52. That Allum raised the issue, of § 39-71-2904 MCA violating the Montana Constitution, Article VII, § 4(2) (The legislature may provide for direct review by the district court of decisions of administrative agencies.), before the Black Robed Politicians, in Allum's three appeals, and the issue has been avoided, each time, and not adjudicated, by the Black Robed Politicians.

53. That the Black Robed Politicians, established their unconstitutional creation, "Workers' Compensation Court" ("WCC"), on July 16, 1976, in *Cosgrove v. Industrial Indemnity Co.*, Case No. 13265, by referring to the decision of the "office of workers' compensation judge," as the decision of the "Workers' Compensation **COURT**," on pages 1, 2, 4, and 7 of said decision. The Justices furthered the R.I.C.O. enterprise, in *Skrukrud v. Gallatin Laundry Co.*, 171 Mont. 217, 557 P.2d 278 (Mont. 1976), by referring to the appeal from "the workers' compensation **court**;" and, has continued said practice, until the present.

54. That from 1976-1980, the Black Robed Politicians rewrote the term

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"Court," instead of "Judge," on approximately forty-seven (48) appeals.

55. That each of Allum's appeals to the Montana Supreme Court, on the "Notice of Filing Sheet," has read, "RE: District Court Case No: WCC No. xxx-xxxx."

56. That in 1984, in *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 691 P.2d 823, Chief Justice Haswell and Justices Morrison, Sheehy and Gulbrandson, admitted, in their written opinion, to violating the Montana statute, § 37-61-420 MCA, and "by judicial fiat," unilaterally, using the practice of, *ipse dixit*, to defraud the common person, into believing, that the Black Robed Politicians were authorizing licensed (by the State of Montana) attorneys, as officers of the state and federal courts, to knowingly violate, the foregoing Montana State statute, to the detriment of their clients (injured Montana workers), without ever informing said clients, of said state statute.

57. That Justice Weber dissented, in *Kelleher*, by observing, "the legislature [is] the appropriate body for this type of legislation, rather than this Court."

58. That David M. Sandler (Sandler) (since 2015, the only "WCC Judge"), as a private attorney, was one of the Montana licensed attorneys, who violated § 37-61-420 MCA, by filing a "retainer agreement," and received, a portion of Sandler's injured Montana worker client's settlement monies, in violation of § 37-61-420 MCA (and pursuant to *Kelleher*).

59. That Sandler, as a co-associate, has continued to authorize, the violation of § 37-61-420 MCA, since obtaining his appointment, in 2015.

2. Mont. Const., Art. VI Executive Branch (provides operational control for the R.I.C.O. enterprise):

60. That from *Skrukrud* to present, the executive branch co-associates, including Governor Gianforte, the current Governor, and Austin Knudsen, the current Attorney General, have failed, to institute any legal action, to correct the Black Robed Politicians' continued malfeasance, misfeasance, and/or nonfeasance, both with malice, and without, of their violations, of their oaths of office and the unconstitutionality of the 1975 statute.

61. That the Attorney General, Mike Greely, on July 10, 1979, acting as a co-associate, issued, his Attorney General's Opinion No. 27 (A.G. Op. Volume 38-27), advancing his personal opinion, as an official "Attorney General Opinion," complete with the legal authority, authored an official, binding, "Attorney General Opinion," that, "the office of compensation judge" was not part of the judicial branch, but

> "there are a number of factors supporting that conclusion.
>
> The powers and procedures in the Office of Workers' Compensation Judge are similar to other state courts.
>
> The **employees of the Office of Workers' Compensation Judge are employees of the judicial branch** and thereby exempt from the State Classification and Pay Plan" (emphasis added).

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62. That no co-associate, in the executive or legislative branches, requested, nor did Mike Greeley ever provide, written justification and/or documentation explaining how employees listed, budgeted and paid, from the executive branch budget, justify pay, as if said employees "are employees of the judicial branch".

63. That the clerical staff, of "the office of workers' compensation judge"/WCC," have been paid, and are currently being paid, at the State judicial branch pay rate, from the executive branch budget (Department of Labor and Industry), since said A.G. Opinion, in 1979.

64. That the executive branch co-conspirators/co-associates, including Governor Gianforte, the current Governor, and Austin Knudsen, the current Attorney General, have actively, since the 1970s and 1980s, established, and continued, the pattern and practice of mismanagement, including fraudulent management, in violation of, Montana's statutes, of Montana's Comprehensive Insurance System (and various other official designations), including actively shielding said fraudulent mismanagement, from any investigation or audit, of the hundreds of millions of dollars, unaccounted for in the 1970s and 1980s (especially the approximate $321 million expenditure of "Expendable Trust Funds" "for 1985," "for 1987," "for 1988," and "for 1989" for "STATE COMP. INS.," "Economic Development and Assistance," in ¶¶ 80, 84, 88 & 94, *infra*).

65. That Sandler was appointed, by co-associate Governor Steve Bullock, in

2015, and confirmed, by the co-associates, in the Senate, to the non-legislatively created office of "WCC" (SR0015, January 9, 2015, 64th Legislature).

66. That Sandler was nominated, by co-associate Governor Steve Bullock, in 2017, to the non-legislatively created, **office of "WCC"** and confirmed, by the co-associates, in the Senate, "[a]s **Workers' Compensation Judge** of the State of Montana, in accordance with sections 3-1-1010 through 3-1-1013, MCA[.]"

67. That no co-associate, in the legislative or executive branch, of Montana's government, has challenged the constitutionality, of either the nomination or confirmation, of Sandler, or the constitutional existence, of WCC.

3. Mont. Const., Art. V Legislative Branch (aids and abets the R.I.C.O. enterprise by providing unconstitutional & funding statutes):

68. That the legislative co-associates have continued to enact statutes, with contradicting unconstitutional provisions, in the same statute; to wit, § 39-71-2901(1) MCA references, the "office of the workers' compensation judge," while subsection (2) references, the "workers' compensation court," without legislatively creating, said referenced "court." *State ex rel. Pac. Emp. Ins. v. Wkrs' Comp.*, 230 Mont. 233, 234-235, 749 P.2d 522, 523-524 (1988) illustrates the judicial misuse of the contradictory unconstitutional sections of the same statute:

> The Workers' Compensation Court is a creature of statute. It has no constitutional status, as its jurisdiction is fixed by the legislature. Under the law prior to July 1, 1987, the Workers' Compensation Court had exclusive jurisdiction to make determinations concerning disputes

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> regarding benefits when a party filed a petition with the court. Section 39-71-2905, MCA (1985).
> * * *
> 39-71-2905. *Petition to workers' compensation judge.* A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter.

69. That the past and current co-associate members, in the legislature, in HB2, in Account Number (Department of Labor and Industry) 66020-(WCC) 09 have, and are, knowingly, with malice of forethought, funding, "WCC," in furtherance, of the association-in-fact R.I.C.O. enterprise, and violation of Montana state law (knowingly expending taxpayer monies, to fund an unconstitutional entity, "WCC").

70. That the co-conspirators/co-associates (state actors), utilizing the amendment procedure, of the Montana Constitution, in 1972, enlisted members of the Montana electorate, not qualified, as participants, in the 1915 WCA *quid pro quo* contract, to institutionalize, in the 1972 Montana Constitution, Article II, § 16, the immunity, "bargained for," voluntarily, by the employers, in exchange, for the payment of 1915 WCA premiums, sufficient, to provide the injured worker, with guaranteed medical and lost wage benefits, and sufficient to induce said workers, to voluntarily surrender, the worker's individual constitutional right to redress damages, from an on-the-job injury.

71. That the legislative co-associates, in 1975, violated the 1915 WCA *quid pro quo* contract, and utilizing the superior abusive police powers, of the State of Montana, to amend and coerce the accounting procedures, required by the 1915 WCA, from a yearly actual determination of solvency, to an actuarially determined solvency (§ 1, Ch. 171, L. 1975).

72. That the legislative co-associates, in 1977, violated the 1915 WCA *quid pro quo* contract, and utilizing the superior abusive police powers, of the State of Montana, amended and coerced participation, by the employers and employees, in 1915 WCA, from **voluntary to mandatory** (§ 1, Ch. 550, L. 1977 (now, § 39-71-401 MCA)).

73. That § 1-12-101 MCA, establishes a "Montana commission on uniform state laws," "which consists of three recognized members of the bar or members of the faculty of the law school of the university of Montana-Missoula," whose members are appointed by the Legislative Council (whose members are all State legislators), thus, furthering the appearance, if not actual, control of unconstitutional legislation, by co-associates, without effective knowledge, or input, by the citizen public.

74. That the foregoing exposes the coordinated relationships, among the co-associates, using deception, to create the illusion of "transparency" and "open public participation," in State government.

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75. That all of the State co-associates perform their assigned roles, of protecting the unconstitutional acts of fellow co-associate, to allow the R.I.C.O. enterprise to prosper, through deflection and obfuscation, of the responsibility, of the accountability and supervision, of each act, program, or law complained of, by the citizen public.

76. That the legislative co-associates used the term, "WCC," when amending, discussing, or passing legislation, almost exclusively, by 1980. The co-associates project the illusion, for the benefit of the enterprise, that there is no distinction between a "judge" and a "court," using both terms, in the same statute (*see* § 39-71-2901 *et seq.* MCA).

77. That the Montana statutes have recognized the distinction between "judge" and "court" powers, since 1895, in § 3-1-401 MCA "[a] justice or judge may exercise out of court all the **powers expressly conferred upon a justice or judge, as contradistinguished from the court** (emphasis added)." A "judge" is a living human being, while a "court," is a physical location. A "judge" cannot be a "court," and a "court" cannot be a "judge," (*Todd v. United States* 158 U.S. 278 (1895), quoting Mr. Justice Story, in *United States v. Clark,* 1 Gallison 497).

C. Purpose of the Association-in-Fact Enterprise:

78. That the purpose of the R.I.C.O. enterprise was to obtain, and continue obtaining, funds from the 1915 WCA "workers' compensation insurance system"

(Plan III) (State Fund-Old), in violation of Montana statutes, employing the following racketeering patterns and practices: (1) isolating injured workers from effective representation, both in person and by an attorney; (2) convoluting the statutory responsibility and accountability, of fellow co-associates, administering the benefit claims and dispensing said funds; (3) providing no executive branch supervisory responsibility or accountability, for enforcing the Montana statutes, including meaningful penalties, on fellow co-associate state actors; (4) providing, legislatively, by fellow co-associates, the amending and eliminating, of the 1915 WCA statutes and procedures, for administering said wage and medical benefits; (5) coordinating the co-associates' intentional malfeasance, misfeasance and/or nonfeasance, in each branch, of the State government, to require the approximate $433.5 million deficit, of State Fund, to be repaid by non-participants, in the 1915 WCA *quid pro quo* contract; (6) effectively creating a "revenue stream," of the repayments, from Montana's citizens, for the cost of administering and repaying the deficit, on benefit claims, initiated, prior to July 1, 1990, for the benefit, of the co-associates, of State Fund-New; (7) legislative co-associates failing to enact any legislation, mandating the supervision, responsibility, and accountability, of the administration and funding State Fund benefit claims, by any State government department or state actor; and (8) legislative and executive co-associates protecting the State Fund co-associates from any meaningful audit, or close scrutiny, of the

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administration and funding, of the State-Fund benefit claims.

79. That the purpose of the R.I.C.O. enterprise was to obtain, and continue obtaining, funds from the State Fund-New, in violation of Montana statutes, employing the following racketeering patterns and practices: (1) isolating injured workers from effective representation, both in person and by an attorney; (2) convoluting the statutory responsibility and accountability, of the fellow co-associates, administering the benefit claims and dispensing said funds; (3) providing no State government supervisory responsibility or accountability, for enforcing the Montana statutes, including meaningful penalties, on fellow State Fund co-associates; (4) legislative co-associates enacting legislation, unconstitutionally vague, rendering said statutes, governing the filing and processing of an injured worker's benefit claim, incapable of an absolute meaning, for implementation and understanding, by an ordinary individual; (5) the Black Robed Politicians, as the state court of last resort, have failed, and are failing, to follow American jurisprudence principles, by establishing "case specific" rulings, not supported by statute, case law, or the administration of justice, for the benefit of, the institutionalized R.I.C.O. enterprise and their fellow co-associates, both state actors and State Fund co-associates; (6) the Black Robed Politicians, as the state court of last resort, have failed, and are failing, to follow American jurisprudence principles, by establishing "case specific" rulings, not supported by

statute, case law, or the administration of justice, to protect "WCC" and Sandler, from objective judicial scrutiny, to allow "WCC" and Sandler to protect the institutionalized R.I.C.O. enterprise and fellow co-associates; (7) the actions, of the Black Robed Politicians, as the state court of last resort, in the foregoing items (5) & (6) help facilitate the denial, of U.S. and Montana constitutional substantive and procedural rights, to Allum and other Montana injured workers; (8) legislative co-associates enacting legislation, that created a "crony capitalism environment" for State Fund, reducing the cost of doing business, and increasing the reserves for State Fund to approximately $650 million, by fiscal year ending, 2023; (9) legislative co-associates enacting legislation, that unduly enriches State Fund, at the financial expense, of the injured workers; and (10) legislative co-associates enacting legislation, that facilitates the final determination, by the Black Robed Politicians, of the excess reserves (approximately $500 million) of State Fund, now a private corporation (asserted, but not proven), cloaked as a Montana State "long arm entity."

SECOND CLAIM FOR RELIEF
R.I.C.O.
18 U.S.C. § 1962
Bribery (18 U.S.C. § 201, § 45-7-101 MCA)
Deprivation of rights under color of law (18 U.S.C. § 242)
Fraud (Theft) (18 U.S.C. § 1033, § 45-6-301 MCA)
Conspiracy to commit a crime (§ 45-4-102 MCA)

Allum, for his second and separate claim for relief, as to the above-named

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defendants, complains, alleges and avers:

80. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above; and paragraphs 45 through 79, of the first claim for relief, above, as though fully set forth herein.

I. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (R.I.C.O.) ELEMENTS:

A. Conspiracy to commit Racketeering Activities (18 U.S.C. § 1962(d))

81. That the co-associates, identified in the first claim for relief, herein, were also among the co-conspirators who orchestrated the creation of the deficit of the 1915 WCA *quid pro quo* contract Plan III through mismanagement (intentional fraudulent management) of the injured workers' claims for benefits, prior to 1990.

82. That the deficit exceeded $81 million by June 30, 1985, and was expected to exceed $140 million to $145 million by June 30, 1987.

83. That the legislative co-conspirators, prior to 1985, aided and abetted the creation of the deficit, by constitutionally guaranteeing, in the 1972 Montana Constitution, Article II, § 16, the "employer immunity" bargained for, in the 1915 WCA *quid pro quo* contract, in exchange for the employer paying a Plan III insurance premium, sufficient to pay benefits, in a dollar amount, large enough to induce workers, to join Plan III, and forego their right to sue, in state district court, the employer, for on the job injuries. This constitutional guarantee was obtained, by inducing non-participants, who were not workers, entitled to participate, in the

1915 WCA *quid pro quo* contract.

84. That the legislative co-conspirators, prior to 1990, aided and abetted the creation of the deficit, by enacting the following legislation:

1. 1975 creation of the "office of the workers' compensation judge" in the executive branch, to allow for the elimination, of the accountability, of the quasi-judicial activities, from the public "Board," with elected officials, to a "judge," appointed for 6 years; and the ability of the Black Robed Politicians co-conspirators, with the approval of the state actor co-conspirators, to transmute the quasi-judicial function of the "executive branch judge," into "a court," an entity unknown in jurisprudence, with powers, neither totally executive nor judicial, in nature;

2. 1975 amending the appeal process, of the executive branch decisions, of the quasi-judicial agency judge, from the district courts, to the Black Robed Politicians, thus, allowing for more *ipse dixit* decisions, creation and protection of WCC, and control over injured workers' due process rights and benefit claims rights;

3. 1975 amending of the 1915 WCA Plan III accounting statutory requirements, from calendar year end actual accounting (balancing of industry accounts) of an actual determination of solvency, to an actuarially determined solvency, thus, allowing the intentional exponential growth of the deficit, used "to

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amend" the 1915 WCA *quid pro quo* contract Plan III out of existence, along with the injured workers' constitutional and contractual rights;

4. 1977 amending of participation from voluntary to mandatory, thus, eliminating most *quid pro quo* arguments, in favor of, injured workers' contractual and constitutional rights, and elevating and establishing State's control of a State sponsored workers' compensation system, with arguments, similar to other states;

5. 1987 amending of 1915 WCA Plan III out of existence, and introducing the new (beginning of) "workers' insurance Plan III," "a nonprofit, independent public corporation;"

6. 1987 and 1989 wholesale repealing of the 1915 WCA Plan III provisions, protecting the injured worker, and providing the injured worker, with claim benefits, sufficient to warrant the injured worker, voluntarily joining the 1915 WCA Plan III insurance program, with the State sponsored pro-employer, anti-worker "State Fund precursor," which (1) eliminated and/or severely limited the access to, and the amount of, injured workers' benefits, (2) instituted unconstitutionally vague and contradictory statutes, and (3) delegated state functions to private actors, to the detriment of the injured workers;

7. 1989 amending the existing "workers' insurance Plan III," and creating two "workers' insurance Plan IIIs," based upon the date, an injured worker's claim for benefits, was filed, thus, separating the existing "workers'

insurance Plan III" deficit, from the ongoing "workers' insurance Plan III" program;

8. 1989 creation, on a specific operative future date, of (1) a separate "workers' insurance Plan III" liability fund, which would include all deficits, on said date, thereby, absolving the liabilities, of the individual employers, incurred, under the 1915 WCA Plan III, Industry Subcategories, and allocating said individual employers' deficit liabilities, to all Montana workers and employers, via a proposed universal payroll tax, on all wages paid, in Montana, including independent contractors and Subchapter S Corporations, for repayment; and (2) a new "workers' insurance Plan III" liability fund, for the incurring of liabilities, and payment, of benefits, for, Plan III accepted, injured workers' claims, and the operational costs thereof; additionally, providing for the new, operational "workers' insurance Plan III" program, to administer both programs, with an executive department liable for the administrative costs, from the state general budget, for the costs of administering the deficit repayment fund claims; and

9. 1975 amending and repealing, of 1915 WCA provisions, requiring "performance bonds" for the Plan III Board members, and granting immunity to the co-associate state actors and private citizens administering ""workers' insurance Plan III" program.

