2022 JUDICIAL REVIEW

CASES FROM 2020 TO 2021

MONTANA CHAMBER OF COMMERCE

Montana Supreme Court Judicial Review

Developed and supported by business leaders across the state, the Montana Chamber of Commerce created a statewide strategic plan known as Envision 2026. Focusing on four pillars, Infrastructure, Business Climate, Workforce Development and Entrepreneurship, Envision 2026 guides the Montana Chamber's efforts to promote and support policies necessary for a vibrant economy.

The Judicial Review is intended to assist the business community in tracking trends in judicial rulings related to Montana's economy.

A fair and predictable judicial climate is a critical component of a healthy business climate and necessary for a robust economy

Following past practice, this Review encompasses a two-year period of important court decisions from 2020 and 2021 related to business. Our intent is to assist the business community in tracking trends in judicial rulings relating to Montana's economy. The report also evaluates each individual judge's stance on business-related issues. We understand judges are bound by the rule of law. The federal and state constitutions, judicial construction, and prior case decisions may control the outcome of a particular case rather than anti-business or pro-business positions. The hope of the business community is that the justices will follow the rule of law and precedent to foster predictability and certainty in the legal arena.

In preparing this analysis, a strict set of criteria was used to achieve the most objective report possible. Input from affected trade associations and individual businesses allowed the Montana Chamber to independently verify the research conducted in specific categories.

Cases selected must have had an impact, either positive or negative, on businesses in the state or affect general liability standards. We tried to exclude decisions with a negative impact on one type of business and a positive effect on other businesses.

The Montana Supreme Court

Chamber Judicial Reviews have evaluated Montana Supreme Court decisions since 1990. The dynamic of the Court has changed considerably in the past several decades, which makes it even more important to continually measure the Court's record. This Review provides a greater understanding of the important role Court decisions play in shaping Montana's economy. Only then can we judge how, and if, the state's business climate is improving or suffering as a result of Court decisions.

Cases are divided into eleven categories: Banking, Contract, Employment, Insurance, Jurisdiction, Land Use/Energy/Environment, Medical Malpractice, Taxation, Tort, Workers' Compensation, and Other. Each case was assigned one category for the purpose of the record even though some cases obviously could be included in multiple categories.

Scoring

In the review of the Montana Supreme Court, individual justices were evaluated in comparison to the pro-business position. Justices were not scored when they did not participate in a case. When justices concurred in part or dissented in part, the Montana Chamber reviewed the written nature of their concurrence or dissent and made an evaluation of how the justice interpreted the overall case. Scores were not weighted. Justices received a 0 to 100 percent Business Score overall for the 2020-2021 period. Whether we agree or disagree with their rulings in individual cases, we appreciate each justice's service to the state of Montana.

Case Participation

The end of this Review shows a graph of the total number of cases for each category, as well as the number of cases in which each justice participated. Higher case participation rates should reflect a higher degree of reliability. The case participation number reflects the number of cases scored for a particular justice from the selected cases during the period of the study (2020 and 2021). District judges who filled in for recused justices were not scored in this Review.

Montana Supreme Court Justices

This report includes a review of the work of seven Supreme Court Justices. Justices serve eight-year terms. Justice biographies are available on the Court's website.

Chief Justice Mike McGrath : Elected in 2008 and re-elected 2016

Justice Beth Baker: Elected in 2010 and retained by voters in 2018

Justice Ingrid Gustafson: Appointed in 2017 and retained in 2018

Justice Laurie McKinnon: Elected in 2012 and retained in 2020

Justice Jim Rice: Appointed in 2001, retained in 2002 and 2006, and re-elected in 2014

Justice Dirk Sandefur: Elected in 2016

Justice Jim Shea: Appointed in 2014 and retained in 2016

Justices of the Montana Supreme Court (left to right): Justice Baker, Justice Sandefur, Justice Rice, Chief Justice McGrath, Justice McKinnon, Justice Shea, and Justice Gustafson

Banking

House v. US Bank et al, 02.23.2021 ☑

FACTS: Plaintiff obtained a residential property through a loan from Countrywide in 2006. The debt was later sold to US Bank via Bank of America. In November 2011, a foreclosure notice was issued to Plaintiff for failure to make sufficient payments since January. BoA then issued a "Reinstatement Calculation" in May 2012 informing Plaintiff of the requirements to resolve the payment deficiencies. Plaintiff sued based on BoA's alleged advice to skip a payment to qualify for the HAMP program. The judge granted summary judgment to Defendant on all issues, and Plaintiff appealed.

HOLDING: Summary judgment was properly granted because Plaintiff was unable to produce any evidence showing negligence, dishonesty, or behavior that was not commercially reasonable beyond a possible administrative error regarding Plaintiff's total monthly payment obligations. (Sandefur, McGrath, Shea, Baker, McKinnon)

Contract

Jorgensen v. Crazy Carls dba Auto Resource, 06.08.2021 ☑

FACTS: Plaintiff entered into a Purchase Agreement and Contract with AR for a Jeep Grand Cherokee and failed to make any payments. Plaintiff then sued for an injunction to prevent repossession of the Jeep, arguing for the presentment of a promissory note and that the Agreement and Contract were fraudulently prepared and violated the statute of frauds because they were not in writing. AR responded that Plaintiff induced AR to give her possession of the Jeep. Defendant claimed the Plaintiff did not pay for the vehicle while claiming she was the proper owner. Summary judgment was granted for AR. Plaintiff appealed.

HOLDING: The Agreement and Contract is not a promissory note, and as such the concept of presentment does not apply. Plaintiff failed to raise any genuine questions about the authenticity of the originals, and the originals are admissible when there is no genuine question of authenticity; mere speculation fails to defeat summary judgment. Affirmed. (McKinnon, McGrath, Shea, Gustafson, Rice)

Bolton et al and BSB Public Works Water Utility Division, 05.04.2021 ☑

FACTS: Claimants filed a grievance in November 2014 alleging BSB changed their work and break schedules without negotiating with the union. After BSB denied the grievance in June 2015, Claimants filed a wage claim for unpaid overtime, which was closed by the Wage & Hour Unit because the CBA did not allow their jurisdiction. Claimants requested their claim be reopened, alleging they were not "completely relieved of duty" over their lunch breaks and so were "on call," which was denied. Claimants appealed.

