

1 IN THE APPELLATE COURT OF THE
2 CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD
3 TRIBES, PABLO, MONTANA

4 ESTATE OF STANLEY LEE BIGHORSE, * Cause No. AP-001-89
5 A Protected Person, by and *
6 through his Conservator, MAE *
7 BIGHORSE; RUBY and JOHN *
8 ACOTHLEY, Co-Personal Repr- *
9 sentatives of the Estate of *
10 LARRY ACOTHLEY, deceased; *
11 PATRICK CORNE, a single man; * APPELLATE
12 and LORI LITTLE WARRIOR, A * OPINION
13 single woman, *
14 Appellees, *
15 vs. *
16 CONFEDERATED SALISH AND *
17 KOOTENAI TRIBES OF THE FLATHEAD *
18 RESERVATION, CALVIN BLACKWATER, *
19 Defendants, *
20 and *
21 ROGER McCREA, DENNIS BALDWIN, *
22 GLACIER CARRIERS, INC., a *
23 Montana Corporation, *
24 Defendants/Appellants. *

25 OPINION

26 I.

INTRODUCTION AND STATEMENT OF CASE

27 Plaintiffs Stanley Big Horse, the Estate of Larry
28 Acothley, Patrick Corne and Lori Little Warrior sued in the
29 Tribal Court of the Confederated Salish and Kootenai Tribes of
30 the Flathead Indian Reservation seeking damages for alleged
31 negligence on the part of Defendants, Confederated Salish and
32 Kootenai Tribes, Calvin Blackwater, and Roger McCrea, Dennis
33 Baldwin, and Glacier Carriers. The claim arose out of a
34 collision between a tractor-trailer loaded with lumber and a
35 van parked on the highway at night within the exterior
36 boundaries of the Flathead Indian Reservation in Montana.

1 A trial without a jury was held in the Tribal Court before
2 the Honorable Donald D. Dupuis, from April 4, 1988 through
3 April 13, 1988. On October 4, 1988 the Tribal Court entered
4 Findings of Fact, Conclusions of Law and Judgment, which found
5 the defendants negligent and apportioned comparative negligence
6 at forty percent (40%) for Blackwater and the Tribes, and sixty
7 percent (60%) for McCrea, Baldwin and Glacier Carriers.
8 Damages were awarded in the total amount of three million, one
9 hundred forty-six thousand, six hundred, fifty seven and zero
10 cents, (\$3,146,657.00) together with Court costs in the amount
11 of six thousand, one hundred and sixty-four and no/100 dollars,
12 (\$6,164.00), interest at the rate of ten percent (10%), and
13 costs of action with payment of the judgment to be proportioned
14 to the Defendants stated percentage of fault.

15 Defendants McCrea, Baldwin and Glacier Carriers appealed
16 the Tribal Court's Findings of Fact, Conclusions of Law and
17 Judgment dated October 4, 1988, Modification of Judgment dated
18 January 17, 1989 and Alteration of Judgment dated January 23,
19 1989.

20 II.

21 FINDINGS OF FACT

22 On or about the 23rd day of November, 1983 on U.S. highway
23 93, north of St. Ignatius, Montana, on the Flathead Indian
24 Reservation, a collision occurred between a van that had been
25 stopped, parked and left unattended in an unlit condition
26 entirely in the northbound lane by the driver, Defendant Calvin
Blackwater, and a tractor/trailer vehicle transporting lumber,

1 being driven by Defendant Robert McCrea, owned by Defendant
2 Dennis Baldwin, and leased to Glacier Carriers.

3 Defendant Tribes, were under contract with the U.S.
4 Government to operate the Kicking Horse Job Corps Center,
5 (KHJCC), near Ronan, Montana, including all aspects of training
6 and supervision of Job Corps enrollees. Authorities at KHJCC
7 had instructed Blackwater to drive the van from KHJCC to the
8 Missoula, Montana airport to pick up certain Job Corps
9 enrollees.

10 Blackwater and some Plaintiffs stated that several
11 enrollees had consumed alcohol before Blackwater picked them
12 up. He stopped the van enroute to KHJCC to purchase gas. At
13 least a case of Budweiser beer was purchased and consumed by
14 Blackwater and the enrollees, together with smoking marijuana
15 by some enrollees, en route north on U.S. 93 towards KHJCC.

16 Blackwater did not wish to return immediately to KHJCC due
17 to the inebriated condition of himself and the enrollees. He
18 turned off U.S. Highway 93 at the Ashley Lake Road and drove on
19 the dirt road toward McDonald Lake in order to allow time to
20 recover from the drinking.

