

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE  
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/25/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: s/s

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

VALERIE CARTER, ) No. 1 CA-IC 12-0001  
)  
Petitioner, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
)  
THE INDUSTRIAL COMMISSION OF ARIZONA, ) (Not for Publication -  
) Rule 28, Arizona Rules  
Respondent, ) of Civil Appellate  
) Procedure)  
HARRAH'S ARIZONA CORPORATION, )  
)  
Respondent Employer, )  
)  
AMERICAN ZURICH INSURANCE CO., )  
)  
Respondent Carrier, )  
)  
SPECIAL FUND DIVISION/NO INSURANCE )  
SECTION, )  
)  
Respondent Party in Interest. )  
)

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Special Action - Industrial Commission

ICA Claim No. 20103-360061

Carrier Claim No. WC930727907

Administrative Law Judge Joseph L. Moore

**AWARD AFFIRMED**

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|---|---------|
| Crossman Law Offices, P.C.<br>By Harlan J. Crossman<br>Attorneys for Petitioner Employee  | Phoenix |
| Andrew Wade, Chief Counsel<br>The Industrial Commission of Arizona<br>Attorney for Respondent   | Phoenix |
| Gordon & Rees, LLP<br>By Matthew G. Kleiner<br>Attorneys for Respondent Employer  | Phoenix |
| Lester & Norton, P.C.<br>By Steven C. Lester<br>Attorneys for Respondent Carrier  | Phoenix |
| Special Fund Division/No Insurance Section<br>The Industrial Commission of Arizona<br>By Miral A. Sigurani<br>Attorney for Respondent Party in Interest | Phoenix |

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**G O U L D**, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") order dismissing petitioner Valerie Carter's claim for lack of subject matter jurisdiction. One issue is presented on appeal: whether the ICA had jurisdiction to determine Carter's entitlement to Arizona workers' compensation benefits for an injury she sustained while employed by the respondent employer, Harrah's Arizona Corporation ("Harrah's"), at the Ak-Chin Casino Resort on Indian tribal land. Because we find Carter was an employee of an Ak-Chin tribal casino enterprise at the time of her industrial

injury and she was covered by that entity's workers' compensation insurance, we affirm the award.

#### I. JURISDICTION AND STANDARD OF REVIEW

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (2012), and Arizona Rule of Procedure for Special Actions 10 (2009). In reviewing findings and awards of the ICA, we defer to the factual findings made by the administrative law judge ("ALJ"), but review questions of law *de novo*. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

#### II. PROCEDURAL AND FACTUAL HISTORY

¶3 On December 1, 2010,<sup>1</sup> Carter filed a worker's report of injury. Carter asserted she had sustained an industrial injury on February 13, 2010, while employed by Harrah's. Carter stated that while she was reaching up to move a box on top of a cabinet, she stepped backwards into an indentation in the carpet, and fell to the floor injuring her neck, low back, and right knee.

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<sup>1</sup> Carter filed an almost identical worker's report of injury on December 7, 2010.

¶4 An investigation of Carter's claim revealed that Harrah's was operating as a tribal enterprise of the Ak-Chin Indian Community and, as a result, Carter's claim was a tribal workers' compensation claim. Tribal First processed Carter's workers' compensation claim on behalf of Ak-Chin's workers' compensation carrier, Hudson Insurance Group ("Hudson"). Hudson accepted Carter's claim and began paying temporary disability benefits to her.

¶5 Eventually Carter sought to file a new, second claim with the ICA. Because Harrah's did not appear to have workers' compensation coverage for its activities on tribal land, Carter's new claim was referred to the respondent party in interest, Special Fund Division/No Insurance Section ("Special Fund").

¶6 After the Special Fund notified Harrah's of Carter's new claim, a Tribal First claims adjuster contacted the ICA and stated that Hudson had already paid Carter both medical and disability benefits for this same February 13, 2010 claim. The adjuster also noted that Carter's

claim has been out of the ordinary; she explained . . . [Carter] was treated for her injury and the treating physician stated she had reached MMI [maximum medical improvement] on 9/30/10. He released her to work with restrictions. . . . [Carter's] employer could and did accommodate her requirements/restrictions but . . . [she] refused the job and refused to return to work.

. . . [Carter] was terminated by her employer because her FMLA had run out.

[Carter] has seen 6 different doctors for her injury. . . [she] 'found' a doctor willing to do surgery and put the cost of that care on her personal insurance. There was no request for a change in doctors submitted to Tribal First and no approval for surgery from Tribal First.

¶17 The Special Fund denied Carter's claim stating that "tribal coverage" applied. Carter then requested an ICA hearing asserting that she had sustained an injury "arising out of and in the course of her employment under Arizona jurisdiction." An ICA hearing was subsequently scheduled.

¶18 The Special Fund moved to join the respondent carrier, American Zurich Insurance Company ("American Zurich"), after discovering that it had issued an Arizona workers' compensation policy to Harrah's. The ALJ granted the motion. The Special Fund also moved to join Harrah's in the litigation. Harrah's responded in opposition to joinder and filed a motion to dismiss for lack of jurisdiction.

