

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 19

WCC No. 9510-7408

DARWIN ZEMPEL

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Insurer.

DECLARATORY JUDGMENT

Summary: Petitioner, who was injured while employed by a business wholly owned by an enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries, sought declaratory judgment from the WCC that the Uninsured Employer's Fund's refusal to pay him benefits violated equal protection provisions or Montana's constitutional right to access to the Courts.

Held: The UEF was established by statute to pay benefits to employees of uninsured employers, which are defined as employers who have not "properly complied" with Montana Workers' Compensation laws. WCC agrees with Tribal Court holding that the WCA is not applicable to the Flathead Reservation, meaning petitioner's employer was not in violation of the WCA and petitioner is not entitled to benefits from the UEF. Where there is a rational relationship between this exclusion and a legitimate governmental purpose -- to respect tribal self-governance and to encourage tribal self-sufficiency and economic development -- the denial of benefits to petitioner is not unconstitutional.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana State Constitution:

Article II, section 16. UEF's refusal to pay benefits to employee of business wholly owned by enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries did not violate legal redress clause of Montana Constitution where WCA did not apply to employer and rational relationship existed between that exclusion and legitimate governmental purpose of encouraging tribal self-sufficiency and economic development.

American Natives: Comity. While the judgment of a tribal court is not entitled to full faith and credit, principles of comity require that the judgment be honored in the same manner as that of a foreign nation. *Day v. Montana Dept. Of Social and Rehabilitation Services*, 272 Mont. 170, 900 P.2d 296 (1995); *Wippert v. Blackfeet Tribe of Blackfeet Indian Reservation*, 201 Mont. 299, 654 P.2d 512 (1982). But while comity may mean that the Montana courts will recognize the judgment as valid and enforceable as between the litigants in the matter, the doctrine does not require Montana courts to accept a tribal court's conclusions of law as binding. See, *Larrivee v. Morigeau*, 184 Mont. 187, 602 P.2d 563 (1979).

American Natives: Generally. UEF's refusal to pay benefits to employee of business wholly owned by enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries did not violate equal protection provisions or legal redress clause of Montana Constitution where WCA did not apply to employer under federal law and rational relationship existed between that exclusion and legitimate governmental purpose of encouraging tribal self-sufficiency and economic development. (Case decided under 1991 WCA, prior to 1993 adoption of provision excluding WCA coverage of a person employed by an enrolled tribal member operating exclusively on a reservation, see section 39-71-401(2)(m), MCA (1993).)

American Natives: Reservations. Because requiring workers' compensation insurance increases the cost of doing business and may impact tribal economy, workers' compensation laws are preempted by federal law and inapplicable on a reservation absent some agreement to the contrary. Although the Confederated Salish and Kootenai Tribes had adopted an ordinance, authorized by section 25 U.S.C. section 1322 (1992), to extend certain laws and jurisdiction of the state of Montana onto the reservation, workers' compensation laws were not included.

Constitutional Law: Constitutional Challenges: Burden. Petitioner challenging constitutionality of UEF statute, which excludes coverage of employees of employer who was not required to have WC insurance because he was an enrolled member of an Indian tribe working exclusively on a reservation, bore a heavy burden, requiring him to prove beyond a reasonable doubt that the statute was unconstitutional as applied to him.

Constitutional Law: Equal Protection. UEF's refusal to pay benefits to employee of business wholly owned by enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries did not violate equal protection provisions or legal redress clause of Montana Constitution where WCA did not apply to employer under federal law and rational relationship

existed between that exclusion and legitimate governmental purpose of encouraging tribal self-sufficiency and economic development.

Constitutional Law: Full Redress. UEF's refusal to pay benefits to employee of business wholly owned by enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries did not violate equal protection provisions or legal redress clause of Montana Constitution where WCA did not apply to employer under federal law and rational relationship existed between that exclusion and legitimate governmental purpose of encouraging tribal self-sufficiency and economic development.