HOLDING: Claimants failed to exhaust the CBA grievance procedures. Claimants were fully compensated according to their timecards and pay stubs. Claimants were not "on call" during breaks because they had the freedom to leave the premises, use their breaks for their own purposes, and were compensated with overtime when they were rarely required to work on their breaks. (McKinnon, McGrath, Sandefur, Baker)

Employment

Hathaway v. Zoot Enterprises, 11.09.2021 ☑

FACTS: Zoot Enterprises hired Plaintiff in December 15 as Director of Marketing and promoted him to VP of Marketing the following year. Plaintiff was terminated June 19 for failure to adhere to standards of professional conduct and violation of company policies. Leadership provided a packet of documents that included grievance procedures. Plaintiff sued several weeks later claiming wrongful discharge without good cause.

HOLDING: The District Court ruling for Zoot is upheld. Plaintiff's first argument, that the process was vague, was belied by the plain text of the handbook which contained several references to termination and noted that complaints about termination must be filed within five days. His second argument, obtaining a personal copy of a policy document fails to provide notice of the policies in it, did not excuse his failure to read the express terms in the documentation and act accordingly. His third argument contradicts precedent, in which this Court declined to waive the WDEA's grievance requirement for an employee when she speculated that her boss would simply affirm her own firing decision - the "mere possibility of an adverse outcome" does not render the process futile. Finally, Plaintiff made only a general denial of the existence of good cause and raised no evidence to show that Zoot's stated reasons were pretextual. (McGrath, McKinnon, Baker, Sandefur, Rice)

Barthel v. Barretts Minerals, 09.14.2021 ☑

FACTS: Plaintiff was a lab technician for Barrett's Minerals starting in 2012. In 2019, he was prescribed medical marijuana for PTSD, and began using after work in February 2019. In March 2019, Plaintiff was randomly selected for drug testing in accordance with Barrett's HR Policy, and he notified his supervisor that he would likely test positive for THC. Plaintiff was placed on suspension pending the test results and terminated after THC was identified. Barrett's HR Policy stated legal drugs were prohibited when they might have adverse effects on the employee's ability to conduct their job safely unless the employee notified their superior, and management was able to determine, in consultation with a healthcare provider, that the employee could conduct their job safely. This policy also provided for immediate termination for violations. Plaintiff sued for wrongful discharge and employment discrimination; Barrett's moved for dismissal because Plaintiff's failure to notify his supervisor of his medical marijuana constituted good cause. Judge Berger granted Barrett's motion and dismissed all claims. Plaintiff appealed.

HOLDING: Barrett's policy clearly requires an employee to notify Barrett's of medications that could affect the employee's ability to perform the job safely. Plaintiff could not use his own discretion to claim his medical marijuana use did not pose a risk to the safety of other persons under the Policy. Failure to comply with the HR Notification Policy constituted good cause for termination. (Full Court)

Wiegand v. Office of Public Defender, 06.01.2021 ☑

FACTS: Plaintiff was fired November 2011, for falsifying time sheets, and soon after initiated the grievance procedure. After several administrative errors by OPD disrupted the grievance process, Plaintiff filed suit for wrongful discharge for violation of OPD's own written personnel policy when they failed to appropriately engage in the grievance process. OPD filed a motion to dismiss, which was granted on the basis that post-termination procedures could not rightfully be the subject of a WDEA claim, and Plaintiff failed to show a connection between her termination and the failed grievance process. Plaintiff appealed.

HOLDING: OPD's violation of the grievance process occurred *after* Plaintiff's termination; her termination was not a result of the grievance process, and as such is not a valid WDEA claim. (Rice, McGrath, Shea, McKinnon, Sandefur)

Employment (cont.)

Buckley v. Western Montana Community Mental Health Center, 03.30.2021 ☑

FACTS: Plaintiff was the Program Manager for Defendant's adult group home. Defendant began investigating claims of neglect, abuse, and violation of rights in April 2019. After the investigation, Defendant terminated Plaintiff immediately. Plaintiff unsuccessfully appealed under WMCMHC's grievance procedures and sued under the WDEA for termination without good cause. Defendant was granted summary judgment, and Plaintiff appealed.

HOLDING: Summary judgment was correctly granted because of the wide discretionary standard for determining what constitutes a legitimate business reason. After the investigation, Defendant no longer trusted Plaintiff to protect the rights of their clients as found in their Employee Policies Handbook, a legitimate business reason. Defendant was well within their discretion even with Plaintiff's past positive reviews and Plaintiff's denial of the problems discovered. (McKinnon, Shea, Baker, Gustafson, Rice)

Shepherd v. Montana Department of Corrections, 03.23.2021 ✘

FACTS: Plaintiff was terminated by DOC after a due process meeting, and she filed a grievance the same day requesting a wrongful discharge hearing. After being denied, Plaintiff filed a complaint in District Court. DOC requested summary judgment because the claim was time-barred. The judge granted the dismissal with prejudice on the basis that administrative remedies were "considered exhausted" after 90 days, interpreted § 39-2-911 as tolling the 1-year SOL for no more than 120 days, which rendered Plaintiff's claim untimely and beyond the one-year and 120-day deadline after her termination. Plaintiff appealed.

HOLDING: "Provisions" and "procedures," as used in § 39-2-911 are dissimilar terms. § 39-2-911(2) unambiguously tolls the SOL until the *procedures* are exhausted. The final sentence in § 39-2-911(2) stating "[in] no case may the provisions of the employer's internal procedures extend the limitations period ... more than 120 days" was not intended by the legislature to limit this tolling period to 120 days. Plaintiff's claim was tolled as she exhausted administrative procedures, and the SOL did not begin until February 14 when the original hearing concluded. Plaintiff timely filed "well within" the one-year SOL. (Shea, McGrath, Gustafson, McKinnon)

DISSENT: The WDA requires an employee to exhaust an employer's "written internal procedures" prior to suing. It provides for tolling while the internal process is ongoing but caps the tolling at no more than 120 days and authorizes the employee to file an action after just 90 days if the internal procedures have not been completed, deeming them to be exhausted. The Majority reasons that "provisions" are the employer's written policies; the "procedures" in the policies to be followed when an employee appeals a discharge. Consequently, the last sentence of 39-2-911(2) means the 120-day extension of the limitation period applies only if provided by the employer's written policies, not independently effectuated by statute. We would venture to say not a single employer has attempted to toll the statute by way of its internal procedures nor thought it possible. (Rice, Baker, Sandefur)

Employment (cont.)

Plakorus v. University of Montana, 12.15.2020 ✘

FACTS: A UM soccer coach did not have his contract renewed after an audit of his phone allegedly found texts and calls to a Las Vegas escort service. Later a newspaper published a story about him being fired for the texts and calls, and the stories included portions of his personnel files and more. He sued UM alleging violations of privacy, defamation, tortious interference, and negligence. UM moved for dismissal based on his failure to grieve his claims or timely file a contract claim, and the District Court granted UM's motion.