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B. Racketeering Activities (18 U.S.C. § 1962(a))

Documents evidencing legislative co-associates' pattern and practice, of funding the R.I.C.O. Enterprise:

85. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1985, on page 33, defines "Expendable Trust Funds" as

> Expendable Trust Funds are used to account for assets held by the State in a trust capacity, where both the trust principal and earnings may be expended.

86. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1985, on page 33, in "Expendable Trust Funds," offers "a brief description of the "Expendable Trust Fund of State Compensation Insurance Fund" as

> This fund accounts for employer contributions to the State-operated workers' compensation insurance system and payment of benefits to injured workers. Administrative costs of operating the fund are paid from a Special Revenue Fund.

87. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1985, on page 35, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1985 (Expressed in Thousands)" states, in "EXPENDITURES: Current," for "STATE COMP. INS.," "Economic Development and Assistance" "52,341" [52 million, 341 thousand dollars].

88. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 24, in Note 18 offers the following description of the "State Compensation Insurance":

> The payment of benefits to injured workers is funded through employer contributions to the State operated workers' compensation insurance system. As of June 30, 1986, actuarial liabilities exceeded assets by $81,021,967. The 50th Legislature, in Chapter 664, provided for a .3% payroll tax for all employers based on total wages paid. This tax is effective from July 1, 1987 through June 30, 1991. Legislative intent is to alleviate cash flow problems, but this action will not address the deficit. Chapter 464 which changed the benefit structure, will affect only future payments and will have no effect on the prior liability.
>
> At June 30, 1987, it is estimated that the unfunded liability is between $140 million and $145 million. There are no funds presently available as a contingency reserve.

89. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 25, defines "Expendable Trust Funds" as

> Expendable Trust Funds are used to account for assets held by the State in a trust capacity, where both the trust principal and earnings may be expended.

90. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 25, in "Expendable Trust Funds," offers "a brief description of the "Expendable Trust Fund of State Compensation Insurance Fund" as

> This fund accounts for (1) employer contributions to the State-operated workers' compensation insurance system; (2) penalties assessed employers who do not carry workers' compensation insurance; and (3) payment of benefits to injured workers. Administrative costs of operating the fund are paid from a Special Revenue Fund.

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91. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 27, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1987 (Expressed in Thousands)" states, in "EXPENDITURES: Current," for "STATE COMP. INS.," "Economic Development and Assistance" "79,715" [79 million, 715 thousand dollars].

92. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1988, on page 20, defines "Expendable Trust Funds" as

> Expendable Trust Funds are used to account for assets held by the State in a trust capacity, where both the trust principal and earnings may be expended.

93. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 20, in "Expendable Trust Funds," offers "a brief description of the "Expendable Trust Fund of State Compensation Insurance Fund" as

> This fund accounts for (1) employer contributions to the State-operated workers' compensation insurance system; (2) penalties assessed employers who do not carry workers' compensation insurance; and (3) payment of benefits to injured workers. Administrative costs of operating the fund are paid from a Special Revenue Fund.

94. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1988, on page 21, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1987 (Expressed in Thousands)" states, in "LIABILITIES" "Estimated Claims 149,168."

95. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1988, on page 22, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1988 (Expressed in Thousands)" states, in "EXPENDITURES: Current," for "STATE COMP. INS.," "Economic Development and Assistance" "91,610" [91 million, 610 thousand dollars].

96. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 2, in Note 18 offers the following description of the "Major Initiatives":

> Other major initiatives enacted include: (1) reform of the Montana workers' compensation system; (2) the imposition of a .3% payroll tax on all employers to assist with solving the workers' compensation unfunded liabilities problem; and (3) the imposition of a 10% surtax on individual income taxes for calendar years 1987 and 1988.
>
> The 51st Legislature enacted the other key initiatives:
> --Authorized a $20 million General Fund Appropriation to the Workers' Compensation Fund to offset an employer rate increase.
>
> --Reorganize the State Workers' Compensation Division. The result is the creation of the State Compensation Mutual Fund, which is a nonprofit, independent public corporation established to provide employers with an option for insuring their workers' compensation * * * coverage.

97. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 5, under "Risk Management" states:

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> * * * At June 30, 1989, actuarial liabilities exceeded assets by $212,517,000. (Compare, ¶ 73, "As of June 30, 1986, actuarial liabilities exceeded assets by $81,021,967.")
>
> * * * The Legislature also removed the responsibility for the funds administration from the Department of Labor and Industry and created the State Compensation Mutual Insurance Fund, which is a nonprofit, independent public corporation. The current rate structure is established with the goal to eliminate the unfunded liability by June 30, 1997. Signed, Dave Ashley, Acting Director, Department of Administration.

98. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 16, defines "Expendable Trust Funds" as

> Expendable Trust Funds are used to account for assets held by the State in a trust capacity, where both the trust principal and earnings may be expended.

99. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 16, in "Expendable Trust Funds," offers "a brief description of the "Expendable Trust Fund of State Compensation Insurance Fund" as

> This fund accounts for (1) employer contributions to the State-operated workers' compensation insurance system; (2) penalties assessed employers who do not carry workers' compensation insurance; and (3) payment of benefits to injured workers. Administrative costs of operating the fund are paid from a Special Revenue Fund.

100. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 17, in "Expendable Trust Funds" "for the fiscal year ending

June 30, 1989 (Expressed in Thousands)" states, in "LIABILITIES" "Estimated Claims 264,596."

101. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 22, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1989 (Expressed in Thousands)" states, in "EXPENDITURES: Current," for "STATE COMP. INS.," "Economic Development and Assistance" "97,645" [97 million, 645 thousand dollars].

102. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1991, on page 34, under "Risk Management" states:

> During the 1990 Special Session, the Legislature passed legislation which separated the liability for claims for injuries prior to July 1, 1990 (State Fund-Old), from the liability for claims for benefits incurred, on, or after July 1, 1990 (State Fund-New). * * *
>
> The 1991 Legislature passed legislation authorizing the Board of Investments to issue up to $220 million in bond to provide further funding for the State Fund-Old and to utilize the employer payroll tax to redeem the bonds issued.
>
> At June 30, **1991, Liabilities for the State Fund-Old exceeded assets by $461.6 million. The actuarially determined liability for unpaid claims, which were incurred, but not reported, increased to $433.5 million undiscounted.** This represents an increase of $139 million in claims liability from fiscal year 1990, of which $98.2 million is a result of changing from a discounted to an undiscounted liability (emphasis added).

103. That the "Montana Comprehensive Annual Financial Report, dated

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June 30, 1989, on page 16, defines "Expendable Trust Funds" as

> Expendable Trust Funds are used to account for assets held by the State in a trust capacity, where both the trust principal and earnings may be expended.

104. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1987, on page 16, in "Expendable Trust Funds," offers "a brief description of the "Expendable Trust Fund of State Compensation Insurance Fund" as

> This fund accounts for (1) employer contributions to the State-operated workers' compensation insurance system; (2) penalties assessed employers who do not carry workers' compensation insurance; and (3) payment of benefits to injured workers. Administrative costs of operating the fund are paid from a Special Revenue Fund.

105. That the "Montana Comprehensive Annual Financial Report, dated June 30, 1989, on page 17, in "Expendable Trust Funds" "for the fiscal year ending June 30, 1989 (Expressed in Thousands)" states, in "LIABILITIES" "Estimated Claims 264,596."

106. That the 2009 & 2011 Biennium Executive Budgets, on pages 88 & 84, respectively, state:

> **Program Description**
>
> The Old Fund was funded through the old fund liability tax (OFLT). This tax was initially enacted in 1987 and expanded in 1993 and was administered by the Department of Revenue. The old fund liability tax was eliminated January 1, 1999.

State law established parameters for the termination of the OFLT. The State of Montana budget director certified that the statutory parameters had been satisfied and that the Old Fund liability was adequately funded.

At the September 16, 1998 State Fund board meeting, **the State Fund's consulting actuary advised the board that as of 12/31/98 the Old Fund would be fully funded including a contingency of 10%.** As a result of this action **the board in turn advised the State of Montana budget director that the Old Fund would be fully funded as of 12/31/98. On September 16, 1998, the budget director submitted written notice to the Department of Revenue to begin efforts to provide for terminating the collection of the old fund liability tax on January 1, 1999.**

The transfer of the excess of adequate funding of the Old Fund established in 39-71-2352(5) and (6), MCA, was amended during the 2002 special legislative session and the 2003 regular session. * * *

If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321 (emphasis added).

107. That the 2025 Biennium Executive Budget, Section P-Proprietary Funds, on page 132, states:

Proprietary Program Description –

The Old Fund consists of claims for injuries that occurred prior to July 1, 1990. Montana State Fund is responsible for administering and managing claims of the Old Fund.

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> Old Fund operating expenses are for assessments charged by the Department of Labor and Industry. A fund transfer from the Old Fund to Montana State Fund compensates Montana State Fund for the expense of Old Fund for claims administration.
>
> As required in 39-71-2352, MCA, the Old Fund has a separate payment and funding structure. **If in any fiscal year claims for injuries resulting from accidents that occurred before July 1, 1990 are not adequately funded, any amount necessary to pay claims** for injuries resulting from accidents that occurred before July 1, 1990 **must be transferred from the state general fund to the Old Fund account provided for in 39-71-2321, MCA.**
>
> **In June 2011, the assets of the Old Fund were exhausted. Since that time, transfers from the general fund, as provided for in law, have been funding the Old Fund claim benefit payments and expenses** (emphasis added).

108. That the continuing deficit, in funding, from June, 2011, in the State Fund-Old, is the direct result, of the misrepresentations (fraud), of State Fund's co-conspirators/co-associates, actuary and Board of Directors, "[a]t the September 16, 1998 State Fund board meeting[.]"

109. That said State Fund co-conspirators/co-associates (actuary and board members), are "not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund" (¶ 6, *supra*).

110. That the co-conspirators/co-associates of State Fund have, and are, receiving economic benefits, as a result of the misrepresentations (fraudulent

advice), either with, or without malice, provided, on September 16, 1998.

The 1980s legislation of the co-associates:

111. That the legislative co-associates, in 1987, using the results of, fellow participating executive branch and legislative branch, co-associates, violating State statutes, to create the "Expendable Trust Fund" deficit, sought to eviscerate the 1915 WCA *quid pro quo* contract, with its accountability provisions, in Plan III, by passing SB 315 (Ch. 464, L. 1987), a wholesale amending of 1915 WCA.

112. That the unconstitutional term, "WCC," permeates the 1987 amendments and discussions, in committee hearings, while the phrase "workers' compensation judge," only appears, in the existing statutes, being amended, without being repealed.

113. That the existence of the Black Robed Politicians' actions, as co-associates, was testified to, by Judge Timothy Reardon, "WCC," in the Minutes of the Meeting of the Labor and Employment Relations Committee Montana State Senate February 14, 1987, page 20:

> As a member of the Governor's Advisory Council, **Judge Reardon voted to strike that language, not because he felt it was a determination of outcome of cases, but because he feels the benefit of doubt has changed from the claimant to the insurance industry** (emphasis added).

114. That the legislative co-associates have, and are, accomplishing the real reason for the 1987 amendments, securing funding and governmental power for the

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R.I.CO. enterprise, and the fellow co-associates, through the carefully legislated unconstitutional statutes, violation of constitutional rights, extending State immunity to State Fund co-associates, and ultimately, funneling said monies, into a newly created, and disguised, State Fund (New) (Sec. 4, Ch. 613, L. 1989).

115. Ch. 464, L. 1987, §§ 11(2) & 21(2) (§ 39-71-701(2) MCA) formalized, in statute, the previously mandated, by the Black Robed Politicians' requirements, for a legalistic "preponderance of proof and evidence," required, for the claimant, to meet the burden of proof, for an injured worker to receive benefits. *Birdwell v. Three Forks Portland Cement Co.* (1935), 98 Mont. 483, 495, 40 P.2d 43, 47:

> In order for the plaintiff to prevail it was necessary for her to **prove by a preponderance of the evidence that Birdwell suffered an industrial accident, and that the injury was the proximate cause of his death** (emphasis added).

116. Ch. 464, L. 1987, § 1(4) effectively repealed § 24(a) 1915WCA. The "liberal construction clause," was amended to read, "Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party."

117. That the 1987 passage of §§ 1(4) above, 11(2) ("more probable than not"), and 21(2) ("preponderance of medical evidence"), by the legislative co-associates, completed the evisceration, of the employer/employee *quid pro quo* contract, of the 1915 WCA.

118. That the legislative co-associates, in 1987, amended § 39-71-2901

MCA, by adding subsection 2, (amd. Sec. 58, Chapter 464, L. 1987), endowing a Montana Constitution, Article VI, executive branch, Department of Labor and Industry, "office of workers' compensation judge," with Article VII, judicial branch, "court" authority, without legislatively establishing, said "court."

119 That the actions, of the legislative co-associates, complained of, in ¶ 108, above, did not repeal the position, of "office of workers' compensation judge," but instead, inserted, in subsection 2, the word, "court," then empowered and ascribed, to said "court," Montana Constitution, Article VII, judicial branch powers, in violation of the Mont. Const. Article VII § 4(2), but did not define the jurisdiction, qualifications for electing the "court's" judge, or the "court's" physical location of operation.

120. That the title, Montana State Fund, as known today, started in 1989 (*see* ¶¶ 5 & 9, *supra*).

121. That the legislative co-associates, in 2007, passed SB 523 (Ch. 428, L 2007) adding the phrase, "the workers' compensation court," to § 3-1-102 MCA (Courts of record), without ever legislatively establishing WCC, and in direct contradiction to § 3-1-101 MCA.

122. That the State of Montana is the only state, in the U.S., with a statutory, non-legislated judicial "court of record," which is not a "court of justice."

123. That the legislative co-associates, on April 22, 2021, passed SB 168

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(Sec.1, ch.270, L. 2021), amending § 37-61-420 MCA, to make all attorney/client interactions, involving retainer fee agreements, consistent with *Kelleher*.

124. That the legislative co-associates, on March 16, 2021, passed SB 140, (Sec. 10, Ch. 62, L. 2021), which amended § 39-71-2901(4) to "the chief justice of the Montana supreme court shall appoint a substitute judge" to an Article VI executive branch, co-associate, governor appointed position.

125. That the provisions of SB 140, (Sec. 10, Ch. 62, L. 2021), complained of, in ¶ 118, above, violate the Montana Constitution Article 3 § 1 (Separation of Powers).

126. That no co-associate, in the legislative or executive branch, of Montana's government, has challenged the constitutionality of ¶ 118, above, to date.

II. ACTIONABLE R.I.C.O. ACTS

A. Bribery (18 U.S.C. 201, § 45-7-101 MCA)

127. That 45-7-101 MCA states "Bribery in official and political matters:

> (1) A person commits the offense of bribery if the person purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:
>
> > (a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

> (b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or
>
> (c) any benefit as consideration for a violation of a known duty as a public servant or party official."

128. That the alleged bribery, of licensed attorneys, as officers of the court (public officials) started in 1984, with *Kelleher* (*see* ¶¶ 56-57, *supra*).

129. That Sandler, as co-associate (appointed (2015) and nominated (2017) "WCC Judge"), has approved and put the stamp, of the "State of Montana Workers' Compensation Court," next to his name, on settlements, awarding a portion of the injured workers' settlement monies, to their attorney(s), in violation of § 37-61-420 MCA, prior to 2021.

130. That co-associate Sandler, to further the appearance, that "WCC" is a legitimate "court," uses a "state seal," in violation of § 3-1-201 MCA (the statute authorizes the supreme court, district courts, and municipal courts to use a seal), which DOES NOT AUTHORIZE Sandler to use a seal.

131. That Does 1-5 are employees, of the State of Montana, Department of Labor & Industry, in the position of director, lawyer, claims examiner, clerk, or other title, acting as co-associates, knowingly, in violation of § 37-61-420 MCA, originated and/or processed any retainer agreement, between an attorney and an injured worker, receiving workers' compensation settlement fees, between 1985

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and April 22, 2021.

132. That Does 6-10 are employees of Montana State Fund, in the position of director, lawyer, claims examiner, clerk, or other title, acting as co-associates, knowingly, in violation of § 37-61-420 MCA, originated and/or processed any retainer agreement, between an attorney and an injured worker, receiving workers' compensation settlement fees, between 1985 and April 22, 2021, resulting in said lawyer receiving a portion of said injured workers' settlement monies.

133. That between the years 1984 and 2021, no member of the executive branch, including the current Governor or Attorney General, obeyed the statute, § 37-61-420 MCA, when supervising and/or requiring the dispersing, of said workers' compensation settlement monies, according to said statute.

134. That no Governor, between the years 1984 and 2021, issued any executive orders and/or directives, compelling compliance with § 37-61-420 MCA, by any executive branch subordinate; nor did any Governor initiate any legislation to override, correct, or otherwise correct the public's misconception of the "judicial fiat or *ipse dixit*," of the Black Robed Politicians, in *Kelleher*.

135. That no Attorney General, between the years 1984 and 2021, issued an Attorney General Opinion(s) (AGO) addressing compliance, by executive branch personnel, with § 37-61-420 MCA; nor did any Attorney General initiate any legislation to override, correct, or otherwise correct the public's misconception of

the "judicial fiat or *ipse dixit,*" of the Black Robed Politicians, in *Kelleher.*

136. That §§ 39-71-2322 through 2327 MCA1985/1987/1989 govern the duties of the "trustee" of the "State Comprehensive Insurance Expendable Trust Fund."

137. That the approximate amount of 321 million, identified, in ¶ 64, *supra,* for "Economic Development and Assistance," violated §§ 39-71-2322 through 2327 MCA1985/1987/1989 establishing, said expenditures, from the workers' insurance trust, with the State, as trustee, as a felony.

138. That no audit of the funds, contracts, and/or the parties, to the transactions, in violation of statutes, identified in ¶¶ 87, 91, 95, & 101, *supra,* were conducted, nor violators identified.

