IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 42

WCC No. 2003-0855

LAURIE PLAIN BULL DOOR

Petitioner

vs.

MONTANA STATE FUND and

UNINSURED EMPLOYERS' FUND

Respondents/Insurer

WARREN BELL

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Garland Victor Door, Sr. died in a work-related accident while driving truck for Warren Bell. Bell, an enrolled tribal member operating a trucking business on the Crow Reservation, had contracted to haul cattle for Smoke Signals Land and Cattle Company, LLC, a business involving Terry and Coral Langstraat, non-Native Americans, and Merle Plain Feather, an enrolled member of the Crow Tribe. The accident occurred in Carbon County, Montana, off the reservation. Since the accident occurred off the reservation, Garland Door's beneficiaries are entitled to death benefits under the Montana Workers' Compensation Act. The sole question presented is whether the Uninsured Employers' Fund is liable for those benefits since Warren Bell was uninsured, or whether the Montana State Fund, which insured Terry and Coral Langstraat, is liable under section 39-71-405, MCA (1979-2003).

Held: The Montana State Fund is liable. Smoke Signals and the Langstraats were not exempt from workers' compensation insurance requirements since their business was not confined to the Crow Reservation. § 39-71-401(1)(m), MCA (2001). Moreover, even if they were exempt from insurance requirements, section 39-71-405, MCA (1979-2003), makes them liable for benefits due an employee of a non-exempt uninsured subcontractor.

Topics:

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-401(1)(m), MCA (2001). Statute exempting from Montana workers' compensation insurance coverage requirements a Native American owned business operating entirely within a reservation is inapplicable to a business whose operations extend beyond the reservation boundaries even though the operations outside the reservation are performed by an independent contractor hired by the business.

Employers: Statutory Employer. An employer who contracts work with an uninsured independent subcontractor is liable for benefits payable to the subcontractors injured employees if the subcontractor was obligated either by statute or contract to provide workers' compensation insurance and irrespective of whether the employer is statutorily required to provide coverage for its own employees.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-405, MCA (1979-2003). An employer who contracts work with an uninsured independent subcontractor is liable for benefits payable to the subcontractors injured employees if the subcontractor was obligated either by statute or contract to provide workers' compensation insurance and irrespective of whether the employer is statutorily required to provide coverage for its own employees.

Native Americans: Insurance Requirements. Business with at least fifty-one percent Native American ownership is exempt from workers' compensation insurance coverage requirements only if its operations are exclusively on a reservation.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-401(1)(m), MCA (2001). Business with at least fifty-one percent Native American ownership is exempt from workers' compensation insurance coverage requirements only if its operations are exclusively on a reservation. The exemption is inapplicable to a trucking firm whose trucks utilized roads outside the reservation to deliver goods even though the goods originated and ended within the reservation.

Insurance: Native Americans. Business with at least fifty-one percent Native American ownership is exempt from workers' compensation insurance coverage requirements only if its operations are exclusively on a reservation. The exemption is inapplicable to a trucking firm whose trucks utilized roads outside the reservation to deliver goods even though the goods originated and ended within the reservation.

Native Americans: Insurance Requirements. Business with fifty-one percent Native American ownership is not exempt from workers' compensation insurance coverage requirements where an integral part of its business occurs outside the reservation even though it hires the off-reservation work to be performed by an independent contractor. A cattle ranching operation's trucking of cows from upper

to lower pastures is an integral part of the business even though the trucking was done by an independent contractor.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-401(1)(m), MCA (2001). Business with fifty-one percent Native American ownership is not exempt from workers' compensation insurance coverage requirements where an integral part of its business occurs outside the reservation even though it hires the off-reservation work to be performed by an independent contractor. A cattle ranching operation's trucking of cows from upper to lower pastures is an integral part of the business even though the trucking was done by an independent contractor.

Insurance: Native Americans. Business with fifty-one percent Native American ownership is not exempt from workers' compensation insurance coverage requirements where an integral part of its business occurs outside the reservation even though it hires the off-reservation work to be performed by an independent contractor. A cattle ranching operation's trucking of cows from upper to lower pastures is an integral part of the business even though the trucking was done by an independent contractor. § 39-71-401(1)(m), MCA (2001).