21 After a period of time, Blackwater drove the van back to
22 U.S. Highway 93 and traveled a short distance north and stopped
23 and parked the van entirely in the northbound lane of U.S.
24 Highway 93 while an enrollee relieved himself.

25 No flares or warning devices were placed by Blackwater to
26 alert approaching traffic. The van did not have its headlights
on at the time of impact, and tests conducted on the bulb

1 filaments of the van confirmed that all lights tested were not
2 on at the time of impact, this included park lights, signal
3 lights, brake lights and license plate lights.

4 With the van entirely in the northbound lane of traffic
5 and all lights off, Blackwater exited the van and attempted to
6 assist the enrollee in returning to the van. McCrea, operating
7 a vehicle owned by Baldwin and leased to Glacier Carriers, was
8 headed north on U.S. Highway 93 and was traveling with his
9 headlights on low beam. Some distance from the parked van
10 McCrea was aware of something out of the ordinary. He then
11 became cognizant of a stationary object in the traveled
12 roadway; however he was unable at the time to avoid contact
13 with the parked vehicle, and a collision took place. As a
14 result of the collision, Plaintiffs sustained damages and
15 injuries which varied greatly in degree and kind.

16 The evidence indicated that Plaintiff Larry Acothley did
17 not survive for an appreciable length of time necessary to
18 establish a survival action. Observations at the scene
19 established that Acothley was not alive after impact.

20 Plaintiff Stanley Big Horse suffered a severe head injury,
21 with subsequent seizures, loss of all vision in his left eye,
22 reduced vision in his right eye and an aggravation of a
23 pre-existing left hip condition.

24 Plaintiff Patrick Corne sustained a collapsed lung, minor
25 fractures, and under went surgery to remove his spleen. Corne
26 has completely recovered from all of his injuries, and the

1 risks of him ever contracting a serious infection and having
2 any residual problems are minimal.

3 Plaintiff Lori Little Warrior sustained injuries
4 consisting of a laceration to her right hand and arm and other
5 minor abrasions. She has fully recovered.

6 The Plaintiffs and Tribes entered into a loan agreement
7 dated June 27, 1985, whereby \$2,000,000.00 was advanced to
8 Plaintiffs, and was to be repaid by the Plaintiffs. The trial
9 Court found this to be a loan, not a settlement as argued by
10 Appellants, McCrea, Baldwin and Glacier Carriers. We agree.

11 Plaintiffs proceeded to file the instant action in Tribal
12 Court naming the Tribes, Blackwater, McCrea, Baldwin and
13 Glacier Carriers as party defendants.

14 All parties are Indians, except McCrea and Baldwin who are
15 non-Indians and Glacier Carriers is a corporation organized and
16 existing under the laws of the State of Montana.

17 At trial, McCrea, Baldwin and Glacier Carriers renewed
18 their motion to dismiss the Tribes as a party and to dismiss
19 the case on the grounds that the Tribal Court lacked
20 jurisdiction because of the loan agreement, which movants
21 interpreted as a settlement. Said motion was denied and the
22 case proceeded to trial. Subsequent to the trial and within
23 the time allowed, McCrea, Baldwin and Glacier Carriers
24 appealed.

25 On appeal the Appellants McCrea, Baldwin and Glacier
26 Carriers raised the issues of subject matter jurisdiction by
the Tribal Court over this matter, whether or not the trial

1 Court's apportionment of comparative negligence is supported by
2 credible evidence and whether or not damages are excessive and
3 speculative.

4 III.

5 CONCLUSIONS OF LAW

6 A. Subject Matter Jurisdiction

7 Does the Tribal Court of the Confederated Salish and
8 Kootenai Tribes of the Flathead Indian Reservation have subject
9 matter jurisdiction over a suit arising out of a collision
10 between a non-Indian trucker hauling lumber and a tribal van
11 carelessly parked on a highway within the reservation at night
12 by a tribal employee where all parties are Indians?

13 The consideration of subject matter jurisdiction involves
14 at least three areas, personal jurisdiction over the parties
15 involved, the territorial jurisdiction of the court, and the
16 authority of the court to hear the class of cases to which the
17 particular controversy belongs.

18 The authority of the Tribal Court of the Confederated
19 Salish and Kootenai Tribes to hear and decide civil matters is
20 found in Ordinance 36B, Chapter II, §1 (2) (1985) Law and Order
21 Code of the Confederated Salish and Kootenai Tribes, which
22 specifically provides that its civil jurisdiction extends to
23 ... "all parties found within the Reservation ... involved
24 directly or indirectly in ... (1) the transaction of any
25 business within the Reservation ... (ii) The ... use ... of any
26 property ... situated within the Reservation."