139. That the desired effect, of the foregoing bribes, was (1) to induce state actors, public officials, and attorneys (as officers of the court), not to audit trust fund expenditures, and/or challenge the constitutionality of WCC and § 39-71-2904 MCA; (2) to increase the financial net worth of the co-conspirators/co-associates; (3) increase the power of the R.I.CO. enterprise and its co-associates; and (4) to demonstrate to non-members the value of joining the R.I.C.O. organization, identified, herein.

B. Fraud (Theft) (§ 45-6-301 MCA)

140. That § 45-6-301 MCA reads:

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> (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:
>
> > (a) has the purpose of depriving the owner of the property
>
> (8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

141. That the Department of Labor & Industry, as part of the association-in-fact enterprise, between 1984 and 2021, did produce and distribute, "Attorney Retainer Agreement" forms, for use, in creating the legitimacy, of the violation of § 37-61-420 MCA, in defrauding injured workers, of the full amount of their compensation benefit monies.

142. That said form, (or a version thereof) was used, by State and State Fund co-associates, as the basis, to reduce an injured worker's compensation settlement monies; and render said monies, to the injured worker's attorney, knowingly in violation, of § 37-61-420 MCA.

143. That said, injured worker's attorney, did knowingly, in violation of § 37-61-420 MCA, keep a portion of their client's injured worker settlement monies, with the express intent of violating, § 45-6-301(1)(a) MCA, " depriving the owner of the property."

144. That the defrauding and theft scheme, described, above, in ¶ 143,

above, occurred on a regular basis, involving multiple offenses, by the same attorney(s), therefore, § 45-6-301(8) MCA applies for determining the sentencing of each attorney.

145. That co-associate, Sandler, participated in the foregoing, theft and defrauding scheme, for his own financial benefit, prior to 2015, and from 2015 to present, as "Judge of WCC," to create an aura of statutory and judicial approval, to complete the theft and defrauding of the injured worker.

146. That the Governor, Attorney General, and Department of Labor & Industry, through the co-conspirators/co-associates, therein, and as part of the association-in-fact enterprise, between 1984 and 1989, initiated, controlled, and failed to take remedial or preventative measures, in compliance, with the Montana Constitution, state statutes, and/or their oaths of office to correct said violations.

C. Corruption of the state and federal court systems

147. That a critical lynchpin element, of the R.I.C.O. association-in-fact enterprise, was, and is, the participation of the unconstitutional "WCC."

148. That the Black Robed Politicians created and named, "WCC," through "judicial activism," or "*ipse dixit*," in excess of their constitutional authority (Montana Constitution Article VII § 1), in 1976.

149. That the Montana Legislature has never, pursuant to the Montana Constitution, Article VII, § 1 (and such other courts as may be provided by law),

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established or created "WCC."

150. That "WCC" does not have a statutory procedure, for either electing a "judge," or appointing a "judge."

151. That "WCC" has no identified physical location, in statute, to conduct official state business.

152. That Montana Administrative Procedures Act (MAPA), § 39-71-2903 MCA (HB100 subsection 6 of the 1975 original bill) governs the administrative hearings, before workers' compensation judge, with no mention of "WCC."

153. That § 2-15-1707 MCA acknowledges "[t]here is the office of workers' compensation judge," with no mention of "WCC."

154. That "WCC" is not statutorily acknowledged, as existing, in the list of Executive branch entities, in Title 2, Chapter 15 MCA.

155. That "WCC" is not listed as having "judicial power," in Montana Constitution Article VII, § 1:

> The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

156. That the Montana Supreme Court web site, "courts.mt.gov/courts/lcourts/," states:

> The **Courts of Limited Jurisdiction in Montana are Justice Courts, City Courts and Municipal Courts.** There are 61 Justice Courts, 84 City Courts and 6 Municipal Courts.

> Justice and Municipal Court Judges are elected, unless appointed to fill a vacated position. . . . City Court Judges may be elected or appointed (emphasis added).

157. That "WCC" is not listed as a "court of limited jurisdiction," in ¶ 156, *supra*, and "WCC" has not, and cannot, meet the constitutional requirement, that the "judge" of "WCC" be elected (Montana Constitution Article VII § 8(1)).

1. State Black Robed Politicians:

158. That the Black Robed Politicians have knowingly, and with malice of forethought, judicially, in written Supreme Court Opinions, falsely labeled, "WCC," as a "court of limited jurisdiction," in furtherance of the R.I.C.O. enterprise, herein.

159. That the Black Robed Politicians, to avoid adjudicating whether "WCC" is constitutional, denied the Black Robed Politicians' statements of fact, in *Allum III* ¶ 7:

> **We** have previously **determined the WCC is a court of limited jurisdiction**—"an administrative tribunal governed by MAPA and allocated to the Department of Labor and Industry for administrative purposes." *Thompson*, ¶ 24. As such, **it has only the power conferred to it by statute**. *Thompson*, ¶ 24 (emphasis added).

160. That the Black Robed Politicians have knowingly, and with malice of forethought, in furtherance of the R.I.C.O. enterprise, exceeded the Article VII authority, by judicially exercising Supervisory Control of a non-Article VII

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unconstitutional entity, "WCC." *See Allum v. State of Montana et al.*, Case No. OP 19-0597 and *Allum v. State of Montana et al.*, Case No. OP 19-0695.

161. That a fundamental axiom, of the American jurisprudence system, is that the issue, of subject matter jurisdiction, may be invoked, at any time, in the course, of a proceeding, was stated, by the Court in *Williamson v. Berry*, 8 How. 495, 49 U.S. 495, 12 L. Ed. 1170, SCDB 1850-036, 1850 U.S. LEXIS 1687:

> "But it is an equally well-settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject, may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings. The rule prevails whether the decree or judgment has been given in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of States."

162. That the Black Robed Politicians, in *Allum v. Montana State Fund*, 2020 MT 159N, ¶ 4, 400 Mont. 561, 464 P.3d 1012 (*Allum I*), put an affirmative duty, on Allum, to raise the issues, of the unconstitutionality of "WCC" and §39-71-2904 MCA, in "WCC," before the Black Robed Politicians would address the issues, on appeal:

> This Court has consistently held that it will not consider issues raised for the first time on appeal. "**In order to preserve a claim or objection for appeal, an appellant must first raise that specific claim or objection in the [trial] court.**" . . . By failing to first raise the issue in the WCC, Allum has waived any consideration of the

> issue on appeal. We decline to address the constitutionality of the WCC under the guise of subject matter jurisdiction. The judgment of the WCC is affirmed (emphasis added).

163. That Allum raised said issues in *Allum III*.

164. That the Black Robed Politicians, in *Allum III*, stated in ¶ 8:

> As Allum resolved all of his benefit disputes, **via the WCC-approved settlement**, as a matter of law the WCC did not have jurisdiction over the remaining stand-alone constitutional challenges. The WCC's conclusions of law were correct (emphasis added).

165. That "[o]n October 18, 2022, Allum and State Fund filed their Joint Petition and Stipulation for Entry of Judgment" (WCC Case No. 2022-5873, Doc. # 53 ¶ 4).

166. That the judgment and order, in WCC Case No. 2022-5873, was filed October 22, 2022.

167. That the Black Robed Politicians were without subject matter jurisdiction, to adjudicate *Allum III*, if WCC, as stated, by the Black Robed Politicians, in *Allum III*, in ¶ 9 Conclusion:

> Because Allum resolved all of his benefit disputes, the WCC did not have jurisdiction over his remaining stand-alone constitutional challenges.

168. That the resolution of benefits, on October 18, 2022, if the Black Robed Politicians, are correct, deprived Sandler, of all jurisdiction, of WCC 2022-5873, on October 18, 2022; the "final, appealable judgment," in the case, was not

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dated and filed, until October 20, 2022; therefore, the "WCC" case had no "final judgment" to appeal. The Black Robed Politicians were without jurisdiction, and the appeal and opinion, in *Allum III* is infirm.

169. That the Black Robed Politicians, in *Allum III*, stated in Footnote 1:

> State Fund asserted Allum's constitutional challenges to be **precluded by res judicata, as he had brought the same constitutional claims in three prior WCC proceedings**, and were also precluded by **Allum's failure to file notice of his constitutional challenges as required by M. R. Civ. P. 5.1(a)**. As we determine the issue on other grounds, it is not necessary to address these arguments (emphasis added).

170. That the Black Robed Politicians, in *Allum III*, in furtherance of the R.I.C.O. enterprise, refused to address the constitutionality of "WCC," and the other constitutional issues, after Sandler in "WCC," had ruled on them, by corruptly using the state judicial system, and their offices, to (1) deny Allum "judicial review" of administrative decisions, as mandated by the Montana Constitution, Article VII, §4(2); (2) refusing to follow American jurisprudence case law, including past Montana case law; and (3) refusing to correctly applying the principles of jurisdiction to, (a) "WCC," as an unconstitutional entity, (b)Sandler, as *coram non judice*, and (c) the Montana Supreme Court, as the head of the judicial branch (department).

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2. **State – WCC and Sandler**

171. That in WCC Case No. 2022-5873 (underlying case to *Allum III*, 2023 MT 121), a judgment and order, under the heading "In the Workers' Compensation Court of the State of Montana," was "Filed, October 20, 2022," in the "Office of Workers' Compensation Judge, Helena, Montana," signed by "David M. Sandler, Judge," with the seal of "Workers' Compensation Court, State of Montana" (Doc #54). Said Order, in ¶11 states:

> IT IS FURTHER ORDERED AND ADJUDGED **that all claims and issues in this case that were properly before this Court have been adjudicated and the rights of the parties have been conclusively determined** (emphasis added).

172. That Sandler, in WCC Doc. # 4 (¶ 2), stated:

> WCC "**is not simply an administrative law court functioning under the executive branch of government** but is a special court created pursuant to Article 7, section 1 of the 1972 Montana Constitution (emphasis added)."

173. That Sandler, in WCC Doc. # 54, page 2, footnote 5 stated:

> Although in a different context, **this Court notes that it has previously rejected Allum's claims that the Judge of the Workers' Compensation Court is part of the executive branch.** *See, e.g.*, Order Den. Pet'rs Summ. J. Mots., Docket Item No. 49, ¶¶9,10. *See also* Order Dismissing Resp'ts State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen for Lack of Subject Matter Jurisdiction, Docket Item No. 4 ¶ 2 (emphasis added).

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174. That Sandler's shifting positions, including opposite positions, of law, are demonstrated in ¶ 172, above, that WCC "is not simply an administrative law **court functioning under the executive branch of government**," and ¶ 173, above, "this Court notes that it has previously **rejected Allum's claims that the Judge of the Workers' Compensation Court is part of the executive branch.**"

175. That Sandler has, and is, committing fraud, if Sandler is not in the executive branch. Sandler has received his remuneration, directly from an Executive Branch Account, Department of Labor and Industry – 66020, Workers Compensation Court – 09, since 2017; and WCC has received its operating funds from the same account.

176. That Sandler has signed and filed ARM 24.5.101 *et seq.*, which is only required of executive branch agencies. Judicial branch entities are exempt.

177. That Sandler has applied ARM rules to injured workers cases, which violate judicial branch court rules, if the "WCC" was, and is, in the judicial branch.

178. That Sandler claims not to be part of the executive branch, but Sandler has never stated, in writing, in what branch, WCC and Sandler, as Judge, reside.

179. That Sandler in WCC Doc. # 4 (¶ 2) (Complaint, ¶ 172), that:

> WCC *** is a special court created pursuant to Article 7, section 1 of the 1972 Montana Constitution,

without ever specifying or defining, statutorily or constitutionally, the definition of a "special court created, pursuant to Article 7, section 1, of the 1972 Montana

Constitution;" and how "WCC" could, statutorily or constitutionally, exist as "an administrative law court functioning, under the executive branch of government," and "a special court created, pursuant to Article 7, section 1," in the judicial branch, of government, at the same time.

180. That Sandler claims to be "WCC Judge," but date stamps and files all of the papers and documents, in WCC cases, in "The Office of the Workers' Compensation Judge, Helena, Montana".

181. That the **title of SR 0001** of the 65th Legislature Special Session, November, 2017, states "***Senate *** concurring in **confirming and consenting** to the appointments to *** the Montana Workers' Compensation **Court** *** ." The body of SR001 states, in relevant part:

> (3) As Workers' Compensation **Judge** of the State of Montana, ***:
>
> David M. Sandler, Kalispell, Montana (emphasis added).

182. That Sandler, through writing and submitting the Administrative Rules of Montana (ARM) for "WCC" (There are no ARM's for the "office of workers' compensation judge."), has mirrored the Montana Rules of Civil Procedure, written by the Black Robed Politicians, in violation of §39-71-105(4) MCA, the

> "Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:
>
> Montana's workers' compensation and

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> occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. **To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities** (emphasis added).

183. That Sandler, in WCC Case No. 2019-4705 (basis for *Allum I* appeal), Order (Doc. No. 70), dated November 29, 2019, states, in violation of §39-71-105(4) MCA, above, on page 4:

> ¶ 12 State Fund is correct that the Montana Rules of Evidence control this case.

184. That the pertinent portion of §39-71-2903 MCA states:

> The workers' compensation judge is bound by common law and statutory rules of evidence.

185. The Montana Rules of Evidence are **Montana Supreme Court Rules, not statutory rules of evidence.** § 2 of Chapter 1, L. 1979 states:

> the Montana Rules of Evidence, printed as chapter 10, Title 26, MCA, appear only for the purpose of facilitating use of the code. Neither this act nor publication of the rules may be construed as an attempt to readopt or promulgate the rules.

186. That Allum demanded a trial by jury, in the original petition (WCC Case No. 2019-4705) Doc. No. 1.

187. That Allum's WCA benefits are a property right.

188. That there is not, and never has been, a Montana statute, precluding a "trial by jury," in a disputed worker compensation contested cases.

189. That Sandler demonstrated, his participation, in the R.I.C.O. enterprise and inherent bias, to violate Allum's constitutional liberties and rights, under color of law, in his Order (Doc. No. 4), from the above case (¶ 158, *supra*), by denying Allum's demand for a trial by jury.

190. That Sandler, in violation of the Montana Constitution, never acknowledged Allum's right to a trial by jury and the existence of Article II, § 26, but accepted State Fund's position, without requiring support, of any kind, "that jury trials are not available in [WCC]."

191. That Allum challenged Sandler's Order, presenting the arguments: (1) the burden of proof should be on MSF to provide the statute cited for "that jury trials are not available in [WCC][,]" and (2) questioning how and why Allum should be required to challenge a Montana Constitutional liberty provision (Article II, § 26), that supports Allum right to a trial by jury.

192. That Sandler never required State Fund to cite the Montana statute authorizing "WCC" to "conduct a trial without a jury;" nor did Sandler, ever cite a statute, which authorized Sandler, to deny Allum his constitutional liberty, "to a trial by jury (Mont. Const. Art. II, § 26)."

193. That Sandler states, in Minute Book Hearing No. 4944, Volume XXVI,

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under Motions:

> Allum has waived his chance to brief his right to a jury trial, therefore, this Court **declines to rule** on the issue and this matter will proceed with a bench trial.

194. That Sandler, in writing and submitting Arm's, for "WCC," violated § 2-4-201(2) MCA:

> In addition to other rulemaking requirements imposed by law, each agency shall:
>
> **adopt rules of practice, not inconsistent with statutory provisions**, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency (emphasis added).

195. That the Montana Constitution, § 26 states:

> Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But . . . by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury

196. That the Montana Supreme Court, in *Shea* (¶ 33, *supra*), based the constitutionality, of the Industrial Accident Board adjudicating, without a jury, workers' compensation cases, on the voluntary participation, of the employees and employers, in the 1915 WCA.

197. That *Shea*, and its progeny, concerning the right to a jury trial, became non-applicable, after 1977 (¶ 72, *supra*), when participation, in 1915 WCA, became mandatory.

198. That Sandler submitted ARM 24.5.332(2), in direct violation of the U.S. and Montana Constitutions, which states:

> The court conducts trials in the same manner as a trial without a jury.

199. That the Black Robed Politicians, Sandler, and State Fund did not refer to the foregoing ARM, at any time, when the jury trial was at issue, in the underlying case to *Allum I.*

200. That § 2-4-612 (5) MCA sates:

> A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

198. That Justice Sheehy, established the mandatory nature of cross-examination in the due process guarantee, in *Hert v. J.J. Newberry Company*, 587 P.2d 11 (1978) Order on Petition on Rehearing, on pages 12-13:

> These contentions point out the necessity for this Court to clarify and redefine the role of the Workers' Compensation Court, and the practices to be followed therein to assure due process.
>
> A worker, employer or carrier is entitled to due process in the proceedings before the Workers' Compensation Court. **The right of cross-examination of adverse witnesses in administrative proceedings is constitutionally protected.** *Goldberg v. Kelly* (1970), 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287.
>
> *** **the right of cross-examination, which is a**

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> **fundamental right and not an evidentiary rule.** *Employers Commercial Union Ins. Group v. Schoen* (Alaska 1974), 519 P.2d 819; *Puncec v. City and County of Denver* (1970), 28 Colo. App. 542, 475 P.2d 359. In fact, the Workers' Compensation Court is bound by the provisions of section 82-4210, R.C.M. 1947, relating to hearings before administrative agencies, of which section 82-4210(3), R.C.M. 1947, provides that **a party shall have the right to cross-examination for full and true disclosure of facts. This statutory provision makes the right of cross-examination absolute.** *Employers Commercial Union Ins. Group,* supra.

201. That Sandler violated § 2-4-612 (5) MCA and the *dicta* of *Hert*, when Allum's right to cross examine Dr. Wilbur Pino (Pino), was denied, in Minute Book Hearing No. 4948, Volume XXVI, on page 2:

> The Court made the following rulings at trial:
>
> > The Court **denied** Allum's motion to compel Wilbert B. Pino, MD, to testify on the grounds that: 1) Dr. Pino did not conduct an [IRE] examination pursuant to § 39-71-605 MCA; 2) **it was Allum's burden to subpoena Dr. Pino to trial**; and 3) the motion was untimely (emphasis in original and added).

