

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1997 MTWCC 12**

**WCC No. 9611-7646**

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**STEVEN KUYKENDALL**

**Petitioner**

**vs.**

**LIBERTY NORTHWEST**

**Respondent/Insurer for**

**STIMSON LUMBER COMPANY**

**Employer.**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

**Summary:** Lumber mill worker was injured during a fight following horseplay-type conduct that escalated into a fight, culminating with a co-worker throwing two-by-fours onto claimant's work table, claimant swinging a two-by-four at the co-worker, and the two fighting on the ground until separated.

**Held:** Claimant was injured within the course and scope of employment where there was a "reasonable connection between" the fight and "the conditions under which [claimant] pursued his employment." *Pinyerd v. State Comp. Ins. Fund*, 271 Mont. 115 (1995). Although claimant seriously escalated the confrontation by swinging the two-by-four, he was goaded into his anger when the other employee threw two-by-fours onto his work table as an act of provocation.

**Topics:**

**Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-407(1), MCA (1995).** Claimant injured in fight with co-worker at lumber mill was injured within course and scope of employment where there was a "reasonable connection between" the fight and "the conditions under which [claimant] pursued his employment." *Pinyerd v. State Comp. Ins. Fund*, 271 Mont. 115 (1995). "It is universally agreed that if the assault grew out of an argument over the performance of the work, the possession of tools or equipment used in the work, . . . the assault is compensable." Larson's Worker's Compensation Law, section 11.12 (b). Although claimant seriously escalated the

confrontation by swinging a two-by-four, he was goaded into his anger by an employee who threw two-by-fours onto claimant's work table as an act of provocation.

**Employment: Course and Scope: Fights.** Claimant injured in fight with co-worker at lumber mill was injured within course and scope of employment where there was a "reasonable connection between" the fight and "the conditions under which [claimant] pursued his employment." Pinyerd v. State Comp. Ins. Fund, 271 Mont. 115 (1995). "It is universally agreed that if the assault grew out of an argument over the performance of the work, the possession of tools or equipment used in the work, . . . the assault is compensable." Larson's Worker's Compensation Law, section 11.12 (b). Although claimant seriously escalated the confrontation by swinging a two-by-four, he was goaded into his anger by an employee who threw two-by-fours onto claimant's work table as an act of provocation.

The trial in this matter was held in Missoula, Montana, on January 21 and January 22, 1997. Petitioner, Steven Kuykendall (claimant), was present and represented by Mr. Rex Palmer. Respondent, Liberty Northwest (Liberty), was represented by Mr. Larry W. Jones.

At the parties' request, on the morning of January 21<sup>st</sup> the Court viewed the Stimson Lumber Company (Stimson) plant site where claimant's injury occurred. Immediately thereafter the trial commenced in Courtroom 1 of the Missoula County Courthouse.

Exhibits: Exhibits 1 through 12 and demonstrative Exhibits A, A-1, A-2, B, and B-1 were admitted without objection.

Witnesses and Depositions: Claimant, William R. Cady, Lorraine Larson, Tory Bagaoisan, Jenny Dain, Harriet Rose Hill, Eric Lief Halverson, Douglas Alan Reinertson, Jerome "Jamie" Jarvis, Catherine "Kate" Stang, and Mike Eichenlaub were sworn and testified. In addition, the parties submitted the depositions of claimant and William R. Cady for the Court's consideration. No transcript of the trial has been prepared.

Issue Presented: The sole issue presented for determination is whether injuries claimant suffered in a fight with a co-employee occurred in the course and scope of his employment with Stimson Lumber Company.

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

#### FINDINGS OF FACT

Claimant is 31 years old and resides in Clinton, Montana. He is a high school graduate. He has a learning disability and speech impediment.

Claimant was in the United States Navy for five and one-half years. He, as many of the others mentioned in this decision, curses "like a sailor."

Claimant was employed by Stimson. During his last nine months of employment in 1995 and 1996, he worked as a "plugger."

On May 25, 1996, claimant injured his left elbow in a fight with a co-employee. He thereafter submitted a claim for workers' compensation benefits.