¶1 The trial in this matter was held in Billings, Montana on April 19, 2004. Petitioner was present and represented by Mr. James G. Edmiston. Respondent Montana State Fund was represented by Mr. Michael P. Heringer and Ms. Margy Bonner. Respondent Uninsured Employers' Fund was represented by Mr. Kevin Braun. The employer, Mr. Warren Bell, was present and represented himself.

¶2 Exhibits: Exhibits 1 through 41 were admitted without objection.

¶3 Witnesses and Depositions: Warren Rae Bell, Frank Jackson, Terry Langstraat, and Coral Langstraat were sworn and testified. The parties also submitted the depositions of Coral Langstraat and Terry Langstraat for the Court's consideration.

¶4 Issues Presented: The Court restates the issues as follows:

¶4a Whether, based on section 39-71-405, MCA (2001), the Montana State Fund is liable for the death benefits arising out of the death of Garland Victor Door, Sr.

¶4b Whether the State Fund unreasonably denied liability for the death of Garland Victor Door, Sr., thereby entitling Mr. Door's beneficiaries to a penalty pursuant to section 39-71-2907, MCA (2001), and an award of attorney fees under section 39-71-611 or -612, MCA (2001).

¶4c If the State Fund is not liable for the death of Garland Victor Door, Sr., whether it is entitled to indemnification from claimant's employer, who was uninsured, and/or the Uninsured Employers' Fund for benefits it has paid under a reservation of rights.

¶5 Having considered the Pre-trial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 The essential facts in this case are virtually undisputed but provide the background to a significant legal dispute concerning the applicability of section 39-71-405, MCA (1979-2003).

¶7 The story begins with Terry and Coral Langstraat, a husband and wife, who are engaged in various ranching operations. Terry Langstraat has lengthy experience in ranching. Over the past four years, Coral Langstraat has done the bookkeeping for the ranching operations. Neither Terry nor Coral are Crow Tribal members or Native Americans.

¶8 In recent years, the Langstraats have ranched on the Crow Indian Reservation, utilizing not only land they own in fee but also leased land and land on which they have secured grazing permits.

¶9 The nature of land ownership on the Crow Reservation, and the limitations placed by the Crow Tribe on leases and grazing permits on that land, are important to understanding the business relationships at issue in this case. In outlining the various types of property ownership, leases, and permits, I have relied on the testimony of Terry Langstraat. I have not examined tribal or other law. Whether Mr. Langstraat's understanding and characterization of the land interests and tribal laws governing them is absolutely correct is not critical to the case. What is important is the general nature and complexity of land ownership, leasing, and permitting on the Crow Reservation.

¶10 Initially, there is "fee land" within the reservation. This is land owned by private individuals. Ownership is not limited to Native Americans or tribal members. There is also non-fee land owned by individual tribal members. Then there is land owned by the Tribe.

¶11 The Crow Tribe allows the lease of non-fee land owned by tribal members. The leases are broken into two classes. The first class is land owned by five or less tribal members. The leases on those lands are called "competent leases." The second class consists of land owned by more than five tribal members. The leases on those lands are called "office leases."

¶12 The Tribe leases tribal lands and grants grazing permits on other tribal lands.

¶13 Leases and permits are awarded on a bid basis, presumably to the highest bidder. Both tribal and non-tribal members can bid on leases for non-fee land owned by individual tribal members, i.e., on the competent and office leases. However, as of 2002, bidding on leases and permitted tribal lands was limited to tribal members or business entities which were fifty-one percent owned by tribal members. Only in cases where there were no bids by tribal members or majority owned tribal businesses were the leases and permits made available for bid by the general public. According to Terry

Langstraat, the Tribe originally limited leases to tribal members but allowed them to sublease to non-tribal members. Mr. Langstraat testified that the Bureau of Indian Affairs declared that practice illegal; following that ruling the Crow Tribe adopted the fifty-one percent ownership requirement.