3. Legislative co-associates

202. That on January 23, 2023, Allum presented testimony and documents, demonstrating (1) "WCC" was never legislatively established; (2) that Sandler claims "WCC" and Sandler are not part of the executive branch; (3) the inequality of clerical pay for "workers' compensation judge" staff and the remainder of the

Department of Labor and Industry clerical staff; (4) the past and current State Budgets are unconstitutional, by virtue of funding "WCC" and Sandler, from taxpayer funds, through HB02; and (5) Sandler was committing fraud, on the Montana citizens, by receiving remuneration, from the Executive Branch Budget, while claiming not to work, for the Executive Branch, before the Joint Appropriations Subcommittee, on General Government, Rep. Terry Moore (R) Billings, Chairman, Sen. Forrest Mandeville (R) Columbus, Vice-chairman, and Members: Rep. Terry Falk (R) Kalispell, Rep. Jim Hamilton (D) Bozeman, Sen. Pat Flowers (D) Bozeman, and Sen. Dan Bartel (R) Lewiston.

203. That on February 20, 2023, Allum appeared to give testimony and documents, at the hearing on Appropriations for Legislative Services, Jerry Howe, Legislative Services Executive Director, including Legal Services Office, before the Joint Appropriations Subcommittee on General Government, Rep. Terry Moore (R) Billings, Chairman, Sen. Forrest Mandeville (R) Columbus, Vice-chairman, and Members: Rep. Terry Falk (R) Kalispell, Rep. Jim Hamilton (D) Bozeman, Sen. Pat Flowers (D) Bozeman, and Sen. Dan Bartel (R) Lewiston.

204. That Representative Terry Moore (R) Billings, Chairman of the Joint Appropriations Subcommittee on General Government, stopped Allum from testifying, at the start of Allum's oral testimony. Rep. Moore stated he was stopping Allum's testimony, because Allum was submitting, as part of his

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testimony, a 33 page document, "Montana's Current Unconstitutional Statutes and Claims Processing Practices, As Demonstrated, By The Inconvenient Legislative History of Montana's Workers' Compensation Laws," authored by Allum, which the Subcommittee Members had not had time to read, and that Allum's use of workers' compensation statutes should be taken up with a policy subcommittee.

205. That Allum stated that the workers' compensation statutes simply illustrated, the culpability, of the Legislative Services, Legal Services Office, past and present misfeasance, malfeasance, or nonfeasance participation, in the Legislature passing unconstitutional bills.

206. That Rep. Moore stated the Subcommittee would address this issue, in their "closed door," working session, on February 23, 2007. Rep. Moore adjourned the hearing.

207. That Sen. Forrest Mandeville (R) Columbus, Vice-chairman, and the Members: Rep. Terry Falk (R) Kalispell, Rep. Jim Hamilton (D) Bozeman, Sen. Pat Flowers (D) Bozeman, and Sen. Dan Bartel (R) Lewiston, made no official act, to preserve Allum's following constitutional liberties:

1) Mont. Const. Art. II § 8, right of participation;

2) Mont. Const. § 9 right to know; and

3) Mont. Const. Art. V § 10(3) ([t]he sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be

open to the public).

208. That the forgoing illustrates the participation of the R.I.C.O. enterprise co-associates, of the Subcommittee members, either through malfeasance, misfeasance, and/or nonfeasance, in violating Mont. Const. Art. III §3, their oath of office, and illustrated their willful tendencies, to restrict public testimony, to other state actors and crony professional and business personnel, with vested financial interest, in Legislative appropriations, and the use of their legislative power, to preclude the exposure of the R.I.C.O. enterprise, to be televised, via the audio/visual State government network and a record made.

4. Federal Judiciary

209. That Judge Brian Morris (Morris), Montana District Court Judge, was assigned to Allum's U.S. District Court Case No. 2:19-cv-00012-BMM, Butte.

210. That Morris was a member of the Black Robed Politicians (Montana Supreme Court) from 2005 to 2013.

211. That Morris, as a co-associate, of the R.I.C.O. enterprise, while adjudicating the U.S. District Court Case, actively protected the façade of the legitimacy of "WCC," as a constitutional entity, by adjudicating (1) (Morris' Order, dated 8/27/20 Dist. Ct. Case Doc. No. 72, p. 5), "[h]is objection fails because the Montana State Fund is an arm of the state[,]" based upon the erroneous reliance on the 1984 Montana Supreme Court case, *Birkenbuel v. Mont. State Compensation*

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Ins. Fund, 212 Mont. 139, 687 P.2d 700, (1984), which was decided 5 years, before State Fund, was established, by the Legislature (while the insurance fund was part of the Department of Labor & Industry and said decision was made after January 1, 2016 (four years), when State Fund was made subject to the laws and regulations, specified under Title 33, Insurance and Insurance Companies (State Fund is now regulated by the Commissioner of Securities and Insurance)); and (2) *sua sponte* judicially determining facts, beneficial for Morris' pre-determined decision, without benefit of discovery or trial.

212. That Kathleen L. DeSoto, Magistrate Judge, acting more, as a defense advocate, and not an impartial judge, prepared Findings and Recommendations for Morris, and *sua sponte*, without benefit of discovery or arguments, from the parties, raised the defenses, for the defendants, of sovereign immunity, in violation of the 1972 Montana Constitution, Art. II, §§ 16 & 18, §§ 2-9-101 & 2-9-108 MCA, *White v. State of Montana*, 203 Mont. 363, 661 P.2d 1272, 40 St.Rep. 507 (1983) and *Pfost v. State*, 219 Mont. 206, 212-223, 713 P.2d 495, 42 St.Rep. 1957 (1985), and *res judicata* (without establishing whether the Black Robed Politicians obtained jurisdiction of the case, or whether Allum received due process, in the state case), which Morris accepted.

213. That Morris failed to recuse himself, in the above, Montana District Court case, in violation of "The Code of Conduct for U.S. Judges:"

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

(C) ***Disqualification.***

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

214. That the Ninth Circuit Court of Appeals violated several Federal Rules of Appellate Procedure in adjudicating Allum's appeal, in USCA9 No. 20-35835.

C. Deprivation of Allum's rights under color of law (18 U.S.C. § 242)

215. That Chief Justice Mike McGrath, Justices James Jeremiah Shea, Laurie McKinnon, Beth Baker, Dirk Sandefur, James A. Rice, and Ingrid Gustafson (the Black Robed Politicians) have denied Allum his U.S. and Montana Constitutional right to a fair and impartial tribunal, by failing to adjudicate, whether § 39-71-2904 MCA, is unconstitutional, and/or whether the Montana Supreme Court is denied appellate jurisdiction of any case, from an executive branch quasi-judicial tribunal, by the Montana Constitution Article VII, § 4(2).

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216. That the Black Robed Politicians have denied Allum a right to a fair and impartial tribunal, by failing to adjudicate whether the Workers' Compensation Court ("WCC") was legislatively enacted, and, if so, by what act.

217. That the Black Robed Politicians have denied Allum due process under the U.S. and Montana Constitutions by denying, a judicial review by the district courts, of the administrative decisions, under the Montana workers' compensation laws.

218. That the Black Robed Politicians have applied different judicial standards to Allum's cases, in violation of *stare decisis* and the Black Robed Politicians' past *dicta*, to wit:

1. Allum, in *Allum I*, was required to raise subject matter jurisdiction, in WCC (an inferior tribunal), before the Black Robed Politicians would address the jurisdictional issue, in the Montana Supreme Court, in Allum's statutory appeal.

2. The Black Robed Politicians, in *Allum I*, employed *ipse dixit*, Montana Supreme Court Internal Operating Rules, to mask their artificial rendering of a decision, in violation of said "Internal Operating Rules:"

a. Section I, paragraph 3(c) (i):

> If an appeal **presents no constitutional issues, no issues of first impression, does not establish new precedent or modify existing precedent**, or, in the opinion of the Court, **presents a question controlled by settled law or by the clear application of**

> **applicable standards of review**, the Court may classify that appeal as one for an unpublished a memorandum opinion (emphasis added).

b. 3(c)(i) was violated because Allum challenged the constitutionality of § 39-71-2904 MCA, in *Allum I*;

c. *Allum I* was a case of first impression, on the issue, of the constitutionality of "WCC"; and

d. The Black Robed Politicians employed *ipse dixit* creative selective analysis (that an inferior tribunal, either executive branch or judicial branch, must decide issues of subject matter jurisdiction, persona jurisdiction, and constitutionality of the inferior tribunal, before the Black Robed Politicians will consider the issues, on appeal) without any supportive U.S. or Montana Constitutional references, or citing any constitutional case law.

3. Allum, in *Allum III*, presented the questions of jurisdictional legitimacy of "WCC" and Sandler, to Sandler, which Sandler rejected, in written Orders. Sandler reaffirmed said Orders, and accepted the settlement agreement, between State Fund and Allum, in Sandler's final appealable, Judgment and Orders Approving Settlement, Dismissing Claims for Benefits with Prejudice, Vacating Trial, Certifying Judgment as Final, and Notice of Entry of Judgment by the Workers' Compensation Court, dated October 20, 2022. On appeal, the Black Robed Politicians again, refused to address the unconstitutionality of § 39-71-2904

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MCA, "WCC" and Sandler, by asserting "WCC lost jurisdiction when the parties settled[,]" which is a legal impossibility, since Sandler, by law, for the "October 20, 2022 Judgment and Orders," to be appealable, would be required to have jurisdiction, at the time, of said order.

4. The Black Robed Politicians admit, in *Allum II*, in footnote 1, on page 2, "[t]his Court denied Allum's writs of supervisory control ***[.]" Thus, asserting, de facto, "WCC" is an "inferior court," of the judicial branch (Article VII), with an appointed judge, by the (Article VI) executive branch governor, and multiple locations, throughout the state, for said "inferior court," in which to conduct hearings, **in violation of the Montana Constitution**, Article VII, §§ 2, 5, and 8.

D. Conspiracy to commit a crime (§ 45-4-102 MCA)

219. That § 45-4-102(1) MCA defines conspiracy as:

> A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of that offense. A person may not be convicted of conspiracy to commit an offense unless an act in furtherance of the agreement has been committed by the person or by a coconspirator.

220. That the coordinated actions of co-associates in State Fund, and the co-associate state actors, Sandler, Black Robed Politicians, legislators, Governor Gianforte, and A.G. Knudsen, to rely upon, and protect the unconstitutionality of "WCC," the *ipse dixit* denial of § 45-6-301(1)(a) MCA, the denial of Allum's

constitutional rights, presented herein, etc., demonstrate the effectuation, of said multiple conspiracies.

VIOLATION OF U.S CONSTITUTION, ARTICLE I, § 10, MONTANA CONSTITUTION (1972), ARTICLE II, § 31:

221. That the 1915 WCA *quid pro quo* contract contained the following provisions, which were, and are, essential to the nature of a *quid pro quo* contract:

1. The contract was voluntary by both parties.

2. The terms of the contract were known to the parties before the parties entered the contract.

3. The employer could voluntarily enter into the contract, independent of the employer's employees.

4. The failure of the employer, to enter into the contract, voided the opportunity, for the employees, to have the option, to enter the contract.

5. Each individual employee, after the employer entered into the contract, could voluntarily enter into the contract, or reject entering into the contract.

222. That Montana Constitution (1972) Article II, § 16:

> No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable **except** as to fellow employees and **his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state** (emphasis added).

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violates the U.S. Constitution, Amendment V (nor be deprived of life, liberty, or property, without due process of law).

223. That Montana Constitution (1972) Article II, § 16 (¶ 222, *supra*) violates the U.S. Constitution, Article I, § 10, and the 1972 Montana Constitution, Article II, § 31 (nor any law impairing the obligation of contracts), namely 1915 WCA *quid pro quo* contract.

224. That Article II, § 16, by employing state police powers, constitutionally invalidates, **ALL MONTANA EMPLOYEES'** U.S. and Montana Constitutional rights to due process, by eliminating each employee's right to accept, or reject, voluntary coverage under the 1915 WCA *quid pro quo* contract.

225. That the phrase "*quid pro quo* contract," after the R.I.C.O. enterprise co-associates coordinated the institution of (1) the 1972 Montana Constitution; (2) the 1976 *ipse dixit* creation of WCC; (3) the 1977 statutory mandating, of participation, by employers and employees, in WCA insurance Plans; and (4) the 1980s wholesale evisceration and rewriting of the 1915 WCA *quid pro quo* contract provisions, without repealing the 1915 Act, became a fraudulent phrase, used by the R.I.C.O. enterprise co-associates, Black Robed Politicians, to obfuscate the nefarious acts, of their co-associates, (1) in creating an involuntary servitude work force, through the use of legal sanctions of the police state, mandating said workforce to follow the whims and *ipse dixit* utterings of co-

associates, in State Fund and the Black Robed Politicians; (2) creating an insolvent Plan III, by fellow co-associate state actors, by malfeasance, misfeasance and/or nonfeasance, in administering the claims of Plan III and the premiums, in violation of statute; (3) changing accounting practices from actual accounting of premium funds, received versus benefits funds paid, at the end of the calendar year, to an accrual accounting method (funds are theoretical and not actual), making the culpability, of fellow co-associate state actors, harder to discover or prove.

226. That the legislative co-associate instituted, 1987 legislative changes, to the 1915 WCA *quid pro quo* contract, rendered the 1915 WCA Plan III contract unrecognizable. Said contract was legislatively amended, from a voluntary employer/employee *quid pro quo* contract, to a police state enforced, dictatorial, totalitarian co-associate controlled premium/benefit insurance system, as stated in *Ingraham v. Champion Intl.*, 243 Mont. 42, 48-49, 793 P.2d 769, 772-773 (1990):

> The power of the legislature to fix the amounts, time and manner of payment of workers' compensation benefits is not doubted.

227. That the monetary abuse of the injured employee, by the 1987 legislative amendments, was stated in *Stratemeyer v. Lincoln County (Stratemeyer I)*, 259 Mont. 147, 153 (Mont. 1993), 50 St. Rep. 731, 855 P.2d 506:

> Even a cursory glance at the legislative history and statute indicates a concern over the high cost of the Workers' Compensation program to the State of Montana and the employers involved in the program. **It is evident**

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> **that this was the primary purpose for the legislative changes in the Workers' Compensation Act. "[P]romoting the financial interests of businesses in the State or potentially in the State to improve economic conditions in Montana constitutes a legitimate state goal."** *Meech v. Hillhaven West, Inc.* (1989), 238 Mont. 21, 48, 776 P.2d 488, 504. (Citation omitted.) A purpose would be to provide for injured workers at a reasonable cost (emphasis added).

and *Burris v. Employment Relations Divisions*, 252 Mont. 376, 384-385, 829 P.2d 639, 641(1992), Justice Trieweiler dissenting:

> However, the Department of Labor's and the Division of Workers' Compensation's concern for the best interests of workers did not end in 1985. **In 1987, it advocated massive amendments to the Workers' Compensation Act** which were ultimately passed, based upon its lobbying efforts. **Those amendment drastically reduced benefits that could be recovered by injured workers**. *See* §§ 39-71-701, -702, -703, and -741, MCA (1987). ***
>
> At the same time, the Division of Workers' Compensation was lobbying through substantial cuts in workers' benefits and severe restrictions on the ability of workers to recover attorney fees from insurers, it proposed amending 24.29.3801, ARM, to further restrict the fees that claimants could pay attorneys.
> ***
> **The regulations** which are challenged in this case are **part of a concerted effort** by the Department of Labor and the Division of Workers' Compensation **to place the burden of that Division's mismanagement on injured workers** — those members of society who are least able to bear that burden (emphasis added).

228. That post 1987, there existed no judicial review of agency quasi-

judicial decisions, until a final decision was reached and articulated, by the executive state agency, as stated in *Satterlee v. Lumberman's Mutual Casualty Co.*, 2009 MT 368, ¶ 6, 353 Mont. 265, 222 P.3d 566:

> In its 2005 "Order Denying Motion for Partial Summary Judgment," the WCC held the statute to be constitutional as applied to PTD benefits. Satterlee appealed and this Court dismissed the appeal without prejudice because the order fell short of a final judgment and identified two remaining unresolved issues to be decided by the WCC:

229. That the co-associate, Black Robed Politicians, post 1987 amendments, in their written decisions, fraudulently characterized the pre and post 1987 amended 1915 WCA *quid pro quo* contract, as having the same effect on the employers and employees, as stated in *Satterlee v. Lumberman's Mutual Casualty Co.*, 2009 MT 368, ¶ 37, 353 Mont. 265, 222 P.3d 566:

> As this Court has held on several occasions, the enactment of the Workers' Compensation Act was essentially a compromise between industry and labor so that labor received guaranteed no-fault recovery, and industry was relieved of the possibility of large and potentially uncapped recoveries in the tort system. *Stratemeyer II*, 276 Mont. at 74, 915 P.2d at 179 (citing *Lewis Clark Co. v. Indus. Accident Bd.*, 52 Mont. 522, 179 P.499 (1916)).

VIOLATION OF U.S CONSTITUTION, AMENDMENT 5:

230. That Allum has a "property right" to elect, or reject, coverage under the 1915 WCA *quid pro quo* contract, guaranteed by the U.S. Constitution, Article I, § 10, and the Montana Constitution, Article II, § 31 (obligation of contracts clause),

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especially, since the 1915 Act (Ch. 96, L. 1915) has never been repealed.

231. That the U.S. Constitution, Amendment V states, in relevant part:

> No person *** nor be deprived of life, liberty, or property, without due process of law;

232. That the Montana Constitution, Article II, § 3 states, in relevant part:

> Inalienable rights. All persons are born free and have certain inalienable rights. They include * * * the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, ***

and § 17 states:

> No person shall be deprived of life, liberty, or property without due process of law.

233. That the types of contracts and histories of the 1915 WCA *quid pro quo* contracts and the contracts of the War Risk Insurance Act, of October 6, 1917, issued by the U.S. government are very similar, including the amending (effectively repealing the operative sections) 1915 WCA, in the 1980s, and the repeal of the War Risk Insurance Act, in 1933.

234. That the U.S. Supreme Court, Mr. Justice Brandeis delivering the opinion of the Court, clarified "contract rights" as "property rights," in *Lynch* v. *United States*, 292 U.S. 571, 576-580, 54 S. Ct. 840 (1934):

> On the other hand War Risk policies, **being contracts, are property and create vested rights.** The terms of these contracts are to be found in part in the policy, in part in the statutes under which they are issued and the

regulations promulgated thereunder (emphasis added).