1 Glacier Carriers is a person as defined in the Law and
2 Order Code as are the other non-Indian defendants using the
3 ordinary definition of person. All non-Indian defendants were
4 personally served process and they responded. As a result of
5 this they were provided notice and an opportunity to be heard.
6 Due process was provided.

7 The conduct of all parties involved in the collision was
8 carried out by "... persons found within the Reservation ..."
9 and "directly" involved in the "use" of vehicles which are
10 "property .. situated within the Reservation". The carrying
11 out of the terms of a lumber hauling contract by the non-Indian
12 defendants is conduct occurring on the reservation by persons
13 found within the reservation. This is a consensual
14 relationship that contemplated delivery of lumber using a
15 highway on the reservation. It directly involves the use of
16 property situated within the reservation.

17 The conduct of utilizing a highway within the Flathead
18 Indian Reservation for commercial purposes created by the
19 non-Indian defendants entering into a consensual relationship
20 to be performed within the exterior boundaries of the
21 reservation has a direct effect on tribal interests and Indian
22 rights when a tractor-trailer loaded with lumber collides with
23 another vehicle on the highway, especially when owned by the
24 Tribes as in this case.

25 The use of Highway 93 through the Flathead Indian
26 Reservation by the non-Indian defendants in carrying out the
terms of the lumber hauling contract and the conduct involved

1 in the collision with the tribal van established sufficient
2 minimum contacts necessary to justify personal jurisdiction
3 over the non-Indian defendants. International Shoe Company vs.
4 State of Washington, 336 U.S. 220 (1957).

5 The fact that a right of way exists for Highway 93 makes
6 no difference when defining Indian Country. The definition of
7 Indian Country includes rights of way and therefore this
8 collision occurred within Indian Country, 18 U.S.C. §1151.

9 Civil jurisdiction over activities of non-Indians on
10 reservation lands presumptively lies in the Tribal Court unless
11 affirmatively limited by a specific treaty or federal statute.
12 Iowa Mutual Insurance Company vs. LaPlante, 107 S. Ct. 971
13 (1987). The existence of concurrent jurisdiction pursuant to
14 Public Law 280 is not a limitation on the authority of the
15 Tribal Court to exercise civil jurisdiction. Larrivee vs.
16 Morigeau, 602 P. 2d 563 (Mont. 1979). It merely provides
17 another forum in which to bring the action, however in this
18 case the only action filed was in Tribal Court.

19 The inherent authority for Indian tribes to administer
20 justice derived from their substantive powers of
21 self-government. Here the Confederated Salish and Kootenai
22 Tribes exercised their substantive powers through their Law and
23 Order Code.

24 A suit involving negligence is a civil matter that falls
25 within the particular class of cases authorized by the Law and
26 Order Code and consequently provides the authority for the

1 Tribal Court to exercise civil jurisdiction here, Ordinance
2 36B, CL II, § 1(2) (1985).

3 Therefore the Court holds that sufficient aspects of
4 subject matter jurisdiction are met to establish jurisdiction
5 in the Confederated Salish and Kootenai Tribal Court over a
6 negligence suit arising out of the collision of a truck hauling
7 lumber and a tribal van on the Flathead Indian Reservation.

8 This conclusion is based upon the findings that the
9 conduct and activities of the non-Indian defendants on the
10 reservation occurred within Indian Country as defined in
11 federal law; that all other parties to the suit are Indians,
12 including the Tribes; that the non-Indian defendants entered
13 into a consensual relationship to be performed on the
14 reservation; that the conduct and activities of the non-Indian
15 defendants directly affected tribal interests and Indian
16 rights; that no affirmative limitation exists upon the civil
17 jurisdiction of the Tribal Court; and that this case falls
18 within that class of cases to which the Tribal Court is
19 empowered to hear.

20 B. Apportionment of Fault

21 Is the trial court's apportionment of comparative
22 negligence supported by sufficient evidence? In the Judgment,
23 and the Alteration of Judgment the trial court ordered,
24 adjudged and decreed:

25
26 "that Defendants Blackwater and the Confederated Salish
Kootenai Tribes are forty percent (40%) negligent and