¶14 Terry Langstraat testified that involvement of non-tribal members in tribal leases was critical to leasing since tribal members often do not have the financing or credit to engage in actual livestock operations. Tribal members therefore attempt to partner with non-tribal members who have the financing or credit to buy and care for livestock.

¶15 In 2002 the Langstraats were already engaged in extensive cattle operations on the Crow Reservation. The land involved in the various operations is graphically outlined in Exhibit 13 to the Langstraats' depositions.[(1)] Exhibit 13 is a copy of a map of the reservation. The map is subdivided into sections (square miles).

¶16 The Langstraats' operations on the Crow Reservation are summarized as follows:

> ¶16a Since April 2001 the Langstraats have had their home on Pryor Road within the reservation. They own in fee the 120 acres on which their home is located. (*See* Terry Langstraat Dep. at 13.)
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> ¶16b Until November 2003 the Langstraats operated the Soap Creek Ranch, which is outlined in yellow on the Crow Reservation map. (Ex. 13). The ranch was operated through Golden Eagle Ranch Corporation, in which the Langstraats are controlling shareholders.[(2)] The ranch consisted of approximately 25,000 acres of leased land from the Crow Tribe and tribal members.
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> ¶16c Until November 2003 the Langstraats operated Camp 8 Ranch, which is outlined in blue on the map. (*Id.*) That ranch was operated by Langstraat Cattle, which is a proprietorship or partnership of Terry and Coral Langstraat. It consisted of 15,000 deeded acres[(3)] and 26,000 acres of land leased from the Crow Tribe and tribal members.
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> ¶16d Finally, Langstraat Cattle operated the Pryor Land Ranch, which is outlined in green on the map. (*Id.*) That ranch consisted of 24,000 acres leased by Langstraat Cattle from the Crow Tribe and tribal members.

¶17 Merle Plain Feather (Plain Feather) is an enrolled member of the Crow Tribe. He owns forty acres of land within the Camp 8 Ranch.

¶18 On October 31, 2001, Plain Feather and the Langstraats executed documents to establish a limited liability company (LLC) known as Smoke Signals Land and Cattle Company, L.L.C. (Smoke Signals). (Ex. 12.) The organizational papers gave Plain Feather a fifty-one percent interest in the company and each of the Langstraats a twenty-four and one-half percent interest. The LLC articles were never filed with the Secretary of State. However, while the LLC never came into being as a legal matter, the Langstraats and Plain Feather thereafter did business together as envisioned by the LLC.

¶19 The proposed LLC was in response to a new tribal requirement limiting initial bidding on tribal leases and grazing permits to tribal members or to business entities in which tribal members had at least a fifty-one percent ownership interest. The new regulation limited the Langstraats' ability to lease land on the reservation. With Plain Feather in effect fronting for them, they could bid on thousands of acres of tribal lands.

¶20 Under the arrangement, Plain Feather contributed no money or credit to Smoke Signals; his only contribution to the business was his status as a tribal member. The Langstraats and Langstraat Cattle Company provided all the funds for purchasing cattle and running the cattle operations. The cost of leasing the tribal land was apparently low enough that the Langstraats expected to make a sufficiently substantial profit from grazing cattle on tribal lands to justify their assuming all financial risk for the operation and paying Plain Feather fifty-one percent of all the profits. Their expectations ultimately proved false.

¶21 In the spring of 2002 Smoke Signals successfully bid on a number of tribal leases and grazing permits. The leases and permits were obtained in Plain Feather's name. (Ex. 1.) The land encompassed in the leases and permits is outlined in orange on the map of the reservation. One of the grazing leases was in the Pryor Mountains. That lease is indicated in a blacked in area in the lower left-hand corner of the map. (Ex. 13.)

¶22 As indicated earlier, tribal leases were available to the general public if no tribal members bid on the leases. In his deposition, Terry Langstraat testified that the minimum bid by tribal members was $2.50 per grazing unit. A grazing unit is the amount of land required to sustain one cow. If no bid of $2.50 or more was received from a tribal member, then the lease was open to bid to the general public, however, the minimum bid to the general public per grazing unit was $5.00, or double the amount for tribal members. (Terry Langstraat Dep. at 20-21.) The financial advantage to Langstraat in associating with Plain Feather thus becomes apparent as Plain Feather was able to obtain the leases for the minimum, $2.50 per grazing unit amount.