At the time of his injury, Stimson was insured by Liberty. Liberty denied liability for the claim on the ground that claimant was not working in the course and scope of his employment when injured.

#### Stimson's Bonner Mill

Stimson operates a plywood mill in Bonner, Montana. It purchased the mill from Champion Lumber Company in the fall of 1993 and has operated it since that time. *Liberty Northwest Ins. Co. v. Champion Int'l*, WCC No. 9601-7477 (6/25/97) at 2.

Production of plywood involves numerous steps and is done on a large scale. Initially, logs are peeled, producing a thin veneer which is then cut into sheets. The veneer sheets are dried and then sorted by grade. Defects, such as knots, in the sheets are then "plugged." Plugging is done with a machine which is affixed to a large table on which sheets of plywood veneer can be moved and manipulated. The machine punches out an elongated piece of the veneer, approximately three inches by two inches (estimated), containing a defect. It simultaneously replaces the punched-out piece with an identically sized, unblemished piece of wood. The new piece is instantly glued into place.

A constant supply of veneer sheets is maintained at the end of each plugger table. A machine operator, who is aptly named a "plugger," takes the top piece off the stack and pulls it onto the table. The plugger then slides the veneer sheet around the table, going from one defect to the next, centering each one under the head of the plugger machine, then activating the machine with a foot pedal. When all defects are plugged, the plugger slides the completed sheet onto a conveyor belt or rollers which then transport the sheet to a round table where it is graded, sorted and sent on for further production steps.

The plugger machine is fed by a tray containing plugs. The punched-out defects fall through a hole in the table and are collected in a bucket placed beneath the hole for that purpose.

The Stimson plant has eight plugger tables. They are set up in two groups of four. At the end of each group there is a round table to which the completed, plugged sheets are sent.

The mill operates 24 hours a day. Storage lockers are provided for the personal effects of the pluggers working each shift. There are three lockers located at the end of each of the plugger tables.

Located across from the plugger tables is the dry stacker which consists of several bins into which the rough veneer is sorted. The veneer is transported to the Dry Stacker by conveyor. Before entering the Dry Stacker, an operator eyeballs each sheet of veneer, determines which bin it should go to, and designates the bin by pressing a control button. The sheet is then deposited in the appropriate bin.

The Dry Stacker is staffed by two stacker operators. One of the operators inspects the incoming veneer sheets and designates the bins into which they are sent. The second operator, hereinafter referred to as the "stacker observer," sits in the plugger area across from the dry stacker and keeps watch over the stacker bins. When the veneer in a bin reaches 25 inches, it automatically drops onto a cart. On occasion the stack does not drop onto the cart properly. The observer must then reposition the stack using a two-by-four or some other lever. The observer also spray paints identifying numerals or letters on the side of each veneer stack.

Diagrams of the mill area where the plugger tables are located are set forth at the end of this decision. Diagram 1, which is part of Exhibit 2, shows the general layout of the mill. The plugger tables are at the top of the diagram below the plywood office and electrical room. Diagram 2 is an enlarged drawing of a portion of Diagram 1, specifically of the plugger and stacker area. It is a reproduction of the second page of Exhibit 2 but has been edited by labeling the plugger tables with large numerals, labeling the round table, identifying the plywood carts adjacent to the tables, identifying the location of the lockers at the end of table 2, and identifying the area where Jamie Jarvis (Jamie), one of the participants in the fight, worked. Only one plywood cart and one locker are identified by labels, however, the plywood carts can be seen without labels adjacent to the other tables. Lockers are located at the base of each table. Diagram 2 does not show the second round table, which is to the north of tables 7 and 8.

Claimant worked as a plugger for Stimson for a period of nine months. He worked the graveyard shift.

Initially, claimant was assigned to table 6. He was later moved to table 1 and was working at that table on the day of the fight.

On the day of the fight, Harriet Hill was working on table 2, which was next to claimant's table.