HOLDING: The Majority held that the District Court erred in holding all of Plaintiff's claims arose out of the employment contract, specifically for his claims on defamation and tortious interference, which are independent of the employment contract. Those claims should survive the motion to dismiss. (Baker, McGrath, Sandefur, Rice)

DISSENT: The defamation and tortious interference claims are sufficiently grounded in the terms of his employment contract, and this Court should therefore align with the District Court on dismissal. (McKinnon)

Tomsu v. University of Montana, 11.24.2020 ☑

FACTS: Plaintiff worked in UM's budget office. He was promoted a few times. At some point, his direct supervisor announced that everyone in the office would report to her, which Plaintiff saw as a demotion. He became concerned over his job title and felt working conditions under his supervisor had worsened. He resigned shortly after a confrontation with his supervisor and then sued for constructive discharge and infliction of emotional distress. The District Court granted summary judgment for UM on the emotional distress claims as they were statutorily barred in wrongful discharge claims. At a bench trial, UM prevailed on the constructive discharge claim.

HOLDING: Tort claims are largely preempted by the Wrongful Discharge from Employment Act if they are "inextricably intertwined with and based upon" a claim for wrongful discharge. In this case, Plaintiff's emotional distress claims are intertwined with his constructive discharge claim and were properly rejected. (Gustafson, McGrath, McKinnon, Shea, Rice)

Employment (cont.)

Brendan v. Billings, 03.31.2020 ✘

FACTS: Michael Glancy was a supervisor at the City of Billings who called a business that had newly hired Tad Brendan, an employee he used to supervise and gave negative information about Brendan's job performance at the City. This was after he had given a favorable recommendation while Brendan still worked for him. Based on this information, the business fired Brendan on the second day of work. After learning of the supervisor's actions, the City of Billings terminated Glancy's employment for violating City policy. Brendan sued the City, alleging tortious interference because the City was vicariously liable for Glancy's actions. The City was granted summary judgment by the District Court because it was able to show it was outside the scope of Glancy's employment.

HOLDING: The Majority of the Court reversed the District Court, finding there were material facts in dispute regarding Glancy's verbal statements and emails to the business and whether there was implicit authority for them within the course and scope of his employment. (Sandefur, Shea, Rice, Gustafson)

DISSENT: The record in the District Court points to no evidentiary basis on which a jury could find that Glancy's anonymous tip to the business was in any way in furtherance of the City's interests. Glancy's actions departed from the normal, authorized tasks of a City supervisor. (Baker, McGrath, McKinnon)

Putnam v. Central Montana Medical Center, 03.25.2020 ☑

FACTS: Plaintiff was employed as an In-Home Care Services Director for 13 years until her employment was terminated in 2017. She sued, alleging wrongful discharge, but the District Court granted summary judgment for the employer.

HOLDING: The District Court found ample evidence for "good cause" in Plaintiff's termination. Plaintiff struggled to manage rising accounts and submit timely employee evaluations despite repeated warnings. While she recognized her duties, she failed to rectify the problems. (McGrath, Rice, Baker, McKinnon, Sandefur)

Berberet v. Signature Flight Support, 01.21.2020 ☑

FACTS: A fuel truck driver for CitySeriveValcon (CSV) was fired after he was found urinating on the property of a customer (SFS) of the delivery company for which he worked. An employee of SFS had reported the urinating to a supervisor, who told CSV it should change who was delivering fuel to them. When the driver was fired, he sued his former employer, who settled. He also sued the customer, SFS, for tortious interference and sought punitive damages. The District Court dismissed his tort claims because he could not prove all the elements of tortious interference.

HOLDING: The District Court correctly granted summary judgment to SVS because Plaintiff could not show SFS asked CSV to fire him or even intended that result. It simply asked for CSV to send another driver. (Gustafson, McGrath, Shea, Baker, Sandefur)

Insurance

National Indemnity v. State and Intervenors Jellesed et al, 11.23.2021 ✘

FACTS: National Indemnity insured the State under a general liability policy in 1973-75 for personal injury claims from asbestos dust arising from the State's failure to warn of these conditions despite its knowledge of the source vermiculite mining & milling in and around Libby decades earlier. Beginning in 2000, claims alleging injuries and death from asbestos were made against the State. The State and National initiated discussions regarding National's duties to defend and prove coverage, but no agreement was finalized. During this time, the State defended itself and settled claims, including a global settlement in 2009 for $43 million. National participated in that settlement but filed an action in 2012 seeking a declaration that it had no obligation to defend the State or cover the claims. The District Court concluded that National breached its duty to defend the State and was obligated to pay claims under terms of the policy.

HOLDING: The District Court ruling is upheld, correctly concluding that coverage for the State existed under the policy and that its exclusions did not apply, except in its determination of the number of "occurrences" eligible for coverage. Each of the State's regulatory failures to warn could constitute an individual "occurrence" but not each claimant's individual injury. (Rice, McGrath, Sandefur, Gustafson, Judge Davies sitting for Baker)

DISSENT: National did not breach its duty to defend the State—a self-insurer represented by counsel since 1976—and thus is not estopped from disputing coverage. *Orr* (Mont. 2004) established that the State acted intentionally in failing to disclose the hazardous conditions of the mine and knew of the injury and loss that was eminent; such conduct is excluded from coverage under the policy. (McKinnon)

Johnsons v. Wilson, 11.02.2021 ☑

FACTS: Johnsons requested supervisory control over Judge Wilson's
dismissing their 1st amended complaint and denial of their motion to file a 2nd amended complaint, alleging State Farm's assertion of the right to subrogate violated the made-whole doctrine on the grounds that their claim was premature.

HOLDING: State Farm's "mere preliminary assertion of the future right to subrogation for the property loss" does not demonstrate they have or will reduce the amount they will be entitled to recover for damages. Johnsons have failed to show how "extraordinary preliminary review" will avoid gross injustice for which appeal after final judgment is inadequate. Petition denied. (McGrath, Sandefur, Shea, Gustafson, Rice)

Insurance (cont.)

Wilkie v. The Hartford, 09.07.2021 ✘

FACTS: Plaintiff was struck by a vehicle driven by Richard Sprout while crossing the street and submitted a claim to the driver's insurer, Hartford. After the driver's liability was clear, Hartford began making payments. In February 2020, Plaintiff's attorney requested a copy of the policy or a statement of the liability limits for the claim; Hartford responded they had no duty to provide Plaintiff with the driver's policy, and it was their policy to not provide policies. Plaintiff's counsel never responded but instead sued, seeking a declaration that Hartford had a duty to provide the policy or disclose the liability limits because liability was reasonably clear and it forced Plaintiff to negotiate from a position of ignorance. Three weeks after Plaintiff filed, Sprouts' shared a copy of the policy and declarations page, and Hartford/Sprout moved to dismiss for mootness because Plaintiff already had a copy of the policy. Plaintiff objected, based on the voluntary cessation or repetitive wrongs evading review exceptions to the mootness doctrine. Judge McElyea dismissed, agreeing issue mootness and that further adjudication would result in an improper advisory opinion.