¶23 Langstraat Cattle Company made the payments for the leases and grazing permits.

¶24 With the leases in hand, in May 2002 the Langstraats arranged for the purchase of 1,900 head of cattle. The purchase of the cattle involved third parties - Jerry Schillinger (Schillinger), Rusty DeVries, and Ernie DeVries - who secured the financing for the cattle through Fin-Ag, which is a financial institution. Schillinger and the two DeVrieses took out the secured loan to purchase the cattle, apparently took title to the cattle, and then transferred them to the Langstraats, who agreed to pay a $50 or $100 per head premium over the purchase cost in order to cover the interest and loan costs incurred by Schillinger and the DeVrieses. The Langstraats personally guaranteed payment for the cattle and executed a further security interest in the cattle to the DeVrieses and Schillinger.

¶25 The 1,900 head of cattle were initially kept on leased lands below the Pryor Mountains (known as "the lower pastures"). However, they were then trucked to the leased lands in the Pryor Mountains (known as "the upper pastures") to forage during the summer.

¶26 The route taken in the Spring of 2002 from the lower to upper pastures was by a road located entirely within the boundaries of the Crow Reservation.

¶27 Smoke Signals maintained a separate checking account. The Langstraats were signatories on the account. Coral Langstraat thought that Plain Feather could sign checks but never recalled him doing so. She usually signed the checks.

¶28 During the summer of 2002, the Langstraats hired a number of cowhands to tend the cows in the Pryor Mountains. Many were Native Americans. Even though Smoke Signals maintained a separate checking account, they were paid directly by Langstraat Cattle Company rather than by Smoke Signals.

¶29 During 2002 Plain Feather took "draws" from Smoke Signals. The draws were in expectation of profits which Plain Feather and the Langstraats believed would be made on their venture. The draws were substantial, amounting to more than $100,000. (Ex. 15 at 5 and Trial Test. of Coral Langstraat.) Plain Feather requested the draws but, significantly, the draws were paid only upon Terry Langstraat's approval.

¶30 Plain Feather's participation in Smoke Signals' operation was limited to making hiring recommendations and overseeing the care of the cattle in the Pryor Mountains during the summer.[(4)]

¶31 In the fall of 2002 ,Terry Langstraat hired truckers to haul the cattle from the upper, Pryor Mountain pastures back down to the lower pastures. One of the truckers he hired was Warren Bell (Bell). Plain Feather recommended Bell, but Terry Langstraat made the hiring decision after determining that Bell's prices for hauling cattle were no more than the prices charged by other truckers.

¶32 Bell is an enrolled member of the Assiniboine-Gros Ventre Tribe of the Fort Belknap Reservation but now lives on the Crow Reservation. He owns his own trucks and has been engaged in trucking for a number of years. In the fall of 2002 he owned two trucks.

¶33 Terry Langstraat hired two other trucking concerns in addition to Bell. The other truckers were not Native American businesses. Bell ultimately hauled about one half of the cattle.

¶34 All truckers were paid $300 per load of cattle. A load was approximately fifty head.

¶35 Bell was paid by Smoke Signals for the cattle he hauled. He presented his bills for hauling to Coral Langstraat at the Langstraats' residence and she wrote him checks on the Smoke Signals' account.

¶36 Initially, the cattle were trucked over the road leading directly from the Pryor Mountains to the lower pasture, a road which was entirely within the boundaries of the Crow Reservation. However, after the trucking began, Arvilla Plain Bull, the owner of some of the land through which the road passed, erected a gate and locked it. She demanded financial tribute for the trucks to pass through. The tribute she demanded was outrageous and Terry Langstraat refused to pay.

¶37 The only other way out of the Pryor Mountain pastures was over a much longer road which was partially on and partially off the Crow Reservation. After the gate was closed, the longer route was taken by the truckers.