Courts: Access to Courts. UEF's refusal to pay benefits to employee of business wholly owned by enrolled member of the Confederated Salish and Kootenai Tribes and operated exclusively within reservation boundaries did not violate equal protection provisions or legal redress clause of Montana Constitution where WCA did not apply to employer under federal law and rational relationship existed between that exclusion and legitimate governmental purpose of encouraging tribal self-sufficiency and economic development.

This Declaratory Judgment action arises out of an industrial accident occurring on the Flathead Reservation. Petitioner, Darwin Zempel (claimant), was injured while employed by a business which is wholly owned by an enrolled member of the Confederated Salish and Kootenai Tribes. The business operated exclusively within reservation boundaries.

A tribal court has previously determined that the Montana Workers' Compensation Act (WCA) did not apply to the employer. The Montana Uninsured Employers' Fund (UEF), which is the respondent in this case, denied liability for the injury since by law the UEF provides coverage only for injured workers employed by uninsured employers who are required to maintain workers' compensation coverage under the Act. Petitioner now challenges that limitation on constitutional grounds. Invalidating the limitation would render the UEF liable for his industrial injury.

Factual and Procedural Background

This case is submitted upon the parties' Stipulation Regarding Pleadings, Issues and Facts. The stipulation contains an agreed statement of facts.

In 1991 claimant was employed by Rodney Schall, an enrolled member of the Confederated Tribes of the Flathead Reservation. Schall operated a logging operation confined to the reservation. At the time of claimant's industrial accident, Schall was logging under a contract with the Flathead Post and Pole Yard, Inc., which is a tribally owned enterprise.

On December 5, 1991, while working in the logging operation, claimant was hit in his eye. According to claimant's opening brief, he suffered a puncture wound of his right eye when poked in the eye by a snag.

At the time of the accident the Confederated Tribes were covered by a workers' compensation insurance policy issued by the State Compensation Insurance Fund. Schall, however, was not covered by workers' compensation insurance.

A series of legal actions followed on the heels of the injury. Initially, claimant filed two petitions with this Court, naming the State Fund as respondent. *Darwin Zempel v. State Compensation Ins. Fund*, WCC Nos. 9207-6498 and 9207-6505 (1992). Those petitions were dismissed without prejudice after the parties agreed to proceed in the Tribal Court of the Confederated Tribes.

The State Fund then filed a declaratory judgment action in the Tribal Court to determine the applicability of the WCA on the reservation. On November 15, 1993, the Tribal Court issued its decision, holding that the WCA "does not apply to Indian owned businesses whose business activity is conducted wholly within the exterior boundaries of the Flathead Indian." *State Compensation Mutual Insurance Fund, et al. v. Leonard Pierce Logging, et al.*, No. CV-161-92 (November 15, 1993).

Claimant thereafter sought benefits from the UEF but was rebuffed. He then brought this action.

Discussion

The UEF was established by statute "to pay to an injured employee of an **uninsured employer** the same benefits the employee would have received if the employer had been **properly enrolled** under compensation plan No. 1, 2, or 3" § 39-71-502, MCA (1991) (emphasis added). Within the limits of the funds available to it, the UEF is required by law to "pay all proper benefits to injured employees of **uninsured employers**." § 39-71-503(1), MCA (1991) (emphasis added).

"Uninsured employer" is expressly defined. Section 39-71-501, MCA (1993), provides:

39-71-501. Definition of uninsured employer. For purposes of 39-71-501 through 39-71-511 and 39-71-515 through 39-71-519, "uninsured employer" means an *employer who has not properly complied with the provisions of 39-71-401.*

(Italics and underlining added for emphasis.) Section 39-71-401(1), MCA (1991), provides broadly that the WCA applies "to all employers . . . and to all employees" *except* those enumerated in subsection (2). It requires employers to provide workers' compensation coverage for their non-exempt employees.⁽¹⁾ At the time of claimant's injury, the section did not contain an exception for the employees of an Indian employer doing business

exclusively within an Indian reservation.⁽²⁾ Thus, the WCA required Schall to provide coverage for claimant.