In order to promote efficiency in administration and justice in the distribution of War Risk Insurance benefits, the Administration was given power to prescribe the form of policies and to make regulations. *** Then, Congress, by a clause of thirteen words included in a very long section dealing with gratuities, repealed "all laws granting or pertaining to yearly renewable term insurance." The repeal, if valid, abrogated outstanding contracts; and relieved the United States from all liability on the contracts without making compensation to the beneficiaries.

Second. The Fifth Amendment commands that property be not taken without making just compensation. **Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment.** *United States* v. *Central Pacific R. Co.*, 118 U.S. 235, 238; *United States* v. *Northern Pacific Ry. Co.*, 256 U.S. 51, 64, 67. **When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals.** That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, **the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power.**

*** **But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. "The United States are as much bound by their**

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> **contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen** (emphasis added)." *Sinking-Fund Cases*, 99 U.S. 700, 719.

235. That the Black Robed Politicians, in *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, ¶ 24, 295 Mont. 467, ¶ 24, 984 P.2d 744, ¶ 24 "held that workers' compensation medical benefits are the property of the individual claimant."

236. That the Black Robed Politicians, since 1987, through *ipse dixit*, and a lack of adversarial discussion, of whether, or not, worker compensation benefits are fundamental rights, have adjudicated against said benefits being fundamental rights, relying upon *Cottrill v. Cottrill Sodding Service*, 229 Mont. 40, 43, 744 P.2d 895, 897 (1987):

> **Both parties agree** that the right to receive Workers' Compensation benefits is not a fundamental right which would trigger a strict scrutiny analysis of equal protection. See *Shapiro v. Thompson* (1969), 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (emphasis added).

VIOLATION OF U.S CONSTITUTION, AMENDMENT 13 (INVOLUNTARY SERVITUDE):

237. That the U.S. Constitution, Amendment XIII, § 1 states, in relevant part:

> nor involuntary servitude, ***, shall exist within the United States,

238. That the U.S. Supreme Court observed the need for "legal coercion" to exist, as an alternative basis, for "involuntary servitude" claims, in *United States v. Kozminski et al.*, 487 U.S. 931, 943-944, 108 S.Ct. 2751, 101 L.Ed.2d 788 (1988):

> * * * in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.
>
> *** our precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion.

239. That Plan III, State Fund, at all times pertinent, herein, coerced and forced through legal sanctions, Allum to work, as an involuntary servant, generating monies for the R.I.C.O. enterprise and State Fund, through being denied 1915 WCA *quid pro quo* contract wage and medical diagnostic and treatment benefits (¶¶ 226 & 227, *supra*).

THIRD CLAIM FOR RELIEF
R.I.C.O.
18 U.S.C. § 1964(c)
Civil Damages

Allum, for his third and separate claim for relief, as to the above-named defendants, complains, alleges and avers:

240. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above; paragraphs 45 through 79, of the first claim for

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relief; and paragraphs 81 through 239, of the second claim for relief above, as though fully set forth herein.

241. That Montana's workers' compensation systems, since 1915, until present, contain wording similar to § 39-71-2311 MCA 2023, "[t]he state fund must be neither more nor less than self-supporting," which reflects the statutory directive to make the Plan III insurance plan, administered by the State, prior to 1990, not a profit center, for private businesses, like Plans I & II, nor a deficit burden to the Montana tax payer.

242. That the R.I.C.O. enterprise co-associates, identified herein, have successfully transferred, approximately $1 Billion (One Billion Dollars) to unknown entities and now, the private corporation defendant, Montana State Fund, as follows:

1. Approximately $500 Million, in Stated Fund-Old, paid for with the .3% payroll tax;

2. Approximately $120 Million, in State Fund-Old, paid out of the yearly State Budget, $10 Million per year, since 2011, when the .3% payroll tax funds ceased (ran out);

3. Approximately $3.3 Million, in State Fund-Old, paid from State Budget, $100 Thousand per year, since 1990 for administration fees for the State Fund-Old claims (since 1990); and

4. Approximately $650 Million, in State Fund-New, current reserves.

243. That the Black Robed Politicians, after the right of the injured worker, to voluntarily accept, or reject, coverage under Plan III, was statutorily removed, and Plan III was technically insolvent, by the actions, described herein, of the R.I.C.O. enterprise co-associate state actors, said Black Robed Politicians, using *ipse dixit*, in *Plumb v. Fourth Judicial Dist. Ct.*, 279 Mont. 363, 372, 927 P.2d 1011, 1016 (1996), to justify, the legislative co-associates, through legislation, reducing the wage and medical benefits, of injured workers, and increasing the technical filing requirements, for the injured worker, to receive benefits, in ¶ 27:

> Addressing a previous substantive due process challenge to the Workers' Compensation Act, we identified "improving the financial viability of the system, controlling costs of the system, and providing benefits" as legitimate governmental objectives of the Act. *Walters*, ¶ 28 (*Walters v. Flathead Concrete Prods.*, 2011 MT 45, 359 Mont. 346, 249 P.3d 91 (2011)).

244. That Allum has been financially injured, by the R.I.C.O. enterprise, described herein, by (1) the denial of the wage and medical diagnostic and treatment, afforded by 1915 WCA *quid pro quo* contract; (2) the cost of seeking judicial redress for the R.I.C.O. enterprise influenced Montana judicial system controlled by the co-associate state actors; (3) the reduction, of injury compensation, determined in violation, of Montana statutes; (4) the statutory termination of Allum's benefit claim, in violation of 1915 WCA *quid pro quo*

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contract; (5) the cost of medical treatment for the emotional, physical and stress related conditions caused by the R.I.C.O. enterprise, and (6) the right to prosecute all civil claims for relief, in a timely manner due to the R.I.C.O. enterprise corrupted state and federal legal system.

FOURTH CLAIM FOR RELIEF
Procedural Due Process Violations
42 U.S.C. § 1983

245. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above; paragraphs 45 through 79, of the first claim for relief; paragraphs 81 through 239, of the second claim for relief, above; paragraphs 241 through 244, of the third claim for relief, above, as though fully set forth herein.

246. That Allum has been subjected to varying interpretations of the same statutes, by the various claims examiners assigned to his case, concerning his lower back injury.

247. That Craig Patterson, Claims Examiner for State Fund, assigned to Allum's case, in 2013, refused to authorize medical examination of Allum's lower back, when requested by Allum's treating physician, as a possible reason, to explain the right leg and knee pain, not responding, in a positive manner, to medical treatment.

248. That, in 2020, the claims examiner, disagreed with Patterson's decision

(¶ 247, *supra*) and authorized, with reservations, the primary physician's request, for a medical examination of Allum's lower back, as a possible reason, to explain the right leg and knee pain, not responding, in a positive manner, to medical treatment.

249. That the 2020 authorization, for the diagnostic medical examination, resulted in the discovery, that Allum has an abnormal spine, with two fractured vertebrae, and a "bulging disc" between L5/S1; and Allum was/is not a candidate, for surgical repair, of the bulging disc, because of his low bone density.

250. The 2020 discovery resulted from a legal battle, between Allum and State Fund, whether Allum's benefit claim for the November 18, 2013 injury, accepted by State Fund, caused the spinal injuries, or whether the spinal injuries were a pre-existing condition, prior to the November 18, 2013 accident.

251. That Anna Pudelka (Pudelka), Allum's State Fund Claim's Examiner, maintained the legal position, that State Fund cannot approve or deny medical diagnostic or treatment procedures, in an unsigned letter, dated November 1, 2018:

> In response to your dispute of the Functional Capacity Examination (FCE), Montana State Fund cannot direct the care by [Allum's Primary Physician] or [medical group of physician].

DELEGATION OF STATE POWERS TO PRIVATE PERSONS OR ENTITES:

252. That the limitations on the legislature's ability to delegate state powers to a private person or entity, was stated in *Bacus v. Lake County*, 138 Mont. 69, 81,

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354 P.2d 1056, 1062:

> 'Delegation of power to determine who are within the operation of the law is not a delegation of legislative power. * * * But it is essential that the **Legislature shall fix some standard** by which the officer or board to whom the power is delegated may be governed, and not left to be controlled by caprice.' We agree with this statement of the law and go further by saying that the standard must not be so broad that the officer or board will have unascertainable limits within which to act.

and *T & W Chevrolet v. Darvial*, 196 Mont. 287, 641 P.2d 1368 (1982):

> The test of whether an act contains sufficient expressions of legislative policy and intent to guide a department was set down by this Court in *Bacus v. Lake County* (1960), 138 Mont. 69, 354 P.2d 1056, and reiterated in *Douglas v. Judge* (1977), 174 Mont. 32, 568 P.2d 530. These two cases hold that a **legislature must prescribe with reasonable clarity the limits of power delegated to an administrative agency. Further, these cases hold that, if the legislature fails to do this, then the attempt to delegate will be nullified** (emphasis added).

and *Consol Pennsylvania Coal Company, LLC, v. Federal Mine Safety and Health Review Commission* 941 F.3d 95 (3rd Cir. 2019), pages 112-113:

> (Headnotes 15, 16, 17:)
>
> The Fifth Amendment's Due Process Clause is violated for lack of fair notice if a statute or regulation **"fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement."** *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 249 (3d Cir. 2015) (citation omitted). That **"fair notice doctrine extends to civil cases, particularly where a penalty is imposed."** ***Id.* at 250**

(emphasis added).

253. That State's statutory Declaration of Public Policy for WCA, in §39-71-105(4) MCA, mandates WCA to be "self-administering". The admissions, and pattern and practice of State Fund, as declared by Pudelka, acting in her official capacity, as Allum's claim examiner, under color of law, has made said statute unconstitutional, by delegating State Fund's statutory authority, rights, and duties, to private physicians and medical personnel.

254. That State Fund, through Pudelka, have admitted their pattern and practice, while Pudelka was Allum's claim examiner, is in violation of § 39-71-1101(2)(c) MCA, which states:

> *** The designated or approved treating physician:
>
> > (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment;

255. That State Fund, with the tacit approval of State, through the legislature, and the Governor, as head of the executive branch, through his supervision authority, have delegated, or abdicated, State Fund's application, per Pudelka, of the legislatively granted exclusive power, for the WCA health care and compensation, and therefore, of Allum, to the control of private physicians and medical personnel, in violation of Allum's constitutional procedural due process rights, guaranteed, by statute.

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256. That the Legislature has statutorily, as a pattern and practice, granted State Fund authority to determine, and control, the medical treatment benefits of Allum, with the issuance of a Maximum Medical Improvement (MMI) designation, by Allum's private treating physician or medical provider (§ 39-71-1101(2)(b) MCA).

257. That the Legislature has statutorily, as a pattern and practice, granted State Fund the authority to determine Allum's ability to return to work, and with what restrictions (establishing the degree of temporary or permanent disability), by retaining an approved private person, to conduct a statutorily undefined procedure, Functional Capacity Evaluation (FCE), and produce a numerical determination of Allum's work capacity (§ 39-71-605(4) MCA).

258. That the Legislature has statutorily, as a pattern and practice, granted State Fund the authority to determine the disability rating (and therefore, Permanent Partial Disability or Permanent Total Disability benefits), of Allum, by conducting an ambiguous Impairment Rating Evaluation (IRE), and issuing a numerical disability (total person) rating, by a private person, approved by Allum's treating physician or medical provider (§ 39-71-1101(2)(d) MCA.

259. That the Legislature has statutorily, as a pattern and practice, granted State Fund the authority to appoint a private person, without written procedures to analyze and determine several suitable jobs, without statutory written guidelines

for determining the suitability of said jobs, and approved, by Allum's private treating physician, for work Allum may return to (§ 39-71-1101(2)(b) MCA).

260. That State and State Fund, under color of law, have, and are, knowingly, allowing the procedures of MMI, FCE, IRE, and IME to be conducted, without written statutes, regulations, rules and/or protocols.

261. That State and State Fund, under color of law, have, and are, knowingly, allowing the procedures of MMI, FCE, IRE, and IME to be uniformly conducted, without any impartial observation, supervision, or other means of recording, to insure the constitutional rights of Allum, are protected, during the administration and reporting, of the foregoing procedures.

262. That State and State Fund, under color of law, have, and are, knowingly, allowing private physicians and other medical providers to dictate and establish the constitutional rights of Allum.

263. That the foregoing procedures, are being conducted to determine "objective medical findings," to establish, the "taking of WCA benefits, as property rights," of Allum, in excess of the legislature's constitutional authority, to delegate legislative administration and enforcement powers, to private entities and persons.

264. That § 39-71-1101(2) MCA states:

> *** The designated or approved treating physician:
>
> (b) shall provide timely determinations required under this chapter, including but

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> not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;
>
> (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and
>
> (d) shall conduct or arrange for timely impairment ratings.

265. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in her Affidavit (Affidavit), attached as Exhibit "A," admitted State Fund violated § 39-71-1101(2)(d) MCA, when she stated in ¶ 16:

> *** **TSOH [Treasure State Occupational Health] subsequently offered to MSF** to schedule Allum for an impairment evaluation with Defendant Wilbur Pino ("Pino") **on November 10, 2018**, *** (emphasis added)

266. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in her Affidavit, admitted State Fund violated § 39-71-1101(2)(d) MCA, when she stated in ¶ 18:

> On November 9, 2018, MSF sent a letter to Allum to inform him that MSF was terminating his TTD benefits in fourteen (14) days pursuant to the Act, on account of his failure to attend an impairment evaluation recommended by his treating physician. ***

267. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in her Affidavit, admitted she committed perjury, when

the statement in ¶ 17 is compared with ¶ 18. **TSOH**, not Allum's primary physician, **offered to schedule the IRE on November 10, 2018**, thus, State Fund violated § 39-71-1101(2)(d) MCA, and Allum's procedural constitutional rights, by affording legal status to TSOH, as a statutory substitute, for Allum's primary physician.

268. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in her Affidavit, when the statement in ¶ 17 is compared with ¶ 18, admitted (1) the "termination letter" predates the alleged violation of any statutory reason for said "letter;" the impairment evaluation was scheduled for November 10, 2018; (2) the "termination letter" violates § 39-71-1106(2) MCA:

> if the insurer believes that the worker is unreasonably refusing:
>
> (2) to submit to medical treatment recommended by the treating physician,

and Allum's procedural constitutional rights, since TSOH is not Allum's insurer; (3) an impairment evaluation is not a medical treatment; and (4) the November 10, 2018, appointment was scheduled by TSOH (Affidavit ¶ 17), not recommended by Allum's primary physician (who recommended Dr. Pyette, Affidavit, ¶ 5).

269. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in her Affidavit, admitted State Fund violated § 39-71-1101(2)(d) MCA, when she stated in ¶ 21:

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> On November 20, 2018, TSOH sent a letter to Allum to inform him **TSOH had scheduled him for an impairment evaluation with Pino** on December 8, 2018, *** (emphasis added)

because TSOH is not Allum's insurer and Pino was not recommended by Allum's primary physician.

270. That State Fund, knowingly, willfully, wantonly, and with malice of forethought, was fully aware of the violations, and intended future violations, of statutes and Allum's constitutional procedural civil rights, under color of law, by Pudelka, TSOH and Pino (Affidavit, ¶ 25).

271. That State Fund, knowingly, willfully, wantonly, and with malice of forethought, in Pudelka's Affidavit, admitted State Fund violated § 39-71-1101(2)(d) MCA, when she stated, in Affidavit ¶ 26, State Fund issued a "termination letter," to Allum, for failing to attend, the December 8, 2018, impairment evaluation, with Pino, which was scheduled by TSOH, and TSOH notified Allum (¶ 21) of the IRE.

272. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, admitted, under color of law, by virtue of State Fund's superior legal, economic, and political power, to violating Allum's procedural constitutional civil rights, protected by statutes, by excluding Allum's primary physician, from the statutorily proscribed IRE process and failing to follow the statutory requirements for conducting an IRE (§ 39-71-1101(2)(b)(d) MCA) and §

39-71-116(27)(a) -703(1)(b) & -711(1)(b) MCA), in ¶ 27:

> **Because I understood** that Allum had an impairment, **I requested** that **TSOH engage Pino to determine Allum's** impairment rating based on the information contained in Allum's medical records. **I also requested that TSOH engage Pino to review** alternative job analyses that MSF's designated rehabilitation provider for Allum had prepared (emphasis added).

273. That State Fund, through Pudelka, knowingly, willfully, wantonly, and with malice of forethought, in Affidavit (¶ 28, accepted the fraudulent document, dated December 18, 2018, produced, by Pino, titled, "Medical Record Review," including the "job analyses," prepared by State Fund's " designated rehabilitation provider," Brandi Taylor (Affidavit ¶ 27).

274. That said document, directly under the title, stated:

> This report will summarize the results and conclusions of this **Impairment Rating Evaluation**. Due to the unique nature of this evaluation, no physician-patient relationship exists and no medical treatment was rendered (emphasis added and italics omitted).

275. That State Fund willfully, wantonly, and with malice of forethought, knew, or should have known, Pino, in direct violation of Guide instructions, conducted the fraudulent "Impairment Rating Evaluation," of Allum, *in absentia.*

276. That State Fund willfully, wantonly, and with malice of forethought, accepted Pino's fraudulent, rating of Allum at 10% (ten percent) whole body disabled, claiming to follow GUIDE impairment schedules.

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277. That State Fund willfully, wantonly, and with malice of forethought, fraudulently, in violation of §39-71-703 MCA, cited Pino's fraudulent disability rating, terminated Allum's TTD benefits, and paid Allum PPD benefits.

278. That State Fund, Thomas Martello and Melissa Quale knew, or should have known, Pino's IRE document violated Allum's procedural constitutional civil rights, protected by statutes, by excluding Allum's primary physician, from the statutorily proscribed IRE process and failing to follow the statutory requirements for conducting an IRE (§ 39-71-1101(2)(b)(d) MCA) and § 39-71-116(27)(a) -703(1)(b) & -711(1)(b) MCA).

279. That Allum, in a letter, dated December 13, 2018, notified Mr. Galen Hollenbaugh, Commissioner of Department of Labor & Industry, Mr. Laurence Hubbard, President/CEO of State Fund, and Tim Fox, Attorney General, of State Fund's violations, demonstrated herein, of Allum's procedural constitutional civil rights (and served all of Allum's filings, in WCC Case Number 2019-4515, on the Attorney General's Office).