¶38 Bell hired Garland Victor Door, Sr. (Door), to drive one of his trucks. He paid Door 20 percent of his fee for each truckload of cattle, or $60 per truckload.

¶39 Door began hauling cattle after the gate closure, thus his hauls were over the road which was partially off the reservation.

¶40 On October 17, 2002, Door picked up a load of cattle in the Pryor Mountains. While transporting the cattle to the lower pastures he lost control of his truck and went off the road. He was killed in the accident, as were forty-eight of the fifty head of cattle he was hauling.

¶41 The accident occurred outside the boundaries of the Crow Reservation and within Carbon County, Montana.

¶42 The parties agree that Bell was an independent contractor. Similarly, there is no dispute that Door was Bell's employee.

¶43 It is also clear that the Langstraats and Plain Feather anticipated conducting the Smoke Signals' operation entirely within the boundaries of the Crow Reservation. Similarly, when Bell agreed to truck cattle from the upper to lower pastures, he expected that his trucking would be over roads entirely within the reservation. But for the actions of Arvilla Plain Bull in closing the road, it would have been so.

¶44 At the time of Door's accident and death, the Langstraats were insured by the Montana State Fund. Bell was uninsured. Smoke Signals, as a separate entity, was uninsured.

¶45 Door was survived by his wife, Laurie Plain Bull Door, and their four children, Sarah Althea Door (DOB: 06/29/84); Farrah Victoria Door (DOB: 06/28/85); Garland Victor Door, Jr. (DOB: 10/07/88); and Caleb James Door (DOB: 02/18/94). (Pretrial Order, Uncontested Facts at 2.)

¶46 A claim for death benefits by Door's beneficiaries was timely filed. Since Door's employer was uninsured, the claim was routed to the Uninsured Employers' Fund (UEF). However, in light of the UEF's claim that section 39-71-405, MCA applies, the State Fund has been paying death benefits to the petitioner under a reservation of rights.

¶47 In the late summer of 2002, the Langstraats and Plain Feather learned that the documents necessary to establish Smoke Signals as a limited liability company had not been filed. By that time, however, they had heard a rumor that the Crow Tribe might change the tribal leasing requirement to one-hundred percent ownership by Native Americans for the initial bidding. In light of the rumor, the Langstraats and Plain Feather entered into an agreement under which the Langstraats transferred legal title to all the Smoke Signals' cattle to Plain Feather. On September 17, 2002, they executed a

purchase and sale agreement selling 1,900 head of cattle to Plain Feather for $1,050 per head. (Ex. 8.) No cash exchanged hands, rather Plain Feather signed a promissory note for the purchase price. (Ex. 5.)

¶48 Despite the supposed sale of the cattle, the Langstraats and Plain Feather had an agreement, albeit not a written one, to split any profits from the Smoke Signals' operation on the same basis set forth in the LLC documents, i.e., fifty-one percent to Plain Feather and forty-nine percent to the Langstraats. It was clear from the Langstraats' testimony that they never excepted Plain Feather to pay the promissory note other than out of the sale of the cattle. There is also no evidence that Plain Feather had the financial wherewithal to personally pay the promissory note, and the evidence suggests the contrary.

¶49 The expectations of the Langstraats and Plain Feather when they began business were overly optimistic. Terry Langstraat expected the summer forage to produce cattle weighing 1,000 pounds; in fact the cattle averaged only 700 pounds when brought down from the upper pastures. Morever, more than two-hundred were lost and never found.

¶50 The original plan of operation called for the cattle to be bred. Some of the cattle did not become pregnant. In the fall of 2002 Terry Langstraat decided to sell the non-pregnant, "dry" cows but retain the pregnant cows. The "dry" cows were brought down to the Pryor Land Ranch and sold in the fall of 2002. The proceeds were used to partially pay off the loans to Fin-Ag, as were the insurance proceeds from the cattle killed in the accident in which Door was killed.