### Horseplay and Pranks

Several of claimant's coworkers testified at trial. Their testimony, along with that of claimant, established that Stimson employees engaged in horseplay at work. For the most part, the horseplay was harmless and was thought to relieve the monotony and boredom of their jobs.

In the case of the pluggers, a common prank was to turn off the fan near another plugger's table, causing the victimized plugger to leave his or her table to go over to the wall switch to turn it back on. Another common prank was to move the trash can under a plugger's table so that the plugs with defects fell onto the floor rather than into the trash can, thus requiring the victimized plugger to sweep up the plugs. Other examples of horseplay not involving pluggers included putting ink in gloves and water fights.

The horseplay occurred when supervisors were not present and the evidence presented at trial failed to establish that supervisors were aware of horseplay. William Cady, the plywood plant manager at Stimson, testified that he was not aware of any horseplay at Stimson prior to the May 23, 1996 incident. (Cady Dep. at 12, 36-40; Trial Test.) Mike Eichenlaub, claimant's immediate supervisor, testified that claimant had come to him with complaints of someone moving the trash can from under his plugger table. Eichenlaub was unable to substantiate the complaint but moved claimant to a different table.

One of the employees testified that horseplay at Stimson was constant. However, despite some evidence that the horseplay was frequent, I do not impute or infer knowledge of the horseplay to Stimson's supervisors since each supervisor was responsible for a large area of the plant and therefore only sporadically observed particular areas and particular employees.

#### Claimant's Interaction with Co-employees and Participation in Horseplay

Claimant's co-employees nicknamed him "Popeye" on account of his stint in the Navy. Claimant did not get along well with his co-employees and they did not particularly like him. One co-employee, Tory Bagaoisan, deliberately attempted to sabotage claimant's work and make his job more difficult, but his conduct was unrelated to what transpired on the day of the fight. Other employees played pranks on claimant more frequently than they did on each other. Doug Reinertson (Doug) testified that claimant was an "easy target." Lorraine Larson (Lorraine) said that claimant had a "tendency to blow things out of proportion" and that for that reason he was "needled a bit more than others." Harriet Hill (Harriet) testified that claimant could "dish it out" but that he could not "take it."

As portrayed by his co-employees, claimant is a humorless individual who has a bad temper. He disliked pranks and, as noted in finding 20, complained about them on at least one occasion. He had a number of confrontations with co-employees during which he became red faced, yelled and cursed.

Lorraine and Catherine "Kate" Stang counseled claimant to "lighten up" and after moving from table 6 to table 1, claimant did engage in some of the same pranks as the others.

#### The Fight

Shortly before the May fight, claimant was told by Mike Eichenlaub that he needed to increase his production. (*Id.*)

On May 23, 1996, the day of the incident, claimant was working at table 1 and Harriet was at table 2. At break time claimant left his table and while passing by Harriet's table he took a four foot long two-by-four board from the top of the lockers under table 2 and tossed it on Harriet's table. He jokingly told Harriet, "Try to plug this."

As claimant walked away from Harriet's plug table, Jamie, the stacker observer, bumped into him and said, "Leave my fucking two-by-four alone." Claimant replied, "Okay, asshole."

Unbeknownst to claimant, Jamie used that particular two-by-four, also known as a "sticker," when repositioning stacks of plywood. Since he used the sticker infrequently, he kept it on top of his locker, which was located below table 2.

Claimant proceeded to the break room under the plywood office. (See diagrams.) While on break claimant told coworker Roger Hinkle that "there's a jackass out there on the stacker who thinks he owns the two-by-fours." Roger asked, "Which jackass are you talking about." Claimant responded, "The one on the stacker."

Doug overheard claimant. With no prompting from claimant and without claimant's knowledge, Doug took five to eight two-by-fours, taped a piece of paper with the word "Jackass" onto one of them, and took them to Jamie, who was stationed between the plywood stacks at the end of tables 3 and 4. According to Doug, he handed them to Jamie and said, "There you go, now you don't have to fight over two-by-fours anymore." Jamie testified that Doug told him, "Popeye [claimant] said some jackass needed some two-by-fours."