¶19 The ALJ held one hearing for oral argument on all of the parties' outstanding motions. Following the hearing, the ALJ entered an order dismissing Carter's claim against Harrah's and American Zurich for lack of subject matter jurisdiction. In his dismissal order, the ALJ specifically adopted portions of both Harrah's Motion to Dismiss and American Zurich's July 14,

2011 Response in Support of Harrah's Arizona Corporation's Motion to Dismiss for Lack of Jurisdiction.<sup>2</sup> Carter timely requested administrative review, but the ALJ summarily affirmed his award. Carter next brought this appeal.

### III. DISCUSSION

¶10 Carter first argues the ALJ erroneously found Ak-Chin and Hudson were indispensable parties. She bases this argument on her supposition that she was solely the employee of Harrah's, an Arizona corporation, and therefore, she was insured by its workers' compensation carrier, American Zurich. The evidence of record in this case includes a "Management Agreement (Casino) between the Ak-Chin Indian Community and Harrah's Arizona Corporation dated December 19, 2001." ("Management Agreement") This agreement was entered into between Ak-Chin, a federally recognized Indian tribe, and Harrah's to obtain Harrah's technical expertise for the operation of the Ak-Chin casino, which Ak-Chin owns and operates on its tribal land. The Management Agreement required the tribe's casino enterprise to maintain statutory workers' compensation insurance coverage for "enterprise employees" and Harrah's to maintain statutory workers' compensation insurance coverage for "manager's

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<sup>2</sup> See *Hester v. Indus. Comm'n*, 178 Ariz. 587, 589-90, 875 P.2d 820, 822-23 (App. 1993)(ALJ may incorporate parties' memoranda in his award by reference).

employees." "Enterprise employees" are defined as all employees assigned to work at the casino enterprise, which includes both the casino and the hotel.

¶11 Based on this evidence, Carter correctly argues that she was an employee of Harrah's, but only as an employee of Harrah's Ak-Chin Casino Resort, an economic enterprise of the Ak-Chin Indian Community. Arizona has recognized that Indian tribes/communities are independent sovereigns, not subject to the jurisdiction of Arizona courts without either the tribe's consent or the consent of Congress. *Morgan v. Colo. River Indian Tribe*, 103 Ariz. 425, 428, 443 P.2d 421, 424 (1968).<sup>3</sup> As an economic enterprise of the Ak-Chin Indian Community, Harrah's Ak-Chin Casino Resort was entitled to the same sovereign immunity afforded to the Ak-Chin Indian Community. See *White Mountain Apache Indian Tribe v. Shelly*, 107 Ariz. 4, 7, 480 P.2d 654, 657 (1971)(finding subordinate economic organization of Indian tribe shares the same immunity from suit as the tribe). For these reasons, Harrah's Ak-Chin Casino Resort is not an employer subject to Arizona's workers' compensation laws.

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<sup>3</sup> The only consent to any Arizona jurisdiction in this case is contained in the Management Agreement and is for the arbitration of disputes in "the Community Court, or in the United States District Court . . . the United States Court of Appeals for the Ninth District, and the United States Supreme Court . . . arising out of this Agreement."

¶12 Carter next argues that despite accepting benefits under the tribal workers' compensation policy, she is not precluded from receiving additional benefits under Arizona's Workers' Compensation Act. As authority for her position, she cites *Agee v. Industrial Commission*, 10 Ariz. App. 1, 455 P.2d 288 (App. 1969); *Jordan v. Industrial Commission*, 117 Ariz. 215, 571 P.2d 712 (App. 1977); and *Lowery v. Industrial Commission*, 123 Ariz. 108, 597 P.2d 1011 (App. 1979). We find each of these cases distinguishable.

¶13 In each of these cases, the issue was whether a workers' compensation claimant could receive additional workers' compensation benefits in Arizona after initially receiving benefits in another state from the same employer and carrier. None of the cases involved a claimant injured while working at a tribal enterprise, on tribal land, covered by a tribal workers' compensation policy, who subsequently sought additional benefits from a different employer and carrier in Arizona. Further, in each of the three cases, the employer who initially paid the claimant benefits in another state was also subject to Arizona jurisdiction. In this case, although Ak-Chin previously paid Carter's workers' compensation benefits, it is clearly not subject to Arizona jurisdiction.



¶14 Carter last argues that the ICA had jurisdiction over her and her employer, Harrah's, at the time of her industrial injury. In that regard, the ALJ adopted the arguments of Ak-Chin and American Zurich that Carter had waived any right to claim Arizona workers' compensation benefits. When Carter filed her initial workers' compensation claim, she identified herself as a total rewards supervisor at Harrah's Phoenix Ak-Chin Casino Resort. She further identified the workers' compensation carrier as "Tribal First." She filed a claim for workers' compensation benefits with Tribal First and received \$45,000 of medical and disability benefits from Hudson before her claim was closed. For these reasons, we agree Carter chose her remedy through her employment at the tribal enterprise and cannot now disclaim that employment to seek additional benefits. See *Ashton v. Sierrita Mining and Ranching*, 21 Ariz. App. 303, 305, 518 P.2d 1020, 1022 (App. 1974)(plaintiff who claimed mining and ranching partnership as his employer for purpose of receiving workers' compensation benefits was estopped from later claiming that partnership was not in fact his employer in tort action).

¶15 For all of the foregoing reasons, the award is affirmed.

/S/ \_\_\_\_\_  
ANDREW W. GOULD, Judge

CONCURRING:

/S/ \_\_\_\_\_  
MICHAEL J. BROWN, Presiding Judge

/S/ \_\_\_\_\_  
DONN KESSLER, Judge