¶51 During the fall, winter, and spring of 2002-2003, the pregnant cows were kept on lower pastures leased by Smoke Signals. The cows did not produce calves as had been anticipated, a fact that contributed to the unfolding financial disaster. The Langstraats had Plain Feather transfer the title of the cows back to them in satisfaction of the promissory note he had executed in September 2002, then sold the cattle and applied the proceeds to outstanding loans. The circumstances and transaction were described by Terry Langstraat in his deposition:

> We had a horrible calving spring last spring. Our calving percentage of those heifers was 61 or 62 percent because they were in thin condition. It was a wreck, just a big wreck. So we ended up with all these cattle that had calved and the value was so low on those, and the ones that lost the calves, we were looking at about 500 bucks now. We went backwards $200 from the fall.
>
> At that point is when Merle - I talked to Merle and said, what do you want to do. Do you want to get out of the deal and then I'll try to buy time with Fin-Ag, and that's what we did. I told Margy I signed a bill of sale back on the remaining amount of those cattle or all of those cattle, basically, and he signed the bill of sale.
>
> He voluntarily just gave the cattle back, and then I kept the balance of those cattle, and they just have sold now in the last - in fact, they just got settled on and that turned around like we had hoped it would. This fall those cattle will end up bringing - the ones that were dry and lost their calves last spring, they ended up

bringing around a thousand dollars a head. It had a huge potential to make profit and nothing quite went right.

(Terry Langstraat Dep. at 29-30.)

¶52 The value of the cattle transferred back to the Langstraats was significantly less than the value of the promissory note Plain Feather had executed the previous fall. Nonetheless, it is clear from Terry Langstraat's testimony that from the beginning he assumed all of the financial risk of the operation. With Plain Feather's transfer of the cattle back to the Langstraats, Smoke Signals' operations effectively ceased.

¶53 The State Fund did not act unreasonably in this matter. Initially, I note it has been paying benefits and that the dispute is not as to the compensability of the claim but rather whether the State Fund or the UEF should pay benefits. There was no threat to cut off benefits, only a dispute as to who should pay them. Moreover, the State Fund's position in this case presented a legitimate issue of law concerning the interpretation and application of sections 39-71-401 and -405, MCA (2001). It's position concerning the interpretation of those statutes was well within the pale of legitimate advocacy.

CONCLUSIONS OF LAW

¶54 This case is governed by the 2001 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Garland Door's accidental death. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶55 The parties agree that Bell was an independent contractor. Their agreement on this point is supported by the facts. Bell owned his own trucks, was paid a flat fee per truck load, hired his own employees, and offered his trucking services to others. There is no evidence of a right of control over his operations by Plain Feather or the Langstraats other than to designate the cattle and where they were to be hauled. Bell was engaged in an independent business, thus satisfying part B of the AB test, § 39-71-120(1)(b), MCA (1999-2003).

¶56 Bell also satisfied the four factor test which has been used to determine the right of control under section 39-71-120(1)(a), MCA (1999-2003). Those factors are (1) evidence of right or exercise of control, (2) method of payment, (3) furnishing of equipment, and (4) right to terminate. *St. John's Lutheran Church v. State Compensation Ins. Fund,* 252 Mont. 516, 521, 830 P.2d 1271, 1275 (1992). Bell furnished the trucks, hired and fired his own employees, and was paid by the truck load. There is no evidence showing that Smoke Signals controlled details of his actual trucking of the cows other than pickup and delivery, or that it had the right to terminate him once he picked up a load.

¶57 The parties agree Bell was hired by the business known as Smoke Signals. Perhaps it is not critical to the resolution of this case, but it is nonetheless helpful to initially determine what sort of business entity Smoke Signals was. Initially, Smoke Signals was not a limited liability company. LLCs are governed by the Limited Liability Company Act, Title 35, Ch. 8. Formation of an LLC requires not only the execution of

articles of organization but the filing of those articles with the Montana Secretary of State. §§ 35-8-201 and -205, MCA. The organizational articles for Smoke Signals were never filed.