By this time, the claimant had returned to his table and was again working. Assuming that claimant had sent the two-by-fours to him, Jamie took them over to table 1 and threw them on the table, saying "Here's your two-by-fours. They have your name on them."

Since the two-by-fours interfered with his work, the claimant picked them up and stacked them vertically against table 2, next to Jamie's locker.

Seeing the two-by-fours stacked against table 2, Jamie again left his work area, proceeded to table 2, collected up the two-by-fours, and threw them for a second time onto claimant's table. Some of the two-by-fours tumbled down the table and struck the claimant. Claimant was not hurt in this incident.

The Court cannot discern any plausible reason for Jamie's action the second time other than his desire to provoke a confrontation or harass claimant. Jamie had no reason to move the two-by-fours as they did not impede his work or the work of anyone else.

Claimant gathered the two-by-fours, carried them to Jamie's work area, and threw them on the floor at Jamie's feet. Claimant was visibly angry and shouted profanities. According to Jamie, claimant stood approximately five or six feet away from him screaming, with his body in a "quartered" position like he was ready to fight. At this point Jamie grabbed his spray gun, which was filled with ink, and sprayed claimant. The ink hit claimant's arm and upper torso. Jamie then stooped down, scooped up some of the two-by-fours, and shuffled them towards claimant. Claimant, still screaming profanities, grabbed one of the two-by-fours and hit Jamie in the ribs with it. Claimant's reaction was out of proportion to the situation and further escalated it. A fight ensued. Claimant and Jamie struggled with one another, moving from Jamie's work area down into the vicinity of tables 1 and 2, where Jamie wrestled claimant to the ground, got on top of him, and put his hands around claimant's neck. Two co-employees then interceded and pulled Jamie off claimant.

During the course of the fight, claimant hit his elbow on the floor. Following the fight he was taken to the first-aid room. Thereafter, he went to the St. Patrick Hospital Emergency Room where he was treated for a left elbow contusion and possible bursal rupture. (Ex. 1 at 1.)

Liberty has attempted to portray Jamie's initial ink gun assault of claimant as a response to "fighting words" used by the claimant included m-f in its unabbreviated form. However, as the transcript of this trial will show, the employees at the mill used colorful profanities on a daily basis. More importantly, Jamie is a former United States Marine and can swear with the best of the sailors. When I asked him if he used the words shouted by claimant, he apologized and said that he used m-f all the time. I find that claimant's words did not trigger Jamie's use of the ink gun. I am also not satisfied that claimant's shouting and posturing were perceived by Jamie as an immediate treat of violence. Rather, I find that Jamie had a chip on his shoulder and, as evidenced by his conduct in throwing the two-by-fours on claimant's table a second time. He wanted the final word and was intent on bullying claimant into some sort of retreat. His conduct was not of the same character as the horseplay which had occurred previously at the mill.

While claimant was wrong in escalating the incident by swinging at Jamie with a two-by-four, Jamie deliberately goaded claimant into a rage. Jamie's actions were in fact more akin to "fighting words" than any words used by claimant.

Stimson fired claimant as a result of the fight. Jamie was sent home for the rest of the day and was subsequently suspended for three weeks. He then returned to work with Stimson and continues to work at the Bonner mill.

I find that the fight in this case was job related. Jamie's conduct in throwing the two-by-fours on claimant's table interfered with claimant's job. Claimant had to stop working and move the two-by-fours. Claimant initially attempted to walk away from the confrontation by leaning the two-by-fours against table 2. Jamie frustrated his attempt to end the conflict.

He left his post, gathering up the two-by-fours a second time, and tossing them once again onto claimant's table. Only then did claimant confront Jamie over the matter.

The fight was not fueled by personal animosity or hatred. Claimant and Jamie did not know each other outside of work. The fight escalated because Jamie interfered with claimant's work performance by repeatedly throwing the two-by-fours on claimant's work station.