HOLDING: McElyea erred when dismissing the voluntary cessation claim to mootness. Hartford has failed to show their conduct will not recur, and Plaintiff provided reasonable evidence that Hartford's conduct would repeat and had occurred prior to this case. Remanded for adjudication of Plaintiff's claim on the merits. (Baker, McGrath, Shea, McKinnon, Sandefur)

Phipps v. Old Republic National Title Insurance and Security Title Abstract, 06.22.2021 ☑

FACTS: Plaintiffs acquired ranching parcels in 2008 and 2016. The legal accessibility of these parcels was uncertain due to the lack of Garfield County public records. The title policies issued at the time of purchase contained legal access exceptions. In 2017, they entered into a buy-sell agreement, contingent on a preliminary title commitment. Plaintiffs ordered a title commitment from Defendants, who researched the title but failed to review road books because they were not a standard part of a title search and unfeasible to review. The sale fell through due to the legal access question. Plaintiffs sued Defendants for negligence, professional negligence, and negligent misrepresentation, alleging road documents from 1912 and 1914 documents would have shown the roads were public and the sale would have been finalized if not for Defendant's failure to examine the books. Judge Hayworth determined statutes regarding the issuance of a title insurance policy did not impose a legal duty. Plaintiffs appeal.

HOLDING: The preliminary report of a title insurance commitment is merely an offer to issue title insurance subject to the terms and disclaimers of the report, not a true title insurance policy that presents an abstract of the title. The duty to conduct a reasonable search that is imposed upon the issuance of a policy is not present in the preliminary commitment. The MTIA does not impose a duty to unconditionally insure the right of access for the potential purchasers. (Full Court)

Insurance (cont.)

Kaul v. State Farm Mutual Auto Insurance, 03.16.2021 ✘

FACTS: Plaintiffs purchased a RV in 2013 along with a State Farm policy. Plaintiffs inspected the roof in March 2017 before leaving for Arizona, returning in April. At some point during the trip, the roof was damaged, which was unnoticed by Plaintiffs. The RV was then stored uncovered until Plaintiffs took a trip in late May, at which time they discovered bubbling in the fiberglass wall. After the RV was hit with a rainstorm during its storage, Plaintiffs continued to use the RV through June and eventually filed a claim with State Farm for total roof repair. The repair shop was forced to remove the wall of the RV to repair the roof. State Farm paid for the roof repair but denied coverage for the wall repair because it was not "direct, sudden, and accidental" as required for coverage under the policy.

HOLDING: The initial rainstorm constitutes a "sudden" event triggering coverage, even though there were subsequent rainstorms that likely contributed to the RV's damage and the physical manifestation of the "sudden" rainstorm went undiscovered for weeks. State Farm is required to cover the entire cost. (Gustafson, McGrath, Shea, Baker, Sandefur, Rice)

DISSENT: The Majority has separated the accident triggering coverage from the cause of the loss—the tear in the roof—and tethered it to a "sudden" amount of rain, thereby distorting a clear limitation of the policy. The covered loss began when the roof tore and ended when the loss was no longer "sudden." The policy is unambiguous: for a loss to be covered, it must be direct, sudden, and accidental. (McKinnon)

Montana Supreme Court Case Review Cases from 2020-2021

Case Summary

	COURT	Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea
2020-2021 Cases (Pro Justice/Participation)	25/43	25/36	15/31	22/36	27/34	25/36	18/35	18/33
2020-2021 Judicial Score	58%	69%	48%	61%	79%	69%	51%	55%
Career Cases (Pro Justice/Participation)		152/225	42/73	144/249	151/177	296/382	63/98	92/144
Career Judicial Score		68%	58%	58%	85%	77%	64%	64%

☑ Indicates a business-positive decision ✘ Indicates a business-negative decision

Montana Supreme Court Case Review Cases from 2020-2021

	COURT	Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea
BANKING								
House v. US Bank et al	☑	☑		☑	☑		☑	☑
CONTRACT								
Bolton et al and BSB Public Works Water Utility Division	☑	☑		☑	☑		☑	
Jorgensen v. Crazy Carls dba Auto Resource	☑		☑	☑	☑	☑		☑
EMPLOYMENT								
Berberet v. Signature Flight Support	☑	☑	☑	☑			☑	☑
Putnam v. Central Montana Medical Center	☑	☑		☑	☑	☑	☑	
Brendan v. Billings	✘	☑	✘	☑	☑	✘	✘	✘
Tomsu v. University of Montana	☑		☑	☑	☑	☑		☑
Plakorus v. University of Montana	✘	✘		✘	☑	✘	✘	
Shepherd v. Department of Corrections	✘	☑	✘	✘	✘	☑	☑	✘
Buckley v. Western Montana Community Mental Health Center	☑	☑	☑		☑	☑		☑
Wiegand v. Office of Public Defender	☑			☑	☑	☑	☑	☑
Barthel v. Barretts Minerals	☑	☑	☑	☑	☑	☑	☑	☑
Hathaway v. Zoot Enterprises	☑	☑		☑	☑	☑	☑	
INSURANCE								
Reisbeck v. Farmers Insurance Exchange	✘	☑	✘	✘	☑	✘	✘	✘
Gunderson and All Secure v. Liberty Mutual Insurance et al	☑		☑	☑	☑		☑	☑
Atlantic Specialty Insurance v. McElyea	✘	✘			✘	✘	✘	✘
Farmers Insurance Exchange v. Wessel & Mehan, Flora, and Crites	☑	☑	☑	☑	☑		☑	
Shephard v. Farmers Insurance Exchange and State Farm Fire & Casualty	☑	☑		☑		☑	☑	☑
Kaul v. State Farm Mutual Auto Insurance	✘	✘	✘	✘	☑	✘	✘	✘
Phipps v. Old Republic National Title Insurance and Security Title Abstract	☑	☑	☑	☑	☑	☑	☑	☑
Wilkie v. The Hartford	✘	✘		✘	✘		✘	✘
Johnson v. Wilson	☑		☑	☑		☑	☑	☑
National Indemnity v. State and Intervenors Jellesed et al	✘		✘	✘	☑	✘	✘	

☑ Indicates a business-positive decision ✘ Indicates a business-negative decision