280. That Allum, after changing primary providers, was, once again, determined to be at MMI, on September 30, 2021, and an IRE impairment rating of 10%, determined by Allum's primary provider.

281. That Allum's primary physician, once again, performed the IRE, with Allum, *in absentia*, and the MMI designation and 10% impairment rating

handwritten, and dated September 30, 2021, on a letter, from State Fund, dated July 19, 2021.

282. That State Fund's designated rehabilitation provider, Brandi Taylor, once again, prepared "Job Analyses," dated in July (two months before Allum was declared MMI), which Allum's primary provider approved, on September 30, 2021.

SIXTH EDITION OF THE AMERICAN MEDICAL ASSOCIATION GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT

NOTE: All quotations from Guide, herein, are from the photocopied materials, provided to Allum by State Fund, without specifying which printing and the published printed statements, by AMA personnel.

283. That State, statutorily, mandates, in § 39-71-116(27)(a) -703(1)(b) & -711(1)(b) MCA, the use of the "sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment (Guide)," without specifying which printing (January, 1994 printing (first); April, 2009 printing (second); or the internet (on-line) updates, yearly (with the most current, as of January, 2023), each update containing clarifications and corrections, of previous editions.

284 That the statutes, referenced above (§ 39-71-116(27)(a), 703(1)(b), and 711(1)(b) MCA), violate other provisions of the same statutes, § 39-71-116(27)(a); 703(1)(b)(ii); and 711(1)(d) MCA, requiring "objective medical findings," as defined in §39-71-116(22) MCA.

285. That Guide, in the "Front Matter," on an unnumbered page states:

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> However, neither the authors or publisher nor any party involved in the creation and publication of this work warrant that the information is in every respect accurate and complete, and they are not responsible for any errors or omissions or for any consequences of the information in this book.

286. That the denial, of Allum's constitutional procedural due process rights, as expressed in Montana's statutes, guaranteeing "medical decisions," by State Fund, based on "objective medical findings," is an impossibility, using Guide, as the starting document, for IREs, because the disability charts, in Guide, are consensus based, not "objective" based, and Guide's stated goal is to "**reduce the burden of care**," as stated in Guide, on page 2, § 1.1:

> The Sixth Edition represents this continued evolution and introduces a "paradigm shift" to the assessment of impairment.

and § 1.2b:

> This vision embodied by this paradigm shift is articulated in terms of 5 specific new axioms. These axioms provide direction and define priorities:
>
> 1. The *Guides* adopts the terminology and conceptual framework of disablement as put forward by the International Classification of Functioning, Disability, and Health (ICF).

and § 1.2b Fn 19:

> World Health Organization. *International Classification of Functioning, Disability and Health, IFC.* Geneva, Switzerland: World Hand page 5, § 1.3b:
>
> The ICF was developed out of a worldwide **consensus**

> **process, which embodies broad cultural values and perspectives.** *** This acceptance reflects the increasing worldwide importance placed on recognition and **reduction of burden of care associated with health conditions** (emphasis added).

and § 1.3d:

> ***Impairment rating:*** **consensus-derived percentage** estimate of loss of activity reflecting severity for a given health condition, and the degree of associated limitations in terms of ADLs.

and page 9, § 1.5.a:3

> Historically, the **numerical ratings applied for** organ system impairment and **whole person impairment** throughout the *Guides* **are based largely on consensus and expert opinion** (emphasis added).

287. That Allum has never had an IRE performed by a statutorily qualified and/or designated individual, in accord with examination procedures required by Guide, page 10, § 1.7b:

> **Examiners must** exercise their ability to **observe the patient perform certain functional task** to help determine if self-report is accurate (emphasis added).

and page 28, §§ 2.7a, b, & c:

> The **physical examination** should be performed ***
>
> Compare the appropriate information obtained on history and **objective findings** ***
>
> When relevant chapters include a data collection form or summary form *** **it must be used to document the**

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data and be attached with the final report (emphasis added).

288. That the admissions, by Guide, that the information, contained therein, is not "accurate and/or complete," renders, the initial starting impairment ratings, published in Guide, impossible of satisfying the statutory requirement that disability ratings, determined in IREs, be "established by objective medical findings."

289. That the admission, by Guide, that there exists, in hard copy, a "second printing" (July, 2009), and yearly internet updates, with "corrections and clarifications" of Guide, which the Montana WCA statutes do not acknowledge exists, and do not mandate which printing is to be utilized, in any WCA procedure, renders mandating the use Guide constitutionally infirm as to equal protection, substantive and procedural due process.

290. That the specific "expert" and or specific "clinical study," that form the basis of Guide's published impairment rating system, cannot be identified, thus, invalidating any claim that Guide is based upon "objective medical findings," and invalidates the use of Guide, in any workers' compensation case, before the "workers' compensation judge," or "WCC," because there is no person available for cross examination, on the validity of Guide's disability tables, as required by *Hert v. J.J. Newberry Company*, 179 Mont. 160, 587 P.2d 11 (1978) Order on Petition on Rehearing, at pages 162-164:

> Statements contained in documents which are part of the Workers' Compensation case file, either before the division or before the Workers' Court, cannot be considered by the Workers' Compensation judge unless offered in evidence at the hearing, or it is material of which the Workers' Compensation Court may take judicial notice.
>
> Thus, it is the duty of any party before the Workers' Compensation Court, whether he be a worker, employer or carrier, if that party intends to rely on the medical evidence in a written medical report, to present the medical person or expert who is the author of the same for cross-examination either by deposition or by testimony at the hearing.

291. That the use of "integrate[d] scientific and medical advancement," Guide, page 20, to determine the baseline impairment rating system, found in Guide, denies Allum "a purely medical determination", as required by § 39-71-711 (1)(a) MCA, for any IRE, because the "integrate[d]" situations are not applicable to Allum's disabilities, resulting from the failed knee replacement surgery and reduced functionality.

292. That as a direct and proximate result of the willful, malicious, and outrageous actions of the defendants, State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected procedural due process rights of Robert L. Allum, Robert L. Allum has suffered compensatory damages in excess of FIFTEEN THOUSAND DOLLARS ($15,000.00).

293. That the willful, malicious and outrageous actions of the defendants,

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State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected procedural due process rights of Robert L. Allum, was done with the intent of inflicting economic, emotional, and physical distress to Robert L. Allum (intentional infliction of economic, emotional and physical distress).

294. That the reckless and callous indifference toward protecting, under color of law, the federally protected procedural due process rights of Allum by the defendants, State of Montana and Montana State Fund, in enlisting the aid of other co-associates of the R.I.C.O enterprise, presented herein, in violating, under color of law, the constitutionally protected procedural due process rights of Robert L. Allum, was done with a total disregard for the possibilities of inflicting economic, emotional and physical distress to Robert L. Allum (negligent infliction of emotional and physical distress).

295. That Robert L. Allum has, in fact, suffered irreparable economic, emotional and physical damage as a direct and proximate result of the willful, malicious, outrageous and reckless actions and callous indifference of the defendants, State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected procedural due process rights of Robert L. Allum.

296. That Robert L. Allum is entitled to punitive damages, as a means of

punishing and deterring the willful, malicious, outrageous, reckless actions and callous indifference of the defendant, Montana State Fund, in conspiring to, and violating, under the color of law, the constitutionally protected procedural due process rights of Allum, for the financial benefit of Montana State Fund and to retaliate, by intimidation and isolation of Robert L. Allum, from medical providers, harassment, and economic warfare against Robert L. Allum, for demanding his constitutional rights. Said acts and callous indifference, was done with the malicious intention of protecting and continuing the pattern and practice of reducing or eliminating the WCA benefits of Robert L. Allum, as presented herein, in an amount in excess of FIFTEEN THOUSAND DOLLARS (15,000.00).

FIFTH CLAIM FOR RELIEF
Substantive Due Process Violations
(42 U.S.C. Section 1983)

297. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above; paragraphs 45 through 79, of the first claim for relief; paragraphs 81 through 239, of the second claim for relief, above; paragraphs 241 through 244, of the third claim for relief, above; and paragraphs 246 through 291, of the fourth claim for relief, as though fully set forth herein.

****

STATUTORYILY MANDATED USE OF SIXTH EDITION OF AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT:

298. That the stated purpose of WCA, in §39-71-105(1) MCA, is for WCA

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benefits to be reactive to injuries, not proactive (or potential oriented):

> *** the following is the public policy of this state: (1) An objective of the Montana workers' compensation system is to provide, *** wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits *** are intended to provide assistance to a worker ***. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

299. That the stated purpose, of the Guide, is social engineering and is forward oriented, as presented, above on page 494:

> The authors of this Chapter [The Lower Extremities] recognize that the process described is still far from perfect with respect to defining impairment or the complexities of human function; however the **authors' intention** is to **simplify the rating process, to improve interrater reliability** and to **provide a solid basis for future editions of the *Guides*** (italics in original, emphasis added).

300. That the foregoing stated goals, established in Guide, are affecting the value and legitimacy of the mandated use of Guide, especially with two hard copy printings, and continuing yearly internet updates, of the hard copy printings and previous year's internet publication, with varying degrees of corrections and clarifications, thus, rendering any use of Guide, a substantive due process violation of Allum's constitutional rights.

301. That the statutory mandating, of the use of Guide, has the unintended consequences, of subjecting Allum, to foreign nation controlled definitions and

influences (¶200, *supra*).

302. That Guide fails to inform, and/or explain, the differences between U.S. and WHO based classifications, especially, "opportunities for improvement."

303. That the mandatory use of the impairment ratings, published in Guide, by §39-71-116 (27)(a), 703(1)(b), and 711(1)(b) MCA, is unconstitutional, because Allum does not know which edition is statutorily mandated, and Allum cannot obtain a copy of the copyright 2008 Guide, without expending financial resources. Allum must travel to Helena, from Bozeman, to access the Montana State Law Library, every time a question about Guide arises, or purchase a copy of Guide, to properly determine, request, and/or prosecute to obtain, Allum's constitutionally guaranteed substantive rights to his WCA benefits.

304. That Guide violates Allum's substantive due process constitutional rights, by not including, a classification of injured workers, where the corrective knee replacement surgery, was a failure, and did not improve the functionality of the knee joint.

305. That Guide is used to provide a "baseline" disability rating system for establishing a monetary value for Allum's disabilities, but includes Allum's failed surgery, in the classification, for injured workers with successful surgeries.

306. That Guide, specifically ignores, the "failed corrective surgeries" in the "baseline" calculations of disabilities, in the section, Introduction, at page 20,

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where Guide states, "[t]he Sixth Edition integrates scientific and medical advancement," thus, not admitting that Allum's surgery failed, denies Allum, just compensation for comparable disabilities.

307. That the Sixth Edition of Guide lowered the whole body impairment ratings for total joint replacement (knee), from previous editions, predicated on, the assumed "better functional results from surgery," which, in Allum's case, did not occur; thus Allum was denied his constitutional substantive due process rights.

308. That Allum is being denied his constitutional substantive due process rights to confront and cross examine any "expert" or "clinical study," supporting the base line, reduction in values, for rating the impairment value for a "total knee (joint) replacement," as published in Guide, and because Guide is a consensus of opinions, not attributable to one specific person.

MAXIMUM MEDICAL IMPROVEMENT IS UNCONSTITUTIONALLY VAGUE AND SUBJECTIVE:

309. That Maximum Medical Improvement ("MMI"), as defined in (§39-71-116(21) MCA, is ambiguous, and cannot be objectively defined. MMI is not a continuous or permanent medical condition. The statute, without defining the terms, states:

> Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical services.

310. That the foregoing ambiguity was illustrated in *Hiett v. Missoula Cnty. Pub. Sch.*, 2003 MT 213, 317 Mont. 95, 75 P.3d 341, ¶¶ 19, 24, 25 & 27:

> ¶ 19 Section 39-71-116(29)(a), MCA (1995).
>
> "Medical stability," as used in the statutes above, is synonymous with "maximum healing" and "maximum medical healing" and means **"a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment."** Section 39-71-116(17), MCA (1995). As will be discussed below in further detail, the **WCC concluded that medical stability was also synonymous with MMI**. Such a conclusion is supported by authority from other jurisdictions. See, for example, *Dohl v. PSF Industries* (1995), 127 Idaho 232, 899 P.2d 445 (emphasis added).
>
> ¶ 24 In the **WCC's statutory analysis**, it painstakingly worked its way through the applicable statutes applying them to the facts in Hiett's case. **The analytical path** taken by the WCC **is illustrative of the conundra the various statutes present,** so we trace it here (emphasis added).
>
> ¶ 25 The court deconstructed the meanings of "primary medical services" and "medical stability," merged them into a single definition, and concluded that "medical stability" is "a point in the healing process when further material improvement would not be reasonably expected *from treatment necessary for achieving medical stability.*" **Recognizing that such a definition was circuitous,** the **WCC** nonetheless **felt constrained to conclude** that once medical stability is *achieved,* no further medical treatment would materially improve a claimant's condition, and therefore any further treatment could not be considered "primary medical services." **Having equated MMI with medical stability, the WCC concluded that Hiett's continuing medications**

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> **beyond MMI were not primary medical services and could not be reimbursed as such** (emphasis added).
>
> ¶ 27 The WCC fully realized that not all claimants who reach medical stability remain there, and that some actually deteriorate and require further treatment to again reach stability.);

311. That AMA Guides Newsletter, Volume 23, Issue 3, May/June 2018, *Maximum Medical Improvement: Jurisdictional Perspectives*, Charles N. Brooks, MD; Christopher R. Bringham, MD, recognized the ambiguity, of MMI, and demonstrated the unconstitutionality (¶ 257, *supra*) of using the Sixth Edition of Guides, in Montana, without an unambiguous definition of MMI:

> Because each arena is to some extent unique, evaluating physicians should become familiar with MMI or the term used and its definition in the applicable federal, state, or provincial law or insurance policy. A table shows the terminology used by various US workers' compensation jurisdictions, but **there is no universal definition for MMI** (emphasis added).

312. That Allum was "declared MMI", on May 4, 2018; declared "NOT MMI", on August 27, 2018; "declared MMI", on September 20, 2018; and Department of Labor & Industry's Medical Review Panel voted to reopen Allum's claim for benefits, with two (2) of the three (3) medical doctors recommending medical physical therapy for Allum's replacement knee (which ultimately underwent revision surgery), on June 19, 2019.

313. That the September 20, 2018, MMI rating, by Allum's primary

physician, contained the following caveat,

> Unfortunately I cannot give a clear reason for the patient's continued swelling. Some patients after total knee replacement have persistent swelling. He may be 1 (sic) of these patients.

314. That the medical treatment of aspiration, was performed on Allum's right knee, on June 27, 2018, and approximately 40 ml of fluid removed.

315. That the aspiration reduced PLAINTIFF's pain, improved Allum's knee functionality, and Allum's overall, physical wellbeing.

316. That the ambiguity, of §39-71-116(21) MCA, is demonstrated by the existence of a variety of options, of medical procedures, ranging from aspiration to Revision Total Knee Replacement surgery, before, and after, the September 20, 2018, MMI designation.

317. That the existence, and recognition, that after Allum's total knee replacement surgery, Allum being declared MMI, State Fund's termination of Allum' TTD benefits, and an IRE, *in abstenia*, total body disability rating of 10%, Allum's right knee remaining swollen, even after aspiration, demonstrates a "structural" problem, with increased medical complications and increased lack of functionality, for Allum, in the immediate future.

318. That Allum may meet the WCA definition of "MMI", with its ambiguity, but cannot meet Guide's definition, because the work related injury and loss of functionality is continuing.

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319. That until the statutory definition of MMI, by Montana and AMA, in Guide, are made uniform and consistent, and provisions made for medical conditions, like Allum's, the ambiguity of the term MMI, will continue to violate Allum's constitutional rights to substantive due process.

STATE FUND'S SYSTEMATIC VIOLATION OF ALLUM'S SUBSTANTIVE DUE PROCESS RIGHTS

320. That State Fund's first requirement, of the systemic pattern and practice, of violating the substantive due process rights of Allum, under color of law, was, and is, for the private "treating physician", to ambiguously declare Allum at MMI.

321. That State Fund's second requirement, of the systemic pattern and practice, of violating the substantive due process rights of Allum, under color of law, was, and is, to schedule a private medical provider to conduct an unsupervised, or independently verified, statutorily undefined FCE of Allum, and issue a "summary, report, or other compiled document".

322. That State Fund's third requirement, of the systemic pattern and practice, of violating the substantive due process rights of Allum, under color of law, was, and is, for the FCE results to be regurgitated, verbatim, in a private "treating physician" report for delivery to State Fund.

323. That State Fund's fourth requirement, of the systemic pattern and practice, of violating the substantive due process rights of Allum, under color of

law, was, and is, for an IRE to be scheduled and performed, without supervision or independent verification, by a private medical provider.

324. That State Fund's fifth requirement, of the systemic pattern and practice, of violating the substantive due process rights of Allum, under color of law, was, and is, for State Fund to accept the results of the IRE, *in abstentia*, "Medical Records Review", terminate Allum's TTD benefits, and convert the "findings" into an IRE disability rating of 10% (ten percent).

325. That the disability rating is then converted into a monetary amount and classified as Permanent Partial Disability ("PPD") benefits or Permanent Total Disability ("PTD") benefits; and then notify Allum of the amount of the PPD or PTD benefits.

326. That State Fund, immediately, starts issuing checks, paying, said benefits, to Allum, thereon.

327. That State Fund's foregoing systemic pattern and practice, of conspiring to, and violating the substantive due process rights of Allum, under color of law, required ambiguity of terms, secrecy of the evaluations, and a compelling legitimate State interest, as enunciated, *ipse dixit*, by the Black Robed Politicians, for denying constitutional rights, pled herein, and delaying any judicial due process proceedings.

328. That the statutes, complained of, herein, provided the ambiguity,

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especially, with the absence of any written guidelines, practices, and/or protocols for MMI, FCE, IRE, and IME, by Department of Labor & Industry, State Fund, or any other State entity.

329. That the self-interest of private physicians and other private medical providers, conducting the FCEs, IREs, and/or IMEs, without witnesses, except Allum, provided the secrecy and lack of evidence or impartial documentation of any possible wrongdoings, by the examiner, or uniformity of the examinations, in all FCEs, IREs, and/or IMEs.