Although I have found for the claimant in this matter, Liberty's denial of the claim was not unreasonable. Claimant was not an entirely innocent victim of an unprovoked assault. He initiated the chain of events when he put a two-by-four on Harriet's table. He was in a rage when he confronted Jamie just before the fight. He escalated the confrontation by hitting Jamie with a two-by-four, an act that could have caused serious bodily injury. The facts were not so clear as to *compel* the insurer to conclude that Jamie provoked the escalation. Finally, prior Montana case law does not address the circumstances of this case, thus making it one of first impression. The law as applied to the present circumstances was reasonably debatable.

#### CONCLUSIONS OF LAW

Claimant's injury is governed by the 1995 version of the Workers' Compensation Act. *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 319, 321, 730 P.2d 380, 382 (1986).

Claimant has the burden of proving that he is entitled to workers' compensation benefits by a preponderance of the probative, credible evidence. *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

Section 39-71-119, MCA (1995), defines injury as follows:

(1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

The criteria of subsection (1)(a) are clearly met since the uncontradicted evidence in this case shows that claimant's fall resulted in physical harm to his elbow.

The only issue to be decided at this time is whether claimant's injury arose out of and in the course of claimant's employment at Stimson.

Section 39-71-407(1), MCA (1995), provides, in relevant part, that "[e]ach insurer is liable for the payment of compensation . . . to an employee of an employer that it insures who receives an injury **arising out of and in the course of employment** . . . ." (Emphasis added.) The language "in the course of employment" generally refers to the time, place, and circumstances of an injury in relation to employment. *Pinyerd v. State Comp. Ins. Fund*, 271 Mont. 115, 119, 894 P.2d 932, 934 (1995) (citing *Landeen v. Toole County Refining Co.*, 85 Mont. 41, 54, 277 P. 615, 620 (1929)). The injury here was in the course of employment because it occurred at the mill, during work hours, when both claimant and Jamie were supposed to be performing work duties.

Thus, the critical question in this case is whether the fight "arose out of" claimant's employment at Stimson. The phrase "arising out of" is related to the concept of causation, *Pinyerd*, 271 Mont. at 120, 894 P.2d at 934 (citing 1 Arthur Larson, Workmen's Compensation Law, § 6.10 (1993) and *Landeen*, 277 P.2d at 620), i.e., whether there is a "relationship between the injury and employment." *Id.*

Although this case may appear at first glance to involve horseplay, it in fact does not. Claimant's initial act, taking the two-by-four and placing it on Harriet's plug table, was meant to be joke and amounted to horseplay but arguably ended immediately when Jamie told claimant: "Leave my fucking two-by-four alone." Doug's actions in presenting Jamie with several two-by-fours might be characterized as horseplay on his part. However, the horseplay unquestionably ended when Jamie threw the two-by-fours on claimant's table for a second time. That event was like throwing down the proverbial gauntlet.

The Montana Supreme Court first addressed the issue of fighting in the workplace in *Penny v. Anaconda Co.*, 194 Mont. 409, 632 P.2d 1114 (1981). In that case, the Court upheld the hearing examiner's findings that claimant was not injured in the course of his employment because claimant's assault of a coworker was of a personal nature and was not connected with the claimant's employment. 194 Mont. at 413, 632 P.2d at 1117. The hearing examiner found that the fight had no connection with a prior disagreement over union policies and that claimant had started the fight "solely to gratify his personal feelings of hatred and anger toward his coworker." *Id.*

Citing Larson's Workmen's Compensation Law, § 11.16, in *Penny* the Court noted that there are two lines of authority concerning assaults. It then adopted the line of authority which is exemplified by the rule set forth in *Willis v. Taylor & Fenn Co.*, 79 A.2d 821, 822 (Conn. 1951), quoting it as follows:

"The fact that employees sometimes quarrel and fight while at work does not make the injury which may result one which arises out of their employment. There must be some reasonable connection between the injury suffered and the employment or the condition under which it is pursued."

194 Mont. at 413, 632 P.2d at 1117.

In *Willis* the Connecticut Supreme Court also said that the "basic principle" to be followed in assault cases is:

"If one employé [sic] assaults another employé [sic] solely to gratify his feeling of anger or hatred, the injury results from the voluntary act of the assailant, and cannot be said to arise either directly out of the employment or as an incident of it. But when the employé [sic] is assaulted while he is defending his employer, or his employer's property, or his employer's interests, or when the assault was incidental to some duty of his employment, the injuries he suffers in consequence of the assault will, as a rule, arise out of the employment."