¶58 Nonetheless, the agreement as set forth in the articles, along with the parties' subsequent conduct and agreements, shows that Plain Feather and the Langstraats throughout their relationship agreed that the Langstraats would secure or contribute all financing for the Smoke Signals' cattle operation, Plain Feather would provide only the tribal connection necessary to secure tribal leases and grazing permits. Nonetheless, they would share any profits on the basis of fifty-one percent to Plain Feather and forty-nine to the Langstraats.

¶59 But for one element, the arrangement smacks of either a partnership or a joint venture, a joint venture being a quasi-partnership arrangement for a single defined project. *Black's Law Dictionary (7th ed. 1997); and see Bradbury v. Nagelhus,* 132 Mont. 417, 426, 319 P.2d 503, 509 (1957). The one element involves control. Partnerships and joint ventures contemplate equal rights in the management and conduct of the partnership or joint venture. Section 35-10-401(6), MCA, provides with respect to partnerships:

> **35-10-401. Partner's rights and duties.**
> . . .
>
> (6) Each partner has equal rights in the management and conduct of the partnership business.

A similar rule applies to joint ventures:

> As between themselves, the members of a joint adventure are principals for themselves and as to the other members, are agents. Thus, they undertake a dual status, at the same time, that of principal and that of agent. 48 C.J.S. Joint Adventures s 5c, p. 827. Since a mutual agency exists, **each has the right of control over the others and an equal right to a voice in performing the joint adventure** as well as in controlling the agencies used in its performance. 48 C.J.S. p. 828, supra. However, one or more members of the joint adventure may entrust certain performances of the enterprise to one or more of the other members. 48 C.J.S. p. 828, supra. [Emphasis added.]

Murphy v. Redland, 178 Mont. 296, 303-04, 583 P.2d 1049 (1978).

¶60 After listening to the testimony in this case, I am persuaded that ultimate control rested with Terry Langstraat. Plain Feather's voice in Smoke Signals was limited to recommending employees and sometimes participating in hiring decisions. In the case of the truckers, Terry Langstraat's testimony indicated he made the hiring decisions, albeit with Plain Feather's input in the case of Bell. Langstraat controlled the finances and made all the business arrangements. Importantly, financial draws by Bell had to be approved by him. Importantly, Langstraat Cattle Company, not Smoke Signals, paid the cowhands for their work. I am persuaded that Plain Feather never had an equal voice in the business.

¶61 Thus, Smoke Signals was in fact an extension of the Langstraats' cattle operations. Merle Plain Feather was not a partner or joint venturer. Rather, his relationship was contractual: he agreed to provide the Langstraats with access to tribal leases in return for fifty-one percent of the profits of the cattle operations on the leased lands.

¶62 At the time of Door's death, Bell was uninsured. Smoke Signals as an entity was also uninsured. However, Terry Langstraat and Langstraat Cattle Company were insured by the State Fund.

¶63 The UEF argues that the Montana State Fund is liable for the accident pursuant to section 39-71-405, MCA (1979-2003), which provides in relevant part:

> **39-71-405. Liability of employer who contracts work out**. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

¶64 All elements for the application of the section are met. First, Bell was an independent contractor. Second, he was performing work - hauling of cattle - which was an integral part of Smoke Signals' business. Third, Bell had not properly complied with Montana workers' compensation insurance requirements. Even though he was an enrolled tribal member, he was not exempt from covering Door since his trucking operations, at least in the case at hand, were conducted in part off the Crow Reservation. Section 39-71-401(1)(m), MCA (2001), provides an exemption to Native American's and Native American enterprises only if their operations are exclusively within the boundaries. The section provides:

> (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted **solely** within the exterior boundaries of an Indian reservation; . . . [Emphasis added.]

¶65 State Fund argues that section 39-71-405, MCA, does not apply to the Langstraats or Smoke Signals because they were exempt from Montana workers' compensation coverage requirements pursuant to section 39-71-401(1)(m), MCA (2001), the same section I have just held did not apply to Bell. I find its argument unpersuasive for two reasons.

