

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 79

WCC No. 9304-6772

JAMES D. McCLURE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BLAZE CONSTRUCTION, INCORPORATED

Employer.

ORDER DENYING PETITION FOR NEW TRIAL
AND CERTIFYING JUDGMENT AS FINAL

The petitioner herein seeks reconsideration of a July 14, 1994 Order Denying Renewed Motion for Declaratory Judgement. That Order determined that the petitioner -- who was employed by an uninsured subcontractor -- is not entitled to benefits under section 39-71-405 (1), MCA, unless the uninsured subcontractor was required by law to carry workers' compensation insurance. The Order further held that the Court is without jurisdiction to determine petitioner's claim that he is entitled to benefits because he is a third-party beneficiary of a contract which required, as a contractual matter, that his employer provide its workers with workers' compensation insurance coverage.

The petitioner's motion is limited to the jurisdictional question. He argues that the Court has broad jurisdiction to determine all issues which relate to workers' compensation benefits, citing **State v. The Honorable William E. Hunt**, 191 Mont. 514, 625 P.2d 539 (1981); **Billings Deaconess Hosp. v. Angel**, 219 Mont. 490, 712 P.2d 1323 (1986); **Carlson v. Cain**, 216 Mont. 129, 700 P.2d 607 (1985); and **Kelleher Law Office v. State Compensation Ins. Fund**, 213 Mont. 412, 691 P.2d 823 (1984). In **Hunt** the Supreme Court held that the Workers' Compensation Court has broad jurisdiction to adjudicate disputes which are "related to benefits payable to a claimant." 191 Mont. at 518. The other cited cases involve specific applications of that principle.

The issue raised by claimant's third-party beneficiary claim, however, does not concern benefits arising under the Workers' Compensation Act. This Court has already determined

that petitioner is not due benefits under the Act unless he can demonstrate that his employer was required by law to maintain workers' compensation insurance coverage, and he does not ask the Court to reconsider that part of its decision. His third-party claim is in essence a claim for damages based on his employer's failure to comply with a contractual requirement that the employer maintain coverage. The amount of benefits that would have been payable to petitioner may well be the **measure** of his damages, but the claim cannot be recast from a contract action for damages into one arising under the Workers' Compensation Act. The Petition for New Trial or for Amendment of Order Denying Renewed Motion for Declaratory Ruling is **denied**.

Since petitioner did not timely notify the Court of his intention to renew his argument concerning application of the Montana Workers' Compensation Act to an Indian owned business operating on the Flathead Indian Reservation, that argument is deemed withdrawn without prejudice to renewing the argument in some other action. The Order Denying Renewed Motion for Declaratory Ruling is therefore **certified as final** for purposes of appeal.

DATED in Helena, Montana, this 7th day of September, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Edward K. Duckworth
Ms. Susan C. Witte
Mr. John Carter - Courtesy Copy