However, the Tribal Court held that federal law precludes the application of the WCA to businesses wholly owned by an enrolled tribal member and conducted exclusively on the reservation. *State Compensation Mutual Insurance Fund, et al. v. Leonard Pierce Logging, et al.*, No. CV-161-92 (November 15, 1993). Based on that holding the parties agree that Schall was not required to provide workers' compensation insurance for his employees since he was not one who had "**not properly complied** with the provisions of 39-71-401." § 39-71-501, MCA. They agree that the UEF is not statutorily liable for claimant's injury and ask this Court to address claimant's constitutional challenge to that lack of statutory coverage.

In challenging the UEF statute the petitioner bears a heavy burden. He must persuade the Court beyond a reasonable doubt that it is unconstitutional as applied to him. *State v. Folda*, 267 Mont. 523, 525-26, 885 P.2d 426, 427 (1994).

I.

We begin our analysis with the fundamental rule that courts should avoid constitutional questions whenever possible. *Wolfe v. Montana Dept. of Labor and Industry*, 255 Mont. 336, 339, 843 P.2d 338, 340 (1992). In this case the constitutional confrontation is avoided if the Tribal Court's determination was incorrect or the parties are incorrect in conceding that the UEF statutes afford no coverage in light of that decision. The latter point is certainly reviewable since the parties agreement concerning statutory construction is not binding on the Court. The reviewability of the first is more troublesome.

A. Reviewability of Tribal Court holding.

The judgment of a tribal court is not entitled to full faith and credit; however, principles of comity require that it be honored in the same manner as the judgment of a foreign nation. *Day v. Montana Dept. of Social and Rehabilitation Services*, 900 P.2d 296, 299 (Mont. 1995); *Wippert v. Blackfeet Tribe of Blackfeet Indian Reservation*, 201 Mont. 299, 304, 654 P.2d 512, 515 (Mont. 1982). But while comity may mean that the courts of the State of Montana will recognize the judgment as valid and enforceable as between the litigants in that matter, the doctrine does not require Montana courts to accept a tribal court's conclusions of law as binding. For example, in *Larrivee v. Morigeau*, 184 Mont. 187, 602 P.2d 563 (1979), the Supreme Court rejected the contention that it must defer to a Confederated Salish and Kootenai Tribal Court's interpretation of the tribal ordinance accepting state jurisdiction over enumerated reservation disputes:

[T]he sovereign state of Montana is entitled in the least to an equal say in the interpretation of an agreement to which its full consent was necessary. It would be

strange indeed if the state should agree to be bound by such interpretation of its consent as the other party chose to give it.

184 Mont. at 202, 602 P.2d at 571.

In light of the interest of the State of Montana in resolving constitutional challenges to its statutes, the doctrine of comity is inapplicable to the Tribal Court's finding that the Montana Workers' Compensation Act does not apply to the reservation.

In *McClure v. Blaze Construction, Inc.*, 899 P.2d 1093, 1096 (Mont. 1995), the Montana Supreme Court stated that in 1991 "an Indian employer operating within the exterior boundaries of an Indian reservation, was not required by Montana law to provide workers' compensation coverage for his employees." While that statement appears to be dispositive, the applicability of the WCA to the reservation was not an issue in the case. In the Workers' Compensation Court, from which the appeal was taken, the parties agreed to "bifurcate the issue of the applicability of Montana's workers' compensation laws to the Flathead Indian Reservation." *Id.* at 1095. Thus, the parties limited their arguments to statutory and contractual issues which the Workers' Compensation Court addressed. The Court never reached the question of whether an Indian owned business operating on the reservation is required to carry workers' compensation insurance. Thus, the statement of the Supreme Court appears to be dicta. Since the statement was not accompanied by any extended discussion or analysis, I believe it appropriate to revisit the matter on a substantive basis.

We must therefore consider the correctness of the Tribal Court's determination. If its determination is correct, we must then determine whether benefits are nonetheless available to the claimant under the UEF statutes. Finally, if benefits are not available, we must address his constitutional arguments.

B. Applicability of the WCA to the Flathead Reservation.

Indian tribes enjoy a special status under the United State Constitution. In three early decisions authored by Chief Justice John Marshall, the Supreme Court held that (1) "the Constitution delegated paramount authority over Indian matters to the federal government"; (2) by treaty, tribes have placed themselves under the protection of the federal government; and (3) within their lands, "tribes would retain self-government . . . subject only to federal authority." Hansen, *Survey of Civil Jurisdiction in Indian Country* 1990, 16 Am. Indian L.R. 319, 321-22 (citing *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Johnson v. McIntosh*, 21 U.S. 543 (1823)).