¶66 Initially, Smoke Signals' operations in fact extended outside the reservation boundaries. Trucking the cattle to and from the lower pasture was an essential part of the business. The trucking required use of a route going outside the reservation boundaries. The fact that Smoke Signals chose to hire a contractor to do that trucking did not thereby circumscribe its business to the reservation. The trucking of the cattle over Montana roads outside the reservation was part and parcel of its operations.

¶67 Second, even if section 39-71-401(1)(m), MCA (2001), exempts Smoke Signals and the Langstraats from providing workers' compensation insurance for their own employees, it does not exempt them from liability under section 39-71-405, MCA (1979-2003). Section 39-71-405, MCA, contains no exceptions or exemptions from liability for an uninsured subcontractor's employees. It says that the "employer is liable for payment of benefits." The section must be applied as it is written. The Court cannot write in a provision limiting liability under section 39-71-405, MCA, to employers who are required to have insurance for their own employees. Section 1-2-101, MCA, expressly provides, "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."

¶68 Indeed, in *McClure v. State Compensation Ins. Fund,* 272 Mont. 94, 899 P.2d 1093 (1995), the Supreme Court expressly held that where the subcontractor had an obligation to provide workers' compensation insurance, the contractor is liable under section 39-71-405, MCA, even though the subcontractor was a Native American Enterprise operating *entirely* within the reservation and was exempt under the law from workers' compensation coverage requirements. The Court held that a provision in the subcontract requiring the subcontractor to carry workers' compensation insurance was sufficient to contractually obligate the subcontractor to do so. The Court held the contractor liable under section 39-71-405, MCA, holding that on its face section 39-71-405, MCA, renders the contractor liable in any situation, contractual or statutory, where the subcontractor is required to have workers' compensation insurance. It cited section 1-2-101, MCA, in reaching its decision.

¶69 I therefore conclude that the State Fund is liable for benefits due on account of the death of Door. The State Fund must therefore pay the benefits due Door's beneficiaries. Pursuant to section 39-71-405, MCA (1979-2003), Bell must indemnify the State Fund for all benefits.

¶70 The petitioner is not entitled to a penalty or attorney fees. Both require proof that the State Fund acted unreasonably. §§ 39-71-611, -612, (1987-2001), and -2907, MCA (1991-2003). I have found that the State Fund did not act unreasonably.

¶71 Finally, and as an aside, I note that Bell's trucking of cattle for Smoke Signals would have occurred entirely within the Crow Reservation but for the actions of Arvilla Plain Bull in closing off the road from the upper to lower pastures. It is unlikely that Bell or the Langstraats considered the workers' compensation consequences of the closure, which forced them to truck the cattle over roads outside the reservation. Sometimes the complexity and technicalities of Montana's workers' compensation laws become an unexpected trap.

JUDGMENT

¶71 The State Fund is liable for death benefits due on account of the work-related death of Garland Victor Door, Sr., and shall continue paying benefits to Garland Victor Door Sr.'s beneficiaries.

¶72 The State Fund is entitled to indemnification from Warren Bell for all benefits.

¶73 The petitioner is entitled to her costs. She shall file her memorandum of costs in accordance with Court rules.

¶74 This JUDGMENT is certified as final for purposes of appeal.

¶75 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 5th day of May, 2004.

(SEAL)

\s\ MIKE McCARTER
JUDGE

c: Mr. James G. Edmiston
Mr. Michael P. Heringer
Mr. Kevin Braun
Mr. Warren Bell
Submitted: April 19, 2004

1. Trial Exhibit 13 is supposed to be the same as deposition Exhibit 13, however, a separate trial exhibit was not provided. Therefore, the exhibit is found in the book of exhibits for the Langstraats' depositions.

2. If information concerning the specifics of stock ownership is in the record, I have missed it. However, the details as to the stock ownership are unimportant. It was clear from the Langstraats' testimony that they have a controlling interest in the corporation.

3. As a result of financial reverses involving the livestock operation at issue in this case, the Langstraats conveyed their interests in deeded land on both the Soap Creek and Camp 8 ranches to Fin-Ag, a financial institution to which they owed money.

4. Many of his relatives worked as cowhands, but as noted earlier they were paid by Langstraat Cattle.