Montana Supreme Court Case Review Cases from 2020-2021

	COURT	Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea
JURISDICTION								
Buckles v. Continental Resources	✗	✗		✗	☑	✗	✗	✗
LAND USE/ENERGY/ENVIRONMENT								
MEIC et al v. DEQ and Montanore Minerals	✗	✗	✗	✗		☑	✗	
Park Co. Environmental Council v. DEQ, Lucky Minerals	✗	✗	✗	✗	✗	✗	✗	✗
Clark Fork Coalition et al v. DNRC and RC Resources	☑	☑	✗	☑	✗	☑	☑	☑
Bye et al v. Somont Oil	☑	☑	☑			☑	☑	☑
MEDICAL MALPRATICE								
Howlett v. Chiropractic Center and Morris	☑	☑	☑	☑	☑			☑
Mooring as PR of Barnett v. Rienne McElyea	☑	☑	☑		☑	☑	☑	
TAXATION								
Mountain Water v. DOR	✗	☑	✗	✗	☑	☑	✗	✗
Boyne USA v. DOR	☑	☑			☑	☑	☑	
TORT								
BNSF v. Eddy	✗	✗	✗	✗	✗	✗	✗	✗
Nolan and Garrity v. Billings Clinic	☑	☑		☑	☑	☑		☑
Warrington v. Great Falls Clinic	✗	✗	✗	✗	✗	✗	✗	✗
Buckles v. BH Flowtest and Black Rock Testing	✗	☑	✗	✗	☑	☑	✗	✗
Childress v. Costco	☑	☑	☑	☑	☑	☑	☑	☑
Babcock v. Casey's Bar	✗	✗	✗			✗	✗	✗
WORKERS' COMPENSATION								
Hensley v. Montana State Fund	☑	☑	✗	☑		☑	✗	☑
Miller v. Montana State Fund	☑		☑	☑	☑	☑		☑
OTHER								
Montana Trial Lawyers Association (MTLA), Petitioner	☑	☑	☑	☑	☑	☑		
Dannels v. BNSF	✗	☑	✗	✗		☑		✗
Jones v. All Star Painting	✗	✗	✗			✗	✗	✗

☑ Indicates a business-positive decision ✗ Indicates a business-negative decision

Montana Workers Compensation Court Review

The Montana Workers' Compensation Court (WCC) was created in 1975 to address work comp cases – a significant development for the business community. Before systematic reforms were enacted in the 2011 Legislature, Montana businesses experienced skyrocketing work comp premiums that became the highest in the nation. Since implementation of the 2011 reforms, Montana's rates have reduced over 30 percent. However, our relatively high premiums still place Montana businesses at a competitive disadvantage with other states and hurt their ability to provide higher wages and better benefits to workers.

Because the courts are a key player in interpreting work comp law, the Montana Chamber began reviewing the decisions of the WCC starting in 2007. This is the eighth cycle the Chamber has reviewed its work, and it covers cases from 2020 and 2021.

Scoring

In this review, the WCC judge was evaluated in comparison to the pro-business position. 26 cases were chosen for this Review during the period from 2020-2021. This report includes a review of judgments made by Judge David Sandler, who was appointed by Governor Steve Bullock in 2014 and confirmed by the Montana Senate in 2015.

Judge Sandler was born and raised in Billings. He received his Juris Doctor degree from the University of Montana School of Law in Missoula in 1998. He clerked for the Honorable James C. Nelson at the Montana Supreme Court from 1998-99, and practiced law at several prominent Montana law firms throughout his career. Judge Sandler's law practice included insurance defense of work comp claims from 1999 to 2006 and from 2007 until his appointment to the Court in August 2014. A portion of his practice represented work comp claimants.

The case descriptions were taken directly from official case summaries compiled by the Montana Law Week and the Workers' Compensation Court staff (wcc.dli.mt.gov/cases.asp).

☑ Indicates a business-positive decision ✘ Indicates a business-negative decision

Montana's Workers Compensation Court Review

Winegardner v. Montana State Fund, 12.17.2021 ☑

FACTS: Plaintiff filed a claim with MSF alleging she hit her head and suffered a concussion July 19 in the course of her employment with a dentist. MSF denied her claim on the grounds that her records contained no objective medical findings of an injury. Plaintiff retained counsel to appeal the denial and have the injury description corrected. The parties reached a settlement, but Plaintiff wished to back out after discovering what she believed to be new evidence to support a continued appeal and argued that the settlement was not binding because she didn't sign it. MSF moved to enforce the settlement agreement.

HOLDING: MSF is correct that under established Montana law a binding settlement agreement exists. Parties entered into a binding agreement the moment MSF accepted Plaintiff's offer because she did not make signing the agreement a condition for the formation of a binding settlement. The Court is also not persuaded by Plaintiff's implied argument that there are unmet conditions. She is bound by the offer that counsel conveyed on her behalf, which did not contain any conditions.

Collen v. Montana State Fund, 11.19.2021 ☑

FACTS: Plaintiff suffered bilateral hearing loss at work prior to retiring. MSF accepted his claim in 12/19 and notified him that his benefits would terminate on August 23 pursuant to the 60-month rule. Plaintiff argued that his hearing aids were a prosthesis and/or prosthetic device and the associated repair and maintenance necessary to monitor its status were not subject to the 60-month rule. MSF declined, positing that hearing aids were not such a device and exempt from the rule. MSF moved to dismiss, arguing that there was no dispute over comp because it was paying all hearing aid medicals to which Plaintiff was entitled and had not denied his future hearing aid benefits, but only taken the position that unless certain facts change, he would not be entitled to medical past August 23.

HOLDING: Plaintiff's arguments are unavailing. First, there was no merit to his concern that waiting until August 23 to file his claim would make it untimely. MSF's letter merely conveyed its current position that those benefits would terminate August 23 based on the facts as they presently exist including that he was currently neither PTD nor in the labor market. Second, Plaintiff's feared outcome was not certain to occur. If he were to become PTD or re-enter the workforce and need his hearing aids, he would have been entitled to medical benefits after 8/23 and therefore not suffer the injury about which he complains. MSF's motion to dismiss is granted.

Lorenzen v. Employers Preferred Insurance, 11.05.2021 ☑

FACTS: Plaintiff had numerous preexisting conditions, beginning as a youth when he crashed on his bike and suffered a cervical spine injury. He tripped while leaving work at Silver Fox Casino and fell several feet off a deck. Employers Preferred accepted liability for his low-back and left-wrist sprains and began paying TTD. Plaintiff returned to work but testified that he could not perform his duties due to various symptoms that he attributed to the job accident. Plaintiff sought judgment from this Court about whether he was entitled to further benefits.