79 A.2d at 822 (*quoting from Jacquemin v. Turner & Seymour Mfg. Co.*, 92 Conn. 382, 384, 103 A. 115, 116).

In *Pinyerd*, the only other Montana case addressing fights between employees, the claimant (Pinyerd) was involved in a fight with a coworker (Jacobson) while employed at Prestige Toyota as a car salesperson. *Id.* at 117, 933. Pinyerd was not the aggressor and there was evidence that he and Jacobson were involved in a dispute unrelated to their employment. However, Prestige's policies created daily friction among its sales staff and contributed to animosity among the employees. *Id.* at 121, 935. In framing the "course of employment" issue, the Supreme Court said that the issue is "not simply what precipitated Jacobson's assault, but whether there was a **reasonable connection between Pinyerd's injury and the conditions under which he pursued his employment.**" *Id.* The Court then stated, "That connection was established when the court found that Jacobson's hostility toward Pinyerd was contributed to by his resentment of Pinyerd's sales success." *Id.*

The facts of this case do not fit neatly into either of the situations considered in *Penny* or *Pinyerd*. In this case, claimant was not the initial aggressor, as was Mr. Penny. However, unlike Pinyerd, claimant seriously escalated the confrontation when he picked up a two-by-four and swung it at Jamie.

Contrary to Liberty's argument, the Montana Supreme Court has not held that the aggressor is automatically precluded from receiving workers' compensation benefits. Only a minority of jurisdictions continue to allow the aggressor defense as an absolute bar to recovery. Larson's Workmen's Compensation Law, § 11.15(c). Larson explains the practical difficulties in applying the aggressor defense as follows:

[L]ong after a quarrel is over, it is often almost impossible to determine who really started it. Many a parent has been forced to sit in belated judgment on this issue between two children, the testimony consisting of "He hit me"; "Yes, but she called me a stinker"; "But before that he grabbed my book"; and so on. One cannot read the facts behind the aggressor cases without seeing how closely the average factory scuffle follows this pattern.

Such is the situation in the case before this Court.

The test for course of employment is not based on whether claimant was the initial aggressor, which he was not, or on whether he escalated the situation such that the roles were switched and he then became the aggressor. Rather, as stated in *Pinyerd*, the test is whether there was a **"reasonable connection between"** the fight and claimant's resulting injury **"and the conditions under which he [the claimant] pursued his employment."** (Emphasis added.) The connection exists in this case. "It is universally agreed that if the assault grew out of an argument over the performance of the work, the possession of the tools or equipment used in the work, . . . the assault is compensable." Larson's Workmen's Compensation Law, § 11.12(b).

Claimant is not entitled to attorney fees or a penalty. A finding of unreasonable conduct on the part of the insurer is required to award either. §§ 39-71-611 and -2907, MCA. The facts and the law applicable to those facts were reasonably debatable, thus I have found that Liberty's conduct was not unreasonable.

Claimant is entitled to his costs in an amount to be determined at a later time.

#### JUDGMENT

The elbow injury claimant suffered on May 23, 1996, occurred in the course and scope of claimant's employment with Stimson. His injury is therefore compensable and Liberty shall pay claimant appropriate compensation and medical benefits.

The Court retains jurisdiction of this matter to determine the amount of benefits due claimant in the event the parties cannot agree on the amount.

Claimant is entitled to costs in an amount to be determined by this Court. Claimant shall submit his memorandum of costs within 10 days of this decision. Liberty shall then have 10 days in which to file its objections, if any. The Court will then assess the costs.

Claimant is not entitled to attorney fees or a penalty.

Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 17th day of March, 1997.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Rex Palmer

Mr. Larry W. Jones

Diagrams (2)

Submitted: January 30, 1997

[Diagram - 1](#)

[Diagram - 2](#)