"State laws are generally not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 170-71 (1973). However, there is no per se rule prohibiting state regulation of tribes and tribal members even in the absence of express

congressional consent; rather, state regulation of tribal and reservation affairs is preempted if the regulation "interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987) (citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 333-34 (1983)).

In *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 147-48 (1984), the Supreme Court summarized the barriers to state regulation as twofold:

[T]he assertion of state authority over tribal reservations remains subject to "two independent but related barriers." First a particular exercise of state authority may be foreclosed because it would undermine "the right of reservation Indians to make their own laws and be ruled by them." Second, state authority may be preempted by incompatible federal law. [Citations omitted.]

Both barriers are implicated when a state regulation interferes with the economic affairs of the tribe since, in determining whether the regulation "interferes or is incompatible with federal and tribal interests," the inquiry must "proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development." *Cabazon*, 480 U.S. at 216 (emphasis added).

Requiring workers' compensation insurance increases the cost of doing business and may impact tribal economy. Thus, it is not surprising that other courts which have specifically considered the applicability of state workers' compensation laws to Indian owned businesses operating within a reservation have declared them preempted and inapplicable. *White Mountain Apache Tribe v. Industrial Commission*, 696 P.2d 223 (Ariz. App. 1985); *Tibbetts v. Leech Lake Reservation Business Committee*, 397 N.W. 2d 883 (Minn. 1986).

The Montana Attorney General reached the same conclusion in a 1977 opinion, 37 Op. Att'y. Gen. 117 (1977). He did not, however, consider the effect of the consent of the Salish and Kootenai Tribes under Public Law 280 to the extension of state jurisdiction to the Flathead Reservation, apparently believing that the Tribe's consent extended only to criminal matters.⁽³⁾ *Id.* at 124. Public Law 280, enacted in 1953, permitted an extension of state civil jurisdiction to a reservation upon agreement of both the state and the tribe. 25 U.S.C. § 1322 (1992). In 1963 Montana adopted an enabling provision which provided that upon resolution of the Confederated Salish and Kootenai Tribes, or any other tribe, authorizing extension of "criminal or civil jurisdiction" to the tribe's people and land, the governor may issue a proclamation effecting the jurisdictional extension.

In 1964 the tribes adopted an ordinance invoking the enabling provision. Adopted as Tribal Ordinance 40-A (Revised), the ordinance provided that

[t]he laws and jurisdiction of the State of Montana, including the judicial system of the State are extended . . . to Indians within the Flathead Reservation to the extent such laws and jurisdiction relate to the subjects following:

- (a) Compulsory School Attendance
- (b) Public Welfare
- (c) Domestic Relations (except adoptions)
- (d) Medical Health, Insanity, Care of the Infirm, Aged and Afflicted
- (e) Juvenile Delinquency and Youth Rehabilitation
- (f) Adoption Proceedings (With consent of the Tribal Court)
- (g) Abandoned, Dependent, Neglected, Orphaned or Abused Children
- (h) Operation of Motor Vehicles upon the Public Streets, Alleys, Roads and Highways
- (i) All Criminal Laws of the State of Montana; and all Criminal Ordinances of Cities and Towns within the Flathead Indian Reservation.

Larrivee, 184 Mont. at 193-94, 602 P.2d at 566-57 (1979) (italics and quotation marks omitted). The Governor thereafter issued the proclamation authorized by statute. In *Larrivee* the Supreme Court gave effect to the ordinance, holding that the courts of the State of Montana had jurisdiction over a motor vehicle accident occurring on the Flathead Reservation and involving an Indian and non-Indian.

The 1993 Montana legislature enacted a provision permitting rescission of the consent to civil jurisdiction on the Flathead Reservation. § 2-1-306(2), MCA. Any such rescission, however, would not affect this case since the injury occurred in 1991.