HOLDING: Plaintiff made several misrepresentations to his providers and during his deposition and trial testimony. Expert witnesses demonstrated no link between the several claims of physical conditions and the job accident, and Plaintiff did not suffer a wage loss because his current restrictions and alleged inability to work in his modified job are the result of his preexisting conditions and his non-job left-ankle injury. Plaintiff is not entitled to additional benefits. (Sandler)

Wetch v. Montana State Fund, 11.05.2021 ✘

FACTS: Plaintiff sustained a head injury at work January 19 and experienced concussion-related difficulties. MSF accepted liability for acute head and arm bruising. She was taken off work and later released for part-time return, but she left her job because she could no longer do the work. MSF terminated her wage loss. Plaintiff unsuccessfully attempted to work in two other jobs and was denied interim benefits by DLI upon request because it determined that benefits had not been paid for a substantial time and she had not shown financial hardship. MSF followed by arguing Plaintiff never relied on the wage-loss benefits that were paid and that she had already been thinking about quitting before her injury and after doing so got other work, meaning termination of benefits was not the cause of any financial hardship.

HOLDING: Although MSF argued Plaintiff's symptoms predated her injury, symptoms can worsen. Given that she was able to perform her modified job before her injury but cannot do so now, it logically follows that her expert witness was correct that her injury caused her worsening symptoms. MSF also had no medical opinion to counter Plaintiff's, and the standard for interim benefits only requires "substantial evidence which, if believed, would entitle [Plaintiff] to the benefits." MSF shall pay benefits.

Krezelak v. Indemnity Insurance of North America, 09.16.2021 ☑

FACTS: Plaintiff suffered injuries including sprains/strains to her entire spine, neck, and shoulders in a work-related MVA in April 2016. Indemnity accepted liability for those injuries but denied liability for other injuries diagnosed months to years after the accident. Plaintiff claimed the later-diagnosed injuries were encompassed as part of Indemnity's acceptance and that she met the burden of proof showing causation through the testimony of two physicians. Indemnity claimed Krezelak failed to show causation based on the opinion of their IME physician.

HOLDING: Indemnity is not trying to "un-accept" liability for injuries that were not even discovered prior to their acceptance, and so could not have accepted liability for undiscovered injuries. However, Indemnity is liable for her other injuries, because Krezelak provided testimony from two physicians who opined the MVA caused or permanently aggravated her conditions that the Court found credible.

Laemmle/Riverside Drywall v. Pettit and UEF, 09.03.2021 ☑

FACTS: Pettit was allegedly injured while roofing for Laemmle in March 2020. Laemmle was uninsured, and Pettit's claim was submitted to UEF. When a DLI investigator interviewed Laemmle, it was unclear whether Pettit was an independent contractor or helping Laemmle personally on his rental property. UEF accepted liability October 2020 and sent Laemmle a letter informing him that he was expected to reimburse UEF for all benefits. In June 2021, Laemmle petitioned for mediation because UEF falsely determined Pettit was an employee entitled to benefits. UEF filed a motion to dismiss as untimely under § 520(1) that the Court converted to summary judgment. Laemmle argueed he did not receive actual notice until later, and his petition was within the 90-day limit from when he was notified.

HOLDING: UEF failed to establish actual notice and failed to ensure they had the correct address for serving Laemmle during the interview when Laemmle gave unclear answers. It has not been proven that Laemmle was intentionally evasive, and there are issues of material fact of when Laemmle was notified. Summary judgment denied.

Bryer as Guardian/Conservator for Sheldon v. Accident Fund General Insurance, 08.10.2021 ✘

FACTS: Johnny Sheldon was found unconscious at work July 2017 and has been incapacitated and mentally incompetent ever since. A six-month temporary guardianship for Sheldon expired January 24, 2018, and he was left without a guardian until July 28, 2020, when Contessa Bryer was appointed. In September 2020, Bryer pursued a comp claim and was appointed full guardian on November 23rd. Bryer filed a petition in March 2021, alleging Sheldon's injury in 2017 was compensable, and the statute was tolled while Sheldon was mentally incompetent and without a legal guardian under § 602. Accident Fund filed for summary judgment based on the two-year limitation under §2905(2).

HOLDING: The statute of limitations tolled during the time Sheldon was mentally incompetent and without a legal guardian. Breyer was well within the limitations period when she filed her petition, as only six months had elapsed before Sheldon was without a guardian, and Breyer filed the petition eight months after becoming guardian, ten months before the statute ran.

National Union Fire Insurance of Pittsburgh v. Rainey, 06.30.2021 ✘

FACTS: Rainey suffered a broken ankle October 25, 2018, while on a road paving crew. National Union accepted liability, and the ankle was surgically repaired on October 26. In late February 2021, a Sedgewick adjustor terminated Rainey's TTD, believing Rainey to be at MMI without any permanent impairment based on a Medical Status Form from a physician, and therefore not needing to comply with the § 609(2)(a)-(d) *Coles* criteria. Rainey requested DLI require NU to pay TTD, which NU agreed to pay as "good faith," but that TTD was not warranted and should be reimbursed. DLI later ordered the reinstatement of TTD pending a hearing.

HOLDING: There is a strong *prima facie* case that NU did not have grounds to terminate Rainey's TTD. Rainey made a strong showing that MSF was likely erroneous, and the physician did not intend to release Rainey to full duty; even if they did, insurers may not terminate TTD simply because a physician made a general statement the person could work an unknown job, and instead must wait for approval of an actual job the person is qualified to perform under the first sentence of § 609(2). Rainey's records and MSF did not show MMI, and rather show he is likely to have a permanent impairment and will be unable to return to his TOI job. DLI's reinstatement of benefits is affirmed pending a hearing, Rainey entitled to costs under § 611.

Marjamaa v. Montana State Fund, 06.23.2021 ☑

FACTS: Plaintiff worked as a ranch hand for Luthje with varied hours. She was paid semi-monthly based on her hand-written time records. She did not believe she was being paid for all the hours she worked but did not complain for fear of being fired and evicted from the home she and her husband rented from Luthje. She injured her foot July 2019 but continued work. Her wages were raised beginning August 2019. Marjamaa quit October 18, 2019, and filed a claim with MSF in February 2020, estimating pay in the four periods before her injury. MSF accepted liability and calculated AWW and TTD based on payroll records. Marjamaa then filed a wage claim for overtime wages due and a sexual harassment claim against the ranch. The wage and harassment claims were settled in July 2020. Although Marjamaa had no records of her hours worked, she claimed MSF did not correctly calculate wages or TTD because it did not consider hours worked but unpaid or did not consider the settlement to include back pay.

