

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 64

WCC No. 9304-6772

JAMES D. McCLURE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BLAZE CONSTRUCTION, INCORPORATED

Employer.

ORDER DENYING RENEWED MOTION FOR DECLARATORY RULING

Introduction

The petitioner in this matter was injured while working on the Flathead Indian Reservation. His employer, Smith Paving and Construction, Inc.(Smith), was a subcontractor for Blaze Construction, Inc. (Blaze). Smith was not insured at the time of the accident so the petitioner is pursuing a claim for compensation against Blaze and its insurer. He has moved for a declaratory ruling based on the contract between Blaze and Smith. The motion is based on stipulations setting forth agreed facts and exhibits.

Factual and Legal Background

The salient facts are few. Blaze entered into a contract with the Bureau of Indian Affairs (BIA) to construct streets in a subdivision located on the Flathead Indian Reservation. Blaze then subcontracted a portion of the work to Smith, which is apparently wholly owned by Native Americans. The subcontract contained the following provision:

THE SUBCONTRACTOR AGREES:

...

(h) To pay Industrial Insurance and all other payments required under Workmen's Compensation laws as the same become due, and to furnish the CONTRACTOR with evidence that the same has been paid before final payment is made on this SUB-CONTRACT.

All work was performed on the Flathead Indian Reservation.

Smith hired petitioner (McClure). On June 8, 1992, McClure injured his shoulder while working for Smith. (Ex. 5.) Smith was not insured at the time of the industrial accident. McClure therefore filed a claim seeking benefits from Blaze's insurer (State Fund), invoking section 39-71-405 (1), MCA, which provides:

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 [sic] 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.** [Emphasis added.]

The State Fund denied liability because Smith was an "Indian-owned business operating solely on the reservation at the time of the injury" and contends herein that a Native American enterprise operating solely on a reservation is not required to carry Montana Workers' Compensation insurance, hence Smith was not an uninsured subcontractor for purposes of section 39-71-405, MCA. (Answer and Proposed Pretrial Order.)

On its face, section 39-71-405(1), MCA, applies only in cases where the subcontractor "has not properly complied with the coverage requirements of the Worker's [sic] Compensation Act," a situation commonly referred to as involving an "uninsured employer." The 1993 Montana legislature expressly exempted "a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation" from the coverage requirements of the Act. Section 39-71-401(2)(m), MCA (1993) (enacted by 1993 Montana Laws, ch.555, § 4). Since this case occurred prior to the adoption of the exemption, the State Fund's arguments in this case are premised on federal law, which it contends precludes any application of state workers' compensation laws to Indian businesses operating on Indian reservations. The State Fund's position is supported by a 1977 opinion of the Montana Attorney General opinion found at 37 Op. Atty' Gen. No. 29 at 118 (May 25, 1977).

Procedural Background

Following the filing of the Petition and the State Fund's Answer, McClure filed what he styled as a Motion for Declaratory Ruling (August 16, 1993). The stated reason for filing the motion was "because it is anticipated that there will be little or any factual dispute between the parties." In his Brief in Support of Motion for Declaratory Ruling McClure set forth four arguments in support of his contention that the State Fund is obligated to pay benefits

pursuant to section 39-71-405(1), MCA. Initially, he argued that the Attorney General opinion cited by the State Fund was wrong,⁽¹⁾ and that Montana Workers' Compensation Laws are applicable to Smith and the Flathead Indian Reservation. He also contended that section 39-71-405(1), MCA applies in this case whether or not Smith was required to carry workers' compensation insurance. He advanced three reasons in support of his contention, as follows:

1. Blaze's contract with the BIA required that all operations be covered by workers' compensation insurance.
2. The Confederated Salish & Kootenai Tribes of the Flathead Reservation carries workers' compensation insurance.
3. The contract between Blaze and Smith required Smith to carry workers' compensation insurance.

Following submission of his initial motion and brief, McClure filed a motion requesting the Court to stay or bifurcate issues regarding the applicability of Montana workers' compensation laws on the reservation. The motion was granted (Order Granting Motion for Partial Stay of Proceedings (October 7, 1993)), and that issue will not be considered here.

Meanwhile, the State Fund filed its opposing brief concerning the remaining grounds of the McClure's original motion. It argued that those remaining grounds raised material issues of fact. The motion was denied because it was factually based but unsupported by any affidavits or other sworn discovery. (Order Denying Motion for Declaratory Ruling (October 7, 1993).)

Thereafter, on December 22, 1993, McClure filed a Renewed Motion for Declaratory Ruling. In a supporting brief he argues that Blaze is a non-Indian employer and that section 39-71-405(1), MCA, imposes liability on Blaze whether or not Smith was exempt from Montana workers' compensation requirements. He argues that Blaze is liable under the section because the BIA/Blaze and Blaze/Smith contracts required Smith to provide workers' compensation insurance. He also claims that he is a third party beneficiary of the two mentioned contracts.⁽²⁾

The State Fund has responded to the renewed motion. This time the parties have agreed to submit the issues upon an agreed statement of facts, certain exhibits, and their briefs. (See stipulations filed on February 9, 1994 and June 1, 1994.)