The civil jurisdiction contemplated by Pub. L. 280, section 2-1-301, MCA, and Tribal Ordinance 40-A, however, does not encompass the extension of workers' compensation laws to Indian owned businesses operating on the Flathead Reservation. In *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 383, 385 (1976), the Supreme Court of the United States held that Pub. L. 280 was enacted to "redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens" and that the primary intent of Congress "was to grant jurisdiction over private civil litigation involving reservation Indians in state court." It did not "confer upon the States general civil regulatory powers" over Indians and Indian reservations. *Id.* at 390. Thus, Pub. L. 280 does not authorize the State of Montana to extend its workers' compensation laws to the reservation. It merely authorizes the state courts, with the consent of the Confederated Tribes, to adjudicate disputes arising under existing law.

Moreover, the only language in Tribal Ordinance 40-A which could possibly authorize any application of the WCA to the reservation is the "public welfare" language. But in *Liberty v. Jones*, 240 Mont. 16, 19, 782 P.2d 369, 371 (1989), the Montana Supreme Court construed that language narrowly, holding that the public welfare language "only applies to practical

issues of economic assistance to the needy." The WCA does not constitute economic assistance to the needy as that subject is generally understood.

Therefore, I find that the Confederated Tribes have not agreed to any application of the Montana Workers' Compensation Laws to their reservations. I concur with the Tribal Court's decision regarding the applicability of the WCA to the Flathead Reservation. The WCA was inapplicable to businesses wholly owned by tribal members and operating exclusively on the Flathead Reservation. Schall was not required by law to provide workers' compensation insurance for his employees.

C. Entitlement to UEF benefits.

The UEF is liable to pay benefits "to injured employees of **uninsured employers**." § 39-71-503, MCA (1991). As discussed earlier in this decision, *uninsured employer* is expressly defined as "an employer who has not properly complied with the provisions of 39-71-401." § 39-71-501, MCA (1993). Schall is an uninsured employer only if he did **not properly** comply with the WCA's requirement to maintain insurance. Since federal law exempted Schall altogether from the coverage requirement, his failure to obtain insurance was not *improper*. He was therefore not an uninsured employer within the meaning of section 39-71-501, MCA (1993). Thus, the parties are correct in their assertion that the UEF is not statutorily liable for claimant's December 5, 1991 injury.

II.

Claimant asserts that section 39-71-501, MCA (1991), as applied in this case, unconstitutionally denies him equal protection of the laws and access to the courts.

A. Equal Protection.

Claimant urges the Court to apply a "heightened scrutiny" or "middle tier" analysis when considering his equal protection arguments. However, the Montana Supreme Court has already determined that laws concerning workers' compensation benefits are not subject to heightened scrutiny; rather, they are subject only to the rational relationship test. *Cottrill v. Cottrill Sodding Service*, 229 Mont. 40, 43, 744 P.2d 895, 897 (1987); *Eastman v. Atlantic Richfield Co.*, 237 Mont. 332, 338, 777 P.2d 862, 865 (1989); *Stratemeyer v. MACO Workers' Compensation Trust*, 259 Mont. 147, 151, 855 P.2d 506, 509 (1993). In *Eastman* the Court said:

We have held that the right to receive Workers' Compensation benefits is not a fundamental right. . . . The classification does not affect the rights of a suspect class, which would include race, nationality, alienage and wealth. We conclude that the Act is not subject to strict scrutiny. As a result [Defendant] need not show a compelling state interest. We conclude that the Act should be analyzed under the

rational basis test. That test requires a legitimate governmental objective which bears some identifiable rational relationship to the classification in question.

Eastman 237 Mont at 337-38, 777 P.2d at 865 (citations omitted). *Stratemeyer* reaffirmed that holding, 259 Mont. at 151, 855 P.2d at 509, and this Court is bound by it.

Under the rational relationship test the Court must determine whether the distinction or classification drawn by the statute is rationally related to a legitimate governmental purpose. *Cottrill v. Cottrill Sodding Service, supra, Eastman v. Atlantic Richfield Co., supra*. In *Montana Stockgrowers v. Dept. of Revenue*, 238 Mont. 113, 777 P.2d 285 (1989), the Court described the rational basis inquiry in the following terms.