330. That the Black Robed Politicians, in ¶ 243, *supra*, provided, *ipse dixit*, the compelling legitimate State interest, as "controlling the costs of the WCA claims and benefits" to justify denying Allum's substantive due process constitutional right, under color of law.

PRIOR LEGAL ACTIONS CONCERNING CONSTITUTIONALITY ISSUES:

331. That Alllum has challenged the constitutionality of WCC and § 39-71-2904 MCA in three cases, in the Montana Supreme Court, *Allum v. Montana State Fund*, 2020 MT 159N, 400 Mont. 561, 464 P.3d 1012 (*Allum I*), *Allum v. State of Montana*, DA 21-0641, Filed 3/29/2022 (*Allum II*), and *Allum v. Montana State Fund*, 23 MT 121 (*Allum III*).

332. That the Black Robed Politicians have, and currently are, practicing a pattern and practice, of violating Allum's substantive due process constitutional

rights, by using varying and contradictory standards of review, in adjudicating Allum's appeals.

333. That Allum has presented, since 2018, basically the same two constitutional issues, in every appeal, (1) is WCC constitutional, and (2) is § 39-71-2904 MCA (direct appeal of an Article VI, executive branch, quasi-judicial tribunal, directly to the Montana Supreme Court), constitutional.

334. That Allum, in the first action, *Allum v. Montana State Fund*, 2020 MT 159N, 400 Mont. 561, 464 P.3d 1012 (*Allum I*), raised the foregoing two constitutional challenges, and the Black Robed Politicians stated, ¶1:

> Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

But the Black Robed Politicians failed to follow their own requirements, in Section I, paragraph 3(c)(i), by selectively omitting said requirement, which states:

> **If an appeal presents no constitutional issues**, no issues of first impression, does not establish new precedent or modify existing precedent, or, in the opinion of the Court, presents a question controlled by settled law or by the clear application of applicable standards of review, the Court may classify that appeal as one for an unpublished a memorandum opinion (emphasis added).

¶ 4, stated:

> This Court has consistently held that it will not consider issues raised for the first time on appeal. "**In order to preserve a claim or objection for appeal, an appellant**

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> **must first raise that specific claim or objection in the [trial] court.**" *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38. Broad, general objections do not suffice; **the objecting party has an obligation to clearly articulate the grounds for the objection so the trial court may address the issue first.** "As a general rule, we do not consider an issue presented for the first time on appeal because **it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.**" *In re D.H.*, 2001 MT 200, ¶ 41, 306 Mont. 278, 33 P.3d 616. By failing to first raise the issue in the WCC, Allum has waived any consideration of the issue on appeal. **We decline to address the constitutionality of the WCC under the guise of subject matter jurisdiction.** The judgment of the WCC is affirmed (emphasis added).

335. That the Black Robed Politicians demonstrated the pattern and practice, to be followed by other judicial officers, R.I.C.O. enterprise co-associates, in processing Allum's appeals; namely, avoid (refuse) to acknowledge Allum's second challenge, the constitutionality of § 39-71-2904 MCA, and find any manufactured legal excuse not to adjudicate the constitutionality of WCC.

336. That the Black Robed Politicians violated the basic constitutional principle, as stated by the U.S. Supreme Court, "Courts *** have an **independent obligation** to determine whether subject-matter jurisdiction exists," (*Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 1244 (2006)), in *Allum I* ¶ 4, and *Williamson v. Berry*, 49 U.S. 495, (8 How.) 495 (1850), at 850:

> But it is an equally well settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when

> the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings.

337. That in *Allum II* the Black Robed Politicians dismissed, with prejudice, Allum's complaint for declaratory judgment, on the constitutionality of the workers' compensation laws, including the constitutionality of WCC, based upon *res judicata,* in violation of *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210, 216-17 (1979), and § 26-3-102, MCA, which states:

> That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged or which was actually and necessarily included therein or thereto.

338. That the Black Robed Politicians, in *Allum III* declined to address the constitutional issues on the *ipse dixit* pretext that "WCC lost jurisdiction" of the case, when the parties settled the benefit claim portion of the action, prior to the entry of the final judgment.

339. That the malfeasance, misfeasance, and/or nonfeasance of Governors Bullock and Gianforte and the misfeasance, and/or nonfeasance of A.G.s Fox and Knudsen, in failing to affirmatively address whether Sandler, as the current, "Judge of WCC," or "Workers' Compensation Court Judge," is "*coram non judice,*" denied Allum's substantive due process constitutional rights, under color of law.

340 That Sandler, currently, claims to be the "Judge of WCC," and not the "workers' compensation judge."

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341. That SR 001, of the 65th Legislative Special Session, November, 2017, stated Governor Bullock nominated Sandler, for **appointment** to the "Workers' Compensation **Court**" in the heading, of SR 001.

342. That the Senate, unilaterally, in the 65th Legislative Special Session, November, 2017, in violation of Mont. Cont. Art. III, § 1, Separation of Powers Clause, **confirmed** the **appointment** of Sandler, as "Workers' Compensation **Judge** of the State of Montana."

343. That § 5-5-303 MCA is activated only, "[w]henever the senate concurs in a nomination[.]" The Senate, in SR 001, did not concur in the nomination to WCC, but altered the nomination, to the "workers' compensation judge," thus violating Allum's constitution rights to his substantive due process rights and a fair and impartial trial.

344. That Sandler's claim, since 2017, on all orders, and official documents, to be "WCC judge," renders Sandler "*coram non judice,*" since there is no statutory "court of competent jurisdiction," or "administrative procedure," identified in § 39-71-2900 *et seq.* MCA, using the term "workers' compensation court," for Allum to seek redress, of his current grievances.

345. That Sandler's unconstitutional status as *coram non judice*, renders all of Sandlers' decisions, in *Allum I, II*, and *III* void.

346. That the malfeasance, misfeasance, and/or nonfeasance of Governors

Bullock and Gianforte and the misfeasance, and/or nonfeasance of A.G.s Fox and Knudsen, in failing to affirmatively addressing the following constitutional issues, has denied Allum's substantive due process constitutional rights, under color of law:

1. Sandler has affixed a State of Montana seal, in violation of § 3-1-201 MCA, next to his signature, on all orders and judgments germane, hereto.

2. Sandler claims not to be part of the executive branch, in spite of being appointed by the Governor, and receiving his remuneration, from the budget of the Department of Labor and Industry – 66020, Workers' Compensation Court - 09.

3. Sandler, as either "office of the workers' compensation judge," or "WCC judge," is not defined, as a "judicial officer," in § 1-1-202(2) MCA, as relating to procedure and the judiciary, in the Montana Code Annotated.

4. Sandler's retirement benefits accrue, through the Public Employees' Retirement System (PERS), and not the Judges' retirement system, established in 1977, in § 19-5-102 MCA.

5. Attorney General Austin Knudsen, in *Allum I, II*, and *III*, chose not to clarify and protect Allum's, and all of Montana's injured workers' substantive due process constitutional rights, concerning the constitutionality of WCC, Sandler, and § 39-71-2900 *et seq.* MCA, before the Montana Supreme Court.

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347. That the Legislature, on March 16, 2021, passed SB 140, (Sec. 10, Ch. 62, L. 2021), which contained unconstitutional sections, as amended, § 39-71-2901(4) mandates that "the **chief justice of the Montana supreme court** shall appoint a substitute judge" to a **governor appointed position**, in the executive branch, is a violation of the separation of powers clause (Mont. Const. Art. III § 1).

348. That the violations, of Allum's substantive due process rights, are the results of a culmination of multiple years of misfeasance, malfeasance, and/or nonfeasance, of multiple state actors and actors, of State and State Fund, acting under color of law.

349. That the preceding Claims for Relief, herein, demonstrate the conversion of the original *quid pro quo* WCA 1915 State administered program, for the benefit, of the injured worker, to the current privatized crony capital enterprise, State Fund, generating profit reserves, at the expense of the injured worker, like Allum.

350. That the creation, and operative protection, of WCC, demonstrates the conspiracy, and effectuation of said conspiracy, of the members, of all three branches of State, to violate Allum's, and all injured workers', substantive due process rights.

351. That the foregoing alleged constitutional due process and statutory violations deprived Allum of the constitutionally required notice and clarity of

process, to effectuate a proper prosecution of the violation(s) of Allum's substantive and procedural due process rights.

352. That Allum has not been in contact, except at trial, with a vocational counselor, retained by State Fund, since 2018.

353. That Allum has served copies of his filings, in the various state courts, containing his constitutional challenges, of the ambiguity of the statutes, and violations of his substantive and procedural due process rights, on Governor Greg Gianforte and A.G. Austin Knudsen.

354. That Allum has notified State Fund, via several legal actions, of the same constitutional ambiguities, and procedural and substantive due process violations of Allum's constitutional rights.

355. That the actions of State and State Fund, in causing, under color of law, and not addressing, said unconstitutional statutes, complained of, in the Claims for Relief, herein, and failing to be established or published, regulations, guidelines, and/or protocols, for conducting the procedures known as, MMI, FCE, IRE, and IME was, and is, malfeasance, misfeasance, or nonfeasance, with the intended purpose of violating Allum's, and all injured on the job Montana workers', constitutional substantive due process rights.

356. That members of State Fund received monetary benefits, from the systemic pattern and practice, under color of law, of conspiring to, and actually

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violating, the substantive due process rights of Allum, and all Montana injured workers, through increased wages, benefits, and job security.

357. That the willful, outrageous and reckless actions and callous indifference of the defendants, State of Montana and Montana State Fund, in violating the federally protected substantive due process rights of Robert L. Allum, was done with the malicious and unconscionable intention of reducing and/or eliminating Robert L. Allum's compensation benefits, and intimidating, isolating, harassing, and conducting economic warfare against Robert L. Allum.

354. That as a direct and proximate result of the willful, malicious, and outrageous actions of the defendants, State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected substantive due process rights of Robert L. Allum, Robert L. Allum has suffered compensatory damages in excess of FIFTEEN THOUSAND DOLLARS ($15,000.00).

355. That the willful, malicious and outrageous actions of the defendants, State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected substantive due process rights of Robert L. Allum, was done with the intent of inflicting economic, emotional, and physical distress to Robert L. Allum (intentional infliction of emotional and physical distress).

356. That the reckless and callous indifference toward protecting, under color of law, the constitutionally protected substantive due process rights of

PLAINTIFF by the defendants, State of Montana and Montana State Fund, in enlisting the aid of other members and/or personnel of State of Montana and Montana State Fund, in violating, under color of law, the federally protected substantive due process rights of Robert L. Allum, was done with a total disregard for the possibilities of inflicting economic, emotional and physical distress to Robert L. Allum (negligent infliction of emotional and physical distress).

357. That Robert L. Allum has, in fact, suffered irreparable economic, emotional and physical damage as a direct and proximate result of the willful, malicious, outrageous and reckless actions and callous indifference of the defendants, State of Montana and Montana State Fund, in violating, under color of law, the constitutionally protected substantive due process rights of Robert L. Allum.

358. That Robert L. Allum is entitled to punitive damages, as a means of punishing and deterring the willful, malicious, outrageous, reckless actions and callous indifference of the defendant, Montana State Fund, in conspiring to, and violating, under the color of law, the constitutionally protected substantive due process rights of Robert L. Allum, for the financial benefit of Montana State Fund. Said acts and callous indifference, was done with the malicious intention of protecting and continuing the pattern and practice of reducing or eliminating the benefits of Robert L. Allum, as presented herein, in an amount in excess of

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FIFTEEN THOUSAND DOLLARS (15,000.00).

SIXTH CLAIM FOR RELIEF
Bad Faith Insurance
(42 U.S.C. Section 1983)

359. That Allum re-alleges, each and every allegation contained in paragraphs 1 through 43, above; paragraphs 45 through 79, of the first claim for relief; paragraphs 81 through 239, of the second claim for relief, above; paragraphs 241 through 244, of the third claim for relief, above; and paragraphs 246 through 291, of the fourth claim for relief; and paragraphs 298 through 356, of the fifth claim for relief, as though fully set forth herein.

360. That the principles of "insurance bad faith," as applied to workers' compensation, were stated in *White v. State*, 2013 MT 187, ¶ 24, 371 Mont. 1, 305 P.3d 795:

> ¶24 "Under Montana common law, an insurer cannot be held liable for bad faith in denying a claim if the insurer had a reasonable basis for contesting the claim or the amount of the claim." *Palmer by Diacon v. Farmers Ins. Exch.*, 261 Mont. 91, 102, 861, P.2d 895, 901 (1993). We have applied the same principles to the State Fund, ruling that it too may be subject to a common-law bad faith claim if it engages in "tortious conduct occurring outside the employment relationship and during the processing and settlement of a workers' compensation claim." *Birkenbuel*, 212 Mont. at 146, 687 P.2d at 704. An insurance company's "duty to act in good faith with [its] insureds . . . exists independent of the insurance contract and independent of the statute." *Birkenbuel,* 212 Mont. at 143-44, 687 P.2d at 702.

361. That the Affidavit of Anna Pudelka, attached as Exhibit "A," demonstrates the torturous violations of § 33-18-242 MCA, in 2018, by State Fund, in denying Allum's TTD benefits, conducting the IRE rating determination, and denial of any PPD or PTD benefits; all of the similar decisions, taken by State Fund, in 2022, in denying Allum's benefits, relied upon and were based upon the actions of State Fund, taken in 2018.

362. That the willful, malicious, outrageous, reckless actions, in tortious breaches of § 33-18-242 MCA, and the implied duty of good faith and fair dealing requirements for processing workers' compensation claims, and the callous indifference, of the defendant, Montana State Fund, in conspiring to, and violating, under the color of law, the constitutionally protected workers' compensation insurance due process rights of Robert L. Allum, both through direct action, in processing Allum's current claim, and the use of the R.I.C.O. enterprise actions of co-associates, in corrupting the state and federal legal process, for the financial benefit of Montana State Fund.

363. That the CEO/President of Montana State Fund, Mr. Laurence Hubbard, received, in excess of $450,000.00 (Four Hundred Fifty Thousand Dollars) a year in salary, in 2018, and the current CEO/President Holly O'Dell, receives a similar salary, while the Governor of Montana receives approximately $118,000.00 (One Hundred Eighteen Thousand Dollars) a year in salary,

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demonstrating the motivation for denying Allum, and all injured workers, fair dealings in insurance processing and paying of benefit claims.

364. That the willful, outrageous and reckless actions and callous indifference of the defendant, Montana State Fund, in violating the protected rights of Robert L. Allum, against the insurance bad faith dealings, was done with the malicious and unconscionable intention of reducing and/or eliminating Robert L. Allum's compensation benefits, and intimidating, isolating, harassing, and conducting economic warfare against Robert L. Allum.

365. That as a direct and proximate result of the willful, malicious, and outrageous actions of the defendant, Montana State Fund, in violating, under color of law, § 33-18-242 MCA and the workers' compensation due process rights of Robert L. Allum, Robert L. Allum has suffered compensatory damages in excess of FIFTEEN THOUSAND DOLLARS ($15,000.00).

366. That the willful, malicious and outrageous actions of the defendant, Montana State Fund, in violating, under color of law, § 33-18-242 MCA and the workers' compensation due process rights of Robert L. Allum, was done with the intent of inflicting economic, emotional, and physical distress to Robert L. Allum (intentional infliction of emotional and physical distress).

367. That the reckless and callous indifference toward protecting, under color of law, § 33-18-242 MCA and the workers' compensation due process rights

of Robert L. Allum, by the defendant, Montana State Fund, in enlisting the aid of other members and/or personnel of State of Montana and Montana State Fund, in violating, under color of law, § 33-18-242 MCA and the workers' compensation due process rights of Robert L. Allum, was done with a total disregard for the possibilities of inflicting economic, emotional and physical distress to Robert L. Allum (negligent infliction of emotional and physical distress).

368. That Robert L. Allum has, in fact, suffered irreparable economic, emotional and physical damage as a direct and proximate result of the willful, malicious, outrageous and reckless actions and callous indifference of the defendant, Montana State Fund, in violating, under color of law, § 33-18-242 MCA and the workers' compensation due process rights of Robert L. Allum.

369. That Robert L. Allum is entitled to punitive damages, as a means of punishing and deterring the willful, malicious, outrageous, reckless actions and callous indifference of the defendant, Montana State Fund, in conspiring to, and violating, under the color of law, § 33-18-242 MCA and the workers' compensation due process rights of Robert L. Allum, for the financial benefit of Montana State Fund. Said acts and callous indifference, was done with the malicious intention of protecting and continuing the pattern and practice of reducing or eliminating the benefits of Robert L. Allum, as presented herein, in an amount in excess of FIFTEEN THOUSAND DOLLARS (15,000.00).

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SEVENTH CLAIM FOR RELIEF
Montana State Constitutional Challenges

Allum, for his seventh and separate claim for relief, as to the above-named defendant, State of Montana complains, alleges and avers:

MONTANA STATUTES:

370. That the amending of § 3-1-102 MCA (Ch 428, L. 2007 (SB 523)), unconstitutionally includes an undefined term, WCC, which also violates Article III § 1 (separation of powers clause), by including the term, WCC, not legislatively established as an Article VII judicial court, and including WCC with Article VII courts of record.

371. That § 39-71-105(5) MCA violates Article II § 31 (contract clause) by ad hoc repealing § 24(a), Ch. 96, L. 1915 (removal of liberal construction clause).

372. That § 39-71-108(2) MCA (En. Sec. 1, Ch. 63, L. 2021) is unconstitutional because the statute directs the grievance process to an unconstitutional entity (legislatively non-established entity), WCC.

373. That § 39-71-116(1) MCA is unconstitutionally vague, by referencing "reaches maximum healing," without defining the term (*see also* § 39-71-116(21) MCA.

374. That § 39-71-116(21) MCA is unconstitutionally vague.

375. That § 39-71-116(27) MCA is unconstitutionally vague ("maximum medical healing") and delegates government power to private entity, AMA,

without specific guidelines.

376. That § 39-71-116(28) MCA is unconstitutionally vague ("maximum healing").

377. That § 39-71-116(38) MCA is unconstitutionally vague ("maximum medical healing").

378. That § 39-71-116(40) MCA is unconstitutionally vague ("maximum medical healing").

379. That § 39-71-604(2) MCA is unconstitutional for three reasons: (1) there is no enforcement or penalty for violation of the statute; (2) references a non-constitutional entity (WCC); and violates § 39-71-105 MCA (requires a claimant to have a working knowledge of M.R.Civ.P.).

