IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 5

WCC No. 9304-6772

JAMES D. McCLURE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND/BLAZE CONSTRUCTION, INCORPORATED

Defendant/Employer.

ORDER DENYING MOTION FOR DECLARATORY RULING; ORDER GRANTING MOTION FOR PARTIAL STAY OF PROCEEDINGS

The petitioner in this case was injured on June 8, 1992, while working for Smith Enterprises, Incorporated (Smith), a subcontractor of Blaze Construction, Inc. The petition alleges that Smith did not have workers' compensation insurance coverage and that petitioner is therefore entitled, pursuant to section 39-71-405, MCA, to receive benefits from Blaze's insurer, which is the State Compensation Insurance Fund (State Fund). In its response the State Fund alleges that Smith is a Native American owned firm which is not subject to Montana workers' compensation laws, and therefore is not an "uninsured subcontractor" for purposes of section 39-71-405.

In a MOTION FOR DECLARATORY RULING, petitioner moved for a determination that Smith is in fact an "uninsured employer." He advanced two arguments. First, he contended that Native American enterprises on the Flathead Reservation are in fact subject to Montana workers' compensation laws. Second, he argued that Smith was contractually required to furnish workers' compensation and must therefore be deemed an uninsured employer. Subsequent to the filing of his motion, the petitioner learned that the Confederated Salish and Kooteni Tribes might not agree with his first argument. He therefore requested the Court to by-pass that issue for the time being and address only his contractual argument.

Petitioner's motion and supporting brief refer to contracts and other evidentiary matters. It is therefore in the nature of a motion for summary judgment. However, the motion is not supported by affidavits, depositions or written discovery. See Rule 56(c), Mont. R. Civ. P. The Court is therefore unable to consider the evidentiary basis on which the motion rests. Moreover, in his reply brief the petitioner acknowledged the need for "additional evidence."

It therefore appearing that the MOTION FOR DECLARATORY RULING is premature, IT IS HEREBY ORDERED that the MOTION FOR DECLARATORY RULING is **DENIED** without prejudice to renew it at a later time.

IT IS FURTHER ORDERED that consideration of petitioner's arguments concerning the applicability of Montana workers' compensation laws to the Flathead Reservation is deferred until petitioner notifies the Court of his intent to proceed on that issue.

DATED in Helena, Montana, this 7th day of October, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Edward K. Duckworth
Ms. Elizabeth A. Horsman-Wiitala