HOLDING: There is no avenue for the Court to calculate wages without pay because § 123(3)(a) requires wages must be calculated using the claimant's "actual average earnings," not hours allegedly worked without pay. The settlement was explicitly divided between emotional damages and fees, and so cannot be considered back pay.

Bowman v. Hartford Accident & Indemnity, 05.27.2021 ✘

FACTS: Plaintiff sustained an injury while working as a comp adjuster for Sedgwick, insured by Hartford. Plaintiff asserted to be entitled to TTD, TPD, medicals, and penalties for unreasonable delay and denials, as well as a violation of § 107(2) because the "point of contact" for the regional adjusters was with the "team lead" in Kentucky and served a request for production of the entire Hartford file. Hartford produced some of the regional file, objecting to parts of some documents as privileged. Some of the documents showed the Kentucky "team lead" was involved in the adjustment as well as directing the Montana adjusters. Plaintiff moved to compel the entire file. Hartford objected and claimed this adjuster was not part of the claim and was merely a "payment clerk," only maintaining a "dummy file" that was not a true part of the greater adjustment file.

HOLDING: The "dummy file" is part of the adjustment, and Plaintiff is entitled to this as part of her claim file. The request for the file is reasonably calculated to lead to admissible information such as why the adjusters made certain decisions or payments and the truthfulness of their affidavits. If the regional adjusters disclose the opinions of Hartford's attorneys to Sedgewick, they have waived privilege and must produce all documents they have claimed privilege. Motion granted.

Robertson v. Montana State Fund, 03.16.2021 ☑

FACTS: Plaintiff injured her back while working as a CNA. MSF accepted her claim for disk herniation and paid medical and indemnity. Plaintiff underwent surgery in May 2019 and was MMI by February 2020. MSF prepared for her return to work for a variety of positions.

HOLDING: MSF met the burden of disproving PTD because it prepared and approved JAs in various areas. After the burden shifted to Plaintiff, Plaintiff failed to provide any evidence to rebut this presumption, and Plaintiff is found to not be PTD. The knowledge, skills, and effort of her previous job as a CNA are transferable to the other positions offered by MSF, and Plaintiff could physically perform the JAs offered.

Walund v. Montana State Fund, 02.22.2021 ☑

FACTS: Plaintiff, a criminal investigator for MTDOJ, began experiencing neuropathy in the early 2010s, with symptoms worsening over the years. In 2019, Plaintiff experienced an "attack" of symptoms that became severe while sitting in a vehicle conducting surveillance, and again in 2020 while driving to a weapons course. Plaintiff filed two claims based on aggravation of a pre-existing condition.

HOLDING: No objective medical findings were produced by Plaintiff showing specific injuries related to the "attacks" that would show exacerbations or aggravation of Plaintiff's neuropathy. Plaintiff failed to show causation of his worsening neuropathy, and his neurologist testified that Plaintiff's neuropathy would progress over time regardless of Plaintiff's behavior. MSF's agreement to "treat" his "attacks" as temporary aggravations was not an admission of liability for any alleged permanent aggravation or a judicial admission that Plaintiff suffered an injury. Judgment for MSF.

Miller v. Montana State Fund, 11.25.2020 ☑

FACTS: Plaintiff had a closed head injury in 1983, which he settled in a "full & final compromise" in 1988. Ten years later, he petitioned to rescind the settlement on grounds of mutual mistake. That was denied. He petitioned again in 2000. In 2001, he entered into a second "full & final compromise settlement" with MSF. In 2020, Plaintiff filed yet another petition to rescind and tort claims. MSF filed for summary judgment.

HOLDING: MSF is entitled to summary judgment under *res judicata* "on the 1988 settlement and the Court does not have subject matter jurisdiction over the tort claims. The only remaining claim the Court did not dismiss but has not yet decided is the claim on the 2001 settlement.

Swan v. Montana State Fund, 09.11.2020 ☑

FACTS: Plaintiff alleged he suffered a lung injury from inhaling crystalized mineral dust while working in an old copper mine, or that he has an occupational disease as a result of his 30-year career as a miner. His last injurious exposure would have been while working for a business insured by MSF.

HOLDING: There is insufficient evidence to prove Plaintiff's lung injury was the result of exposure to crystalized mineral dust. He also did not prove he has a compensable occupational disease.

Hogan v. Federated Mutual Insurance, 09.02.2020 ✘

FACTS: Federated Mutual moved to dismiss Plaintiff's petition for hearing where Plaintiff claimed the insurer's subrogation lien on this third-party tory recovery was invalid. Plaintiff claimed he would not be made whole. Federated Mutual argued his claim was premature because he had not reached maximum medical improvement (MMI), which can make it difficult to determine how much workers' compensation he might be entitled to in his lifetime.

HOLDING: Montana's subrogation law does not require an injured worker to reach MMI before bringing a claim to invalidate a subrogation lien. The Court believed Plaintiff could prove that the amount of worker's compensation to be received with "sufficient certainty" for the Court to make findings and calculate benefits.

☑ Indicates a business-positive decision ✘ Indicates a business-negative decision

Herman v. MCCF, 09.02.2020 ☑

FACTS: Plaintiff sought a ruling from the Court on the designation of a treating physician, a ruling that MCCF was liable for medical and other fees, and a declaration that the statute allowing an insurer to designate the treating physician as unconstitutional. MCCF responded by conceding liability on all claims and moving for summary judgment while Plaintiff moved forward and sought penalties.

HOLDING: The Court held that Plaintiff's claims are moot because it no longer has subject matter jurisdiction over the dispute since MCCF has admitted liability.

Walters v. Employers Insurance Of Wausau, 07.30.2020 ☑

FACTS: Plaintiff suffered a workplace injury strain that kept her off work for a few days. She was diagnosed with left-side sciatica, and her medical status form said, "Employee Not Released to Work." The form was misplaced by the employer, which fired Plaintiff after she did not show up for two shifts. Once the form was discovered, the employer contacted Plaintiff about returning to work and said it did not consider her discharged. Plaintiff claimed the employment relationship was irreparably harmed and sought TTD payments.

HOLDING: Plaintiff is not entitled to TTD benefits because she is not suffering a total loss of wages as a result of a workplace injury. The employer offered her a modified position that she could have performed, and she has no good reason to refuse the employment. Her wage loss is a result of her unwillingness to return to an available job she is able to perform. The employer corrected its mistake in a timely manner. Summary judgment is proper for the insurer.