[T]o survive scrutiny under the rational basis test, classifications must be reasonable, not arbitrary, and they must bear a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Eisenstadt v. Baird* (1972), 405 U.S. 438, 447, 92 S.Ct. 1029, 1035, 31 L.Ed. 2d 349, 359. In applying this test the Court in *Eisenstadt* framed the inquiry as: "Whether there is some ground of difference that rationally explains the different treatment"

238 Mont. at 117-18, 777 P.2d at 288 (1989).

The alleged discrimination in this case is the lack of coverage afforded by statute to injured employees of Indian owned businesses operating on the reservation. The statute does not specifically exclude those workers, rather they are excluded as a result of the limitation of benefits to workers of employers who are required by law to provide insurance but who fail to do so.

As applied in this case, the distinction between employees of Indian employers working solely on the reservation and other employees has a legitimate governmental purpose and is rationally related to that purpose. As early discussion shows, Indian Tribes have a special, quasi-sovereign status. Federal law controls the states relations with the Tribes and tribal members residing on reservations. There is a federal policy encouraging tribal self-sufficiency and economic development. Exemption of Indian owned enterprises doing business on the reservation, as well as their employees, is rationally related to that legitimate governmental objective. When citizens of the State of Montana avail themselves of jobs on a reservation, they agree to abide by tribal rules. Indeed, their presence on the reservation is at the pleasure and invitation of the tribe. "A tribe's power to exclude non-members entirely or to condition their presence on the reservation is equally well established." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983). It is no more onerous to exclude an Montana citizen who decides to work on an Indian reservation from the protections of the WCA than to exclude a Montana citizen who decides to work in another state.

Section 39-71-501, MCA, as applied to petitioner, bears a rational relationship to a legitimate government purpose. The statute does not deny petitioner his right to equal protection of the laws.

B. Access to Courts.

Claimant further argues that he has been deprived of his "right of access to the courts to seek a remedy for wrongs recognized by common law or statutory authority." Plaintiff's Opening Brief in Support of Petition for Declaratory Judgment at 6. He relies on Article II, section 16 of the Montana Constitution, which provides:

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

His argument is without merit. As a matter of federal law, state courts do not have jurisdiction over a civil action arising on the reservation filed by a non-Indian against an Indian, because the state court's assumption of jurisdiction would interfere with "the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U. S. 217, 220 (1959). Moreover, claimant is not precluded from pursuing a claim against his employer, he is merely limited to pursuing the claim in tribal court.

The Montana Constitution does not guarantee access to this state's courts for all injuries irrespective of jurisdictional considerations. The situation in this case is analogous to an action arising in another state.

ORDER AND JUDGMENT

1. The petitioner has not been denied his constitutionally guaranteed rights of equal protection or access to the courts. His petition is **dismissed**.
2. This decision is certified as final for purposes of appeal.
3. Any party to this dispute may have 20 days in which to request a rehearing from this Declaratory Judgment.

Dated in Helena, Montana, this 21st day of February, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas C. Bulman
Mr. Mark E. Cadwallader
Mr. Joseph P. Mazurek - Courtesy Copy

1. In addition to exceptions for specific types of workers, § 39-71-401, MCA (1991), also permitted sole proprietors, partners and corporate officers to decline coverage.
2. The 1993 legislature amended the list of exclusions to exclude coverage of "a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation." § 39-71-401(2)(m), MCA (1993) (1993 Mont. Laws, ch. 555, § 4). However, the injury in this case antedated the amendment. Thus, the amendment is inapplicable. *McClure v. Blaze Construction, Inc.*, 899 P.2d 1093, 1096 (Mont. 1995).
3. Discussing *State ex rel. McDonald v. District Court*, 159 Mont. 156, 496 P.2d 78 (1972), a criminal case involving alleged crimes committed on the Flathead Indian Reservation, the opinion states, "*McDonald* does not establish State jurisdiction in the question under consideration since Montana has not acted under Public Law 280 or the successor statutes to assume any civil jurisdiction over Indian Affairs." 37 Op. Att'y. Gen. 117, 124.