Discussion

In a letter to the Court dated May 27, 1994, McClure's attorney has reiterated his request that any determination concerning the applicability of the Montana Workers' Compensation Act to the Flathead Indian Reservation be deferred to a later time. Thus, for purposes of the present motion the Court assumes, but does not determine, that the Act

did not apply to Smith. McClure must therefore show that Blaze and its insurer are liable for his injury even though the Act did not require Smith to insure its employees.

Initially, McClure contends that Blaze is liable for benefits under section 39-71-405(1), MCA, because of its failure to confirm that Smith had workers' compensation insurance coverage for its employees. He argues that the contractual provisions pertaining to workers' compensation insurance brings Blaze within the ambit of section 39-71-405(1).⁽³⁾ The plain language of section 39-71-405(1), MCA, is dispositive of his arguments.

Section 39-71-405(1), MCA, imposes liability on the employer of a contractor -- viz. the prime contractor in the case of hired sub-contractor -- when the "[sub]contractor has not properly complied with the coverage requirements of the Worker's Compensation Act." On its face the section is triggered only where the subcontractor "has not properly complied with the coverage requirements of the . . . Act." The legislature's intent to condition liability upon the non-compliance of the subcontractor is reinforced by the next sentence of the section, which provides that "[a]ny 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.**" (Emphasis added.) Thus, the section clearly and unequivocally contemplates only those situations where the subcontractor is required by the Workers' Compensation Act to provide coverage for its employees and fails to do so.

If McClure's interpretation were adopted, prime contractors would be liable for injuries suffered by sole proprietors, partners and corporate officers who have elected not to be covered by insurance. Such an interpretation is not only contrary to the plain meaning of the statute, it would nullify other provisions allowing such election, section 39-71-401(3) & (4), MCA, whenever sole proprietors, partnerships and corporations subcontract. Such an interpretation would violate precepts of statutory interpretation which require a court to harmonize, if possible, all provisions of a statute, *McClanathan v. Smith*, 186 Mont. 56, 61, 606 P.2d 507 (1980), and to avoid unreasonable interpretations which would lead to absurd results, *Darby Spar, Ltd. v. Department of Revenue*, 217 Mont. 376, 379, 705 P.2d 111 (1985). It would also violate the admonition that a Court must construe a statute as it finds it, *In re Baier's Estate*, 173 Mont. 396, 401, 567 P.2d 943 (1977), and may not insert new terms, *Russette v. State Compensation Insurance Fund*, 51 St.Rptr. 414, 415 (1994).

Section 39-71-405 (1), MCA, will therefore be construed and applied as written. Since it applies only when a subcontractor is required by the Workers' Compensation Act to carry workers' compensation insurance, McClure is not entitled to benefits from Blaze or its insurer unless it is determined that the Act applied to Smith at the time of McClure's injury.

The third ground advanced in support of the present motion is a contractual one. McClure argues that he is entitled to benefits because he is a third-party beneficiary of contracts among the BIA, Blaze and Smith. The claim is in substance an action for breach of contract arising out of Blaze's failure to assure that Smith maintained coverage for its employees.

This Court's jurisdiction is limited to controversies concerning benefits payable "under" the Workers' Compensation Act. Section 39-71-2905, MCA. Claimant has failed to demonstrate that he is entitled to benefits "under" the Act. Whether he is entitled to damages for breach of contract is a matter outside the jurisdiction of this Court.

ORDER

McClure's Renewed Motion for Declaratory Ruling is **denied**. If petitioner wishes to renew his argument concerning application of the Montana Workers' Compensation Act to businesses operating on the Flathead Indian Reservation, he must notify the Court of his intention to do so within 20 days of this Order, otherwise the argument will be deemed as withdrawn and this Order certified as final.

DATED in Helena, Montana, this 14th day of July, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

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

1. The order of issues as set forth herein is not the same as set forth in McClure's brief. The correctness of the Attorney General Opinion was argued last. However, McClure's first argument was that the Attorney General's opinion is not binding upon the Court.
2. The third-party beneficiary argument was raised for the first time in Claimant's Reply Brief (January 10, 1994). The State Fund has not objected to the inclusion of this additional argument and has filed its own brief addressing the issue. (Respondent's Brief in Response to Petitioner's Third-party Beneficiary Argument (February 10, 1994).)
3. The Court assumes for the purposes of its decision that the contracts among the BIA, Blaze and Smith required all subcontractors, including Smith, to furnish workers' compensation insurance. The State Fund contends that the contracts do not in fact require coverage. In light of the disposition of the present motion it is unnecessary to address that contention.