380. That § 39-71-605(1-4) MCA are unconstitutional because a psychologist cannot be "treating physician," with hospital privileges, and cannot meet the requirements of § 39-71-116(21) MCA requiring "objective medical findings."

381. That § 39-71-605(4) MCA is unconstitutionally vague, because (1) Functional Capacity Evaluations (FCE) is not defined in statutes and has no written mandatory guidelines, (2) Independent Medical Evaluations (IME) is not defined in statute, and has no written mandatory guidelines, and (3) other medical investigative procedures, such as inter-relationship of different body parts affected

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by the same injury, do not meet the requirements of: *Bacus v. Lake County*, *supra.*

382. That § 39-71-606(5) MCA is unconstitutionally based on the requirement, that WCC, an unconstitutional entity, is required to render punitive decisions.

383. § 39-71-609 MCA is unconstitutionally vague ("maximum healing" & "medical stability").

384. That § 39-71-610 MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

385. That § 39-71-611 MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

386. That § 39-71-613(5) MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

387. That § 39-71-701(1)(a) MCA is unconstitutionally vague ("maximum healing").

388. That § 39-71-701(2) MCA violates Article II § 31 (contract clause).

389. That § 39-71-701(4) MCA is unconstitutionally vague ("maximum healing").

390. That § 39-71-702(2) MCA violates Article II § 31 (contract clause).

391. That § 39-71-703(1)(b) MCA is unconstitutionally vague because (1) the statute does not specify which printing of the AMA guide is to be used, (2) the

AMA guide is based upon a consensus of opinions and is not based upon "objective medical findings," (3) unconstitutionally delegates a government function to a private entity, and (4) violates Article II § 31 (contract clause).

392. § 39-71-703(1)(b)(ii) MCA unconstitutionally contradicts § 39-71-703(1)(b) MCA, since there are no "established ... objective medical findings," which serve to establish the AMA Guide baseline table, used in determining the ratable condition.

393. That § 39-71-703(2) MCA is unconstitutionally vague because (1) the statute does not specify which printing of the AMA guide is to be used, (2) the AMA guide is based upon a consensus of opinions and is not based upon "objective medical findings," (3) unconstitutionally delegates a government function to a private entity, and (4) violates Article II § 31 (contract clause).

394. That § 39-71-703(5)(c) MCA is unconstitutionally vague ("maximum healing").

395. That § 39-71-703(5)(d) MCA is unconstitutionally vague, because there are no statutory requirements for testing and quantifying the various "labor activity" levels.

396. That § 39-71-711(1)(a) MCA is unconstitutionally vague ("maximum healing").

397. That § 39-71-711(1)(b) MCA is unconstitutionally vague because (1)

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the statute does not specify which printing of the AMA guide is to be used, (2) the AMA guide is based upon a consensus of opinions and is not based upon "objective medical findings," (3) unconstitutionally delegates a government function to a private entity, and (4) violates Article II § 31 (contract clause).

398. That § 39-71-711(4) MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

399. That § 39-71-712(1) MCA is unconstitutionally vague ("maximum healing").

400. That § 39-71-712 (all subsections) MCA is unconstitutional because the statute denies equal protection to individual employees versus union employees (collective bargaining units).

401. That § 39-71-717(10) MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

402. That § 39-71-721 (all subsections) MCA denies equal protection to living injured worker and spouse (400 weeks benefits) versus dead worker (500 weeks benefits) to "surviving spouse" (even if "surviving spouse is an illegal alien (federal code immigration classification), or not living in the U.S.).

403. That § 39-71-741(2)(c) MCA is unconstitutionally vague (no court is specified).

404. That § 39-71-741(2)(f) MCA is unconstitutionally vague ("maximum

medical improvement").

405. That § 39-71-741(6) MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

406. That § 39-71-2300 *et seq.* MCA (Ch. 464, L.1987 (SB 315)) governing Montana State Fund violate Article II § 31 (contract clause).

407. That § 39-71-2313 (1) MCA defines State Fund as "a state compensation insurance fund ... that is a nonprofit, independent public corporation."

408. That State Fund cannot meet the definition of "public corporation" set forth in § 39-71-116 MCA.

409. That § 39-71-2311 *et seq.* MCA violates (1) Article II § 31 (contract clause), (2) granting state powers to a private party, and (3)is not an "arm of the state," per the requirements of *Mitchell v. Los Angeles Comm. College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989), *supra.*

410. That § 39-71-2311 *et seq.* MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

411. That § 39-71-2901(2) MCA violates Article III § 1 (separation of powers clause) and refers to a non-existent entity, WCC, and authorizes Article VII judicial powers to said entity.

412. That § 39-71-2901(3) MCA unconstitutionally allows an appointed

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private citizen to appoint another private citizen to perform governmental duties.

413. That § 39-71-2901(4) MCA violates Article III § 1 (separation of powers clause).

414. That § 39-71-2901(5) MCA violates Article III § 1 (separation of powers clause) and delegates the government power of appointment to a private citizen to appoint another private citizen to perform governmental duties.

415. That § 39-71-2901(6) MCA is unconstitutionally vague, by referencing personnel of, duties of said personnel, and the authority of an unconstitutional entity, WCC; additionally, this statute references, "judge" and "court" with distinctly different duties and authorities.

416. That § 39-71-2901(7) MCA unconstitutionally delegates the government power of appointment, to a private citizen, to appoint another private citizen, to perform governmental duties.

417. That § 39-71-2903 MCA, second sentence, is unconstitutional because (1) Montana has no "statutory rules of evidence," there are only Montana Supreme Court Rules of Evidence, published in MCA, (2) contradicts § 39-71-105(4) MCA, and (3) violates Article II § 31 (contract clause).

418. That § 39-71-2904 MCA violates Article VII § 4(2).

419. That § 39-71-2910(2) MCA violates Article VII § 4(2).

420. That § 39-71-2911 MCA is unconstitutional because the statute

references, and requires action from, WCC, an unconstitutional entity.

421. That § 39-71-2914 MCA is unconstitutional because the statute references, and requires action from, WCC, an unconstitutional entity.

ADMINISTRATIVE RULES OF MONTANA

422. That Rule 24.5.101 *et seq.* are unconstitutional, because said Rules mimic the Montana Rules of Civil Procedure, enacted by the Montana Supreme Court; and are therefore, in violation of § 39-71-105 MCA and Article II § 31 (contract clause).

423. That Rule 24.5.101 *et seq.* are unconstitutional, because said Rules are unconstitutionally vague and ambiguous, due to the unknown status of WCC (Is WCC constitutional? Is WCC an Article VII court? Is WCC a rogue Article VI entity?).

PRAYER

WHEREFORE, the plaintiff, Robert L. Allum, prays for judgment against the defendants, State of Montana and Montana State Fund, either jointly or severally, for relief, as follows:

1. That Robert L. Allum be awarded R.I.C.O. damages, as requested, in claim for relief three;

2. That Robert L. Allum be awarded compensatory damages in an amount in excess of FIFTEEN THOUSAND DOLLARS ($15,000.00) for each of the

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claims for relief, so requested.

3. That Robert L. Allum be awarded punitive damages in an amount in excess of FIFTEEN THOUSAND DOLLARS ($15,000.00) for each of the claims for relief, so requested.

4. That Robert L. Allum be awarded the costs of this litigation, and

5. That the Robert L. Allum be granted declaratory and/or injunctive relief for the constitutional challenges and such other and further relief as may be deemed just and proper in the premises.

DATED this 11th day of September, 2023.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

ROBERT L. ALLUM, Plaintiff, v. STATE OF MONTANA, MONTANA STATE FUND, DEPARTMENT OF LABOR, ANNA PUDELKA, MELISSA QUALE, THOMAS E. MARTELLO, WILBUR PINO, AND DOES 1-100 Defendants.	**CASE NO. CV 19-12-BU-BMM-KLD** **AFFIDAVIT OF ANNA PUDELKA**

Exhibit "A"
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I, ANNA PUDELKA, declare under penalty of perjury that the following is true and correct:

1. I was employed with the Montana State Fund ("MSF") as a Claims Examiner at all relevant times with respect to the above-captioned case filed by Plaintiff Robert Allum ("Allum"). My employment with MSF ended on September 20, 2019. I am a party to this lawsuit, and I am familiar with the above-captioned case.

2. I was the Claims Examiner assigned to process Allum's claim for workers' compensation benefits, which is the subject of this lawsuit.

3. The statements in this affidavit are based on my personal knowledge, or on records that were made at or near the time of the relevant events by—or from information transmitted by—someone with personal knowledge, which were kept in the course of regularly conducted claims processing activities of MSF and were made as a regular practice of such claims processing activities. As the Claims Examiner assigned to process Allum's claim for workers' compensation benefits, I maintained and reviewed such records.

4. On December 13, 2013, MSF began paying temporary partial disability benefits and temporary total disability ("TTD") benefits to Allum,

respectively, depending on whether he was working at a given time, in accordance with the Montana Workers' Compensation Act, Mont. Code Ann. § 39-71-101 to § 39-71-4004 (the "Act").

5. On May 4, 2018, Allum's treating physician, Dr. Martin Gelbke ("Gelbke"), determined that Allum had reached maximum medical improvement ("MMI") status. Gelbke further recommended that Allum undergo an impairment evaluation with Dr. Royce Pyette ("Pyette"). Attached as Exhibit 1 is a true and correct copy of notes from Gelbke to MSF dated May 4, 2018, which was sent to MSF via facsimile on May 9, 2018.

6. Based on the determination and recommendation of Gelbke, I arranged with Treasure State Occupational Health ("TSOH") to schedule an impairment evaluation for Allum with Pyette on September 6, 2018.

7. On August 16, 2018, MSF sent a letter to Allum to inform him that MSF had scheduled him for an impairment evaluation with Pyette on September 6, 2018. Attached as Exhibit 2 is a true and correct copy of a letter from MSF to Allum dated August 16, 2018.

8. After MSF sent the letter to Allum informing him that MSF had scheduled him for an impairment evaluation, Allum telephoned me to inform me that his treating physician's assistant, Jaspur Kolar ("Kolar"),

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recommended cancellation of the impairment evaluation due to ongoing knee pain affecting Allum. Based on that information, I proceeded to cancel the impairment evaluation that I had arranged for Allum with TSOH to take place on September 6, 2018.

9. Medical records provided to MSF indicated that both Gelbke and Kolar concurred that Allum had reached MMI status as of September 20, 2018. Attached as Exhibit 3 is a true and correct copy of medical records dated September 20, 2018, which were provided to MSF.

10. On October 10, 2018, I arranged with TSOH to schedule an impairment evaluation for Allum with Pyette, based on the medical records provided to MSF indicating that Allum had reached MMI status as of September 20, 2018.

11. On October 11, 2018, Allum telephoned me to inform me that he intended to videotape his rescheduled impairment evaluation. I explained to Allum at that time that whether he could videotape his impairment evaluation would be subject to the discretion of the healthcare provider conducting the impairment evaluation, and that in any event, Allum would need to complete the impairment evaluation due to his MMI status.

12. On October 22, 2018, Allum sent a letter to MSF to express several concerns regarding his treating healthcare providers and to request to

videotape any independent medical examination. Attached as Exhibit 4 is a true and correct copy of a letter from Allum to MSF dated October 22, 2018.

13. On October 24, 2018, MSF sent Allum a letter to inform him that MSF had scheduled him for an impairment evaluation with Pyette on November 9, 2018. Attached as Exhibit 5 is a true and correct copy of a letter from MSF to Allum dated October 24, 2018.

14. On October 31, 2018, Allum sent TSOH a copy of his letter dated October 22, 2018, to MSF, and also notified TSOH of Allum's intention to videotape the impairment evaluation. Attached as Exhibit 6 is a true and correct copy of a letter from Allum to MSF dated November 21, 2018, in which Allum acknowledges that he had notified TSOH of Allum's intention to videotape the impairment evaluation.

15. On November 1, 2018, MSF sent a letter to Allum in response to his letter to MSF dated October 22, 2018. The letter addressed several of the concerns that Allum raised, and clarified that the impairment evaluation that it had scheduled for him was not an independent medical evaluation. Attached as Exhibit 7 is a true and correct copy of a letter from MSF to Allum dated November 1, 2018.

16. Following a review of Allum's medical records and correspondence, including Allum's expressed intention to videotape the

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impairment evaluation, Pyette declined to conduct the impairment evaluation. TSOH subsequently offered to MSF to schedule Allum for an impairment evaluation with Defendant Wilbur Pino ("Pino") on November 10, 2018, but clarified that TSOH would not permit videotaping as requested by Allum. Attached as Exhibit 8 is a true and correct copy of an email from TSOH to MSF dated November 5, 2018.

17. On November 9, 2018, TSOH emailed MSF to inform MSF that Allum would object to an impairment evaluation unless permitted to videotape it. Attached as Exhibit 9 is a true and correct copy of an email from TSOH to MSF dated November 9, 2018.

18. On November 9, 2018, MSF sent a letter to Allum to inform him that MSF was terminating his TTD benefits in fourteen (14) days pursuant to the Act, on account of his failure to attend an impairment evaluation recommended by his treating physician. Attached as Exhibit 10 is a true and correct copy of a letter from MSF to Allum dated November 9, 2018.

19. On November 16, 2018, Allum telephoned me to dispute the termination of his TTD benefits, on the grounds that Pyette had cancelled the impairment evaluation, and to assert his purported right to videotape the impairment evaluation. I explained to Allum that MSF maintained grounds

to terminate Allum's TTD benefits because the reason for Pyette's cancellation was that Allum intended to videotape the impairment evaluation, which Allum had no right to do. Allum then stated that he would attend an impairment evaluation, provided that the healthcare provider conducting the impairment evaluation state in writing that Allum would not be permitted to videotape the impairment evaluation.

20. I subsequently telephoned TSOH to inform TSOH that Allum would attend an impairment evaluation, but only if TSOH stated in writing that TSOH does not permit videotaping of an impairment evaluation.

21. On November 20, 2018, TSOH sent a letter to Allum to inform him that TSOH had scheduled him for an impairment evaluation with Pino on December 8, 2018, and that TSOH does not permit videotaping or audiotaping of examinations. Attached as Exhibit 11 is a true and correct copy of a letter from TSOH to Allum dated November 20, 2018.

22. On November 21, 2018, Allum sent a letter to MSF in which Allum disputed MSF's determinations related to Allum's workers' compensation claim, challenged the propriety of his scheduled impairment evaluation, re-asserted his right to videotape the impairment evaluation that MSF had scheduled for him, and made several allegations of wrongdoing against MSF, TSOH, and his healthcare providers.

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23. On November 26, 2018, Allum sent a letter to MSF in which Allum objected to the impairment evaluation scheduled with Pino, re-asserted his right to videotape the impairment evaluation, and advanced several other claims of violations of the Act. Attached as Exhibit 12 is a true and correct copy of a letter from Allum to MSF dated November 26, 2018.

24. On December 7, 2018, MSF, though Defendant Melissa Quale ("Quale"), an attorney employed by MSF, sent a letter to Allum to explain the claims process under the Act as well as MSF's position with respect to Allum's claim. Attached as Exhibit 13 is a true and correct copy of a letter from MSF to Allum dated December 7, 2018.

25. Allum did not attend the scheduled impairment evaluation with Pino.

26. On December 10, 2018, MSF sent a letter to Allum to inform him that MSF was terminating his TTD benefits pursuant to the Act due to his failure to attend the impairment evaluation with Pino. Attached as Exhibit 14 is a true and correct copy of a letter from MSF to Allum dated December 10, 2018.

27. Because I understood that Allum had an impairment, I requested that TSOH engage Pino to determine Allum's impairment rating based on the information contained in Allum's medical records. I also

requested that TSOH engage Pino to review alternative job analyses that MSF's designated rehabilitation provider for Allum had prepared.

28. On December 18, 2018, Pino reviewed Allum's medical records, determined that Allum's whole person impairment rating was ten percent (10%), a Class 2 impairment rating, and explained the rationale for that determination. In addition, Pino unconditionally approved the alternative job analyses that MSF's designated rehabilitation provider for Allum had prepared. Attached as Exhibit 15 is a true and correct copy of a report from Pino summarizing his review of Allum's medical records. Attached as Exhibit 16 is a true and correct copy of alternative job analyses that MSF's designated rehabilitation provider for Allum had prepared, which include Pino's signature indicating his unconditional approval.

29. On December 19, 2018, MSF sent two letters to Allum to inform him: (1) that MSF was terminating Allum's TTD benefits; and (2) that MSF was paying Allum an impairment award. Attached as Exhibits 17 and 18, respectively, are letters from MSF to Allum dated December 19, 2018.

30. On December 21, 2018, MSF sent payment to Allum in the amount of $393.16 for TTD benefits, which brought his TTD benefits current. MSF also sent payment to Allum in the amount of $1,376.18 for the

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first installment of his impairment award. MSF proceeded to send payments to Allum on a biweekly basis from December 28, 2018, through June 24, 2019, to fully satisfy his impairment award. However, as of the end of my employment with MSF, Allum had only cashed one (1) of the checks that MSF sent to Allum in payment of his impairment award. MSF also fully paid Allum TTD benefits through January 24, 2019.

DATED this 12 day of March, 2020.

ANNA PUDELKA

SUBSCRIBED AND SWORN to before me this 11th day of March, 2020.

MAXINE DE'SHONG
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20144045896
MY COMMISSION EXPIRES DEC 2, 2022

Signature of Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the clerk of the court for the United States District Court for the District of Montana, using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I hereby certify that on March 12, 2020, I caused a copy of the foregoing **Affidavit of Anna Pudelka** to be served on the following persons by the following means:

1 CM/ECF
_____ Hand Delivery
2 Mail
_____ Overnight Delivery Service
_____ Fax
_____ E-Mail

1. Clerk, U.S. District Court

2. Robert L. Allum
132 West Magnolia Drive
Belgrade, MT 59714

By: */s/ Ben Eckstein*
BEN ECKSTEIN
Assistant Attorney General

1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440
Attorneys for Defendants

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