Gordon v. Continental Western Insurance, 07.09.2020 ☑

FACTS: Plaintiff suffered a head injury at work in 2019, and the insurer accepted liability. On a number of occasions, the insurer set up a §605 panel and missed the appointments or was directed by his attorney not to attend. The insurer was assessed a number of cancellation fees due to Plaintiff's unwillingness or inability to attend panels or exams. The insurer moved the Court for a suspension of TTD benefits for failing to attend his appointments.

HOLDING: Suspension of TTD benefits is reasonable because the Court found that Plaintiff was acting unreasonably and did not have sufficient justification to miss appointments. His conduct resulted in unnecessary cancellation fees for the insurer.

Dargin v. XL Insurance, 05.26.2020 ✘

FACTS: An insurer moved for summary judgment in a case involving a security guard who claimed she fell and hit her head and blacked out. Her head showed no signs of a fall, her hard hat had no damage, and security tapes revealed "nothing." She allegedly had a seizure while in the hospital for a week after the fall, and there was some question as to whether her fall was the result of a seizure, or whether her seizures were a result of the fall.

HOLDING: The Court held there was still a question of material fact regarding her fall to preclude summary judgment for the insurer. Plaintiff asserts the incident should be considered an "unexplained fall," and the majority rule in other jurisdictions is that unexplained falls at work that result from no discoverable reason always arise out of employment. The Court refused to make findings of fact in the summary judgment phase and denied the insurers motion.

Winslow v. New Hampshire Insurance, 05.07.2020 ☑

FACTS: Plaintiff claimed he injured his back while unloading a truck at a big box store. The insurer denied the claim but ultimately accepted it just under two years later and a month before trial. Plaintiff went to trial anyway to seek a penalty against the insurer for acting unreasonably and to get attorney fees.

HOLDING: There is no basis for a penalty or attorney fees because the insurers initial denial of the claim is reasonable. Plaintiff refused to provide records from his previous medical providers who had treated his lower-back problems. His claim that a video was irrefutable proof is unfounded because the footage does not actually show the moment of injury and gave the insurer ground to question his credibility. This Court does not have the authority to award attorney's fees and assess a penalty unless the Court settles the dispute or unless it falls within § 611 of the Montana workers' compensation code.

Mize v. Montana State Fund, 05.06.2020 ✘

FACTS: A snowplow driver was in a vehicle crash when the hydraulics of the truck failed, and the plow collided with a guardrail. The crash caused his body to slam into the interior of the truck's cab. A week later, he died of a pulmonary embolism. MSF denied liability arguing there was no evidence the driver suffered an injury as defined in the workers' compensation code and the cause of his death was not attributable to a workplace injury.

HOLDING: The widow who brought the action on behalf of her husband was able to show through expert testimony that the four elements of a death case were met: 1) an injury under § 119(1)(c); the cause of his death through medical evidence; 2) an accident took place that fit § 119(2); and the accident was caused by a specific event on a single day during a single shift. The snowplow driver's death arose out of the course and scope of his employment and is a compensable injury.

Warboys v. Liberty Northwest Insurance, 03.10.2020 ☑

FACTS: Plaintiff was a lifelong resident of Libby who had likely been exposed to ambient asbestos that existed in the town, exposure from her parents bringing it home from work, and possibly from her time as an employee at Stimson Lumber from 1998-2003. After a visit to a clinic for asbestosis screening, she filed a claim saying she had respiratory disease proximately caused by her Stimson Lumber employment.

HOLDING: Plaintiff's CT does not show structural pathology consistent with respiratory disease. Several physicians she visited stated she did not have diagnosable respiratory disease at all. The only two providers who offered evidence on behalf of Plaintiff did not convince the Court that she has diagnosable respiratory disease.

Neisinger v. New Hampshire Insurance, 02.26.2020 ☑

FACTS: Plaintiff had lower back pain but was able to handle heavy labor. He saw a chiropractor dozens of times for this pain. In 2015, he suffered a compensable workplace injury to his leg. Later, he developed severe lower back pain that affected his hips and legs. He argued the workplace injury to his leg aggravated his lower back pain and sought coverage from the insurer. The insurer denied liability.

HOLDING: The Court held that Plaintiff's symptoms of severe back pain were not caused by the workplace accident because they didn't appear until about ten months after the incident. The insurer is not liable for back treatments because it is not responsible for his spinal condition.

Montana Work Comp Court Case Review

Cases from 2020-2021

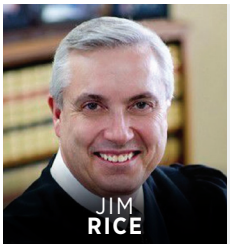
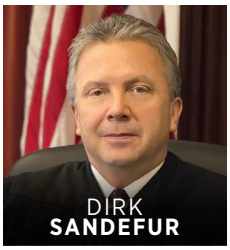
	SANDLER
Winegardner v. Montana State Fund	☑
Collen v. Montana State Fund	☑
Lorenzen v. Employers Preferred Insurance	☑
Wetch v. Montana State Fund	✘
Krezelak v. Indemnity Insurance of North America	☑
Laemmle/Riverside Drywall v. Pettit and UEF	☑
Bryer as Guardian/Conservator for Sheldon v. Accident Fund General Insurance	✘
National Union Fire Insurance of Pittsburgh v. Rainey	✘
Marjamaa v. Montana State Fund	☑
Bowman v. Hartford Accident & Indemnity	✘
Robertson v. Montana State Fund	☑
Walund v. Montana State Fund	☑
Miller v. Montana State Fund	☑
Swan v. Montana State Fund	☑
Hogan v. Federated Mutual Insurance	✘
Herman v. MCCF	☑
Walters v. Employers Insurance Of Wausau	☑
Gordon v. Continental Western Insurance	☑
Dargin v. XL Insurance	✘
Winslow v. New Hampshire Insurance	☑
Mize v. Montana State Fund	✘
Warboys v. Liberty Northwest Insurance	☑
Neisinger v. New Hampshire Insurance	☑

Case Summary

2020-2021 Cases (Pro Justice/Participation)	16/23
2020-2021 Judicial Score	70%
Career Cases (Pro Justice/Participation)	58/87
Career Judicial Score	67%

☑ Indicates a business-positive decision ✘ Indicates a business-negative decision

Montana Supreme Court **Judicial Scores**

	LIFETIME GRADE	LIFETIME SCORE	2020-21 SCORE
 LAURIE **McKINNON**	B	85%	79%
 JIM **RICE**	C+	77%	69%
 BETH **BAKER**	D+	68%	69%
 JIM **SHEA**	F	64%	55%
 DIRK **SANDEFUR**	F	64%	51%
 MICHAEL **McGRATH**	F	58%	61%
 INGRID **GUSTAFSON**	F	58%	48%