1 Defendants McCrea, Baldwin, and Glacier Carriers are sixty
2 percent (60%) negligent;"

3 The court supports this assignment of fault with an
4 exhaustive description of the physical conditions pertinent to
5 the accident, including a detailed description of the roadway
6 at the accident site and leading up to it. Also included is an
7 equally exhaustive study of what the driver of the semi-truck
8 should have seen and needed to do to avoid the accident. All
9 of this generally concentrates on the actions of Defendant
10 McCrea and, through him, Defendants Baldwin and Glacier
11 Carriers. Somehow the trial court did seem to conclude that
12 the uncontested fact that Defendant Blackwater had consumed an
13 undetermined amount of alcohol while enroute from Missoula was
14 unimportant. The Court found that his use of alcohol or other
15 controlled substances to be essentially irrelevant to the
16 issues involved in the proceedings. This conclusion flies in
17 the face of the evidence presented. Blackwater parked the van
18 12 inches to the west of the fog line; "placing the van
19 entirely within the north bound lane of Highway 93 and exposing
20 the occupants to a possible collision". The court found the
21 evidence did not conclusively show that Blackwater, who was
22 standing outside of the KHJC van at the time of impact, took
23 any actions which would have either drawn specific attention to
24 the parked KHJC van or further reduced its visibility.
25 Somehow this means that the facts that Blackwater parked the
26 van in the center of the northbound lane of Highway 93 without

1 lights of any sort and without warning signs or flares, after
2 consuming an undetermined amount of alcohol, at night, show
3 Defendant Blackwater, and through him, the Tribes are
4 responsible for a smaller share of fault than the
5 co-defendants. We disagree.

6 It is clear that Defendant McCrea should have seen and
7 somehow avoided the KHJC van and his failure to do so creates a
8 substantial measure of fault for the accident. The accident
9 site is not at the base of a steep hill or otherwise visually
10 obscured area. The fact that he stated to Witness Krantz, "I
11 just didn't see them" coupled with the absence of skid marks
12 prior to impact; his admitted failure to actively brake or
13 reduce speed; and no credible evidence indicating an attempt to
14 take evasive measures early enough to avoid impact, denotes an
15 inattentive and possibly extremely tired driver. The
16 destruction of the log books and trip tickets pertaining to the
17 tractor-trailer involved in this accident suggests an attempt
18 to cover-up how many hours McCrea may have been on the road.
19 This is speculative, however, and does not carry much weight in
20 the deliberations of this court. If Defendant McCrea had only
21 moved his vehicle eighteen inches to the left (the amount of
22 overlap of the two (2) vehicles at impact) the accident would
23 not have occurred at all. If he was driving in the center of
24 the northbound lane, which is 11 feet 6 inches wide, in a
25 tractor-trailer 8 feet wide, then he must have moved his
26 vehicle 6 feet 6 inches to the left in order to impact the van
with only 18 inches of the tractor-trailer. This indicates to

1 this Court that Defendant McCrea made more than no attempt to
2 take avoidance or evasive measures as indicated in the trial
3 court's findings of fact. McCrea indicated his reason for not
4 braking prior to impact was to prevent a complete loss of
5 control of what constituted a large vehicle. Clearly he is not
6 absolved of all fault by this finding because he was driving
7 too fast for the distance he should have been able to see down
8 the road, but there would have been nothing for him to attempt
9 to avoid if Blackwater had not parked the KHJC van squarely in
10 the center of the northbound lane of Highway 93 without warning
11 devices.

12 This Court does not find that the consumption of alcohol
13 was unimportant to the accident. It was a contributing factor
14 that impaired Blackwater's judgment to the point of negligently
15 parking the KHJC van in the northbound lane without any warning
16 signs or illumination of any sort. By parking his vehicle in
17 such a manner Blackwater set up events in a careless fashion
18 that ultimately ended in severe injury, property damage, and
19 loss of life.

20 The Court concludes that the trial court's findings of
21 negligence assigned at forty percent (40%) for Defendants
22 Confederated Salish and Kootenai Tribes and Calvin Blackwater,
23 and sixty percent (60%) for Defendants Roger McCrea, Dennis
24 Baldwin and Glacier Carriers, Inc. are not supported by
25 sufficient evidence. These findings of the Tribal Court are
26 reversed and this Court holds Defendants Confederated Salish
and Kootenai Tribes and Calvin Blackwater, sixty percent (60%)

1 negligent and the Defendants Roger McCrea, Dennis Balwin of
2 Glacier Carriers, Inc. forty percent (40%) negligent.

3 C. Damages.

4 Is the trial court's award of damages totaling \$3.15
5 million excessive and speculative? .

6 A collision between a tractor-trailer hauling lumber and a
7 van parked on the highway resulting in the death of one person,
8 massive head injuries to a second person, the removal of the
9 spleen of a third person and minor injuries to a fourth is a
10 foreseeable consequence of such an unfortunate incident.

11 The trial court carefully assessed these injuries and
12 reasonably calculated the amount of damages sustained in a
13 manner which this court finds to be supported by credible and
14 sufficient evidence.

15 This court holds that the trial court did not abuse its
16 discretion in assessing damages in the amounts set forth in the
17 judgment.

18 IV.

19 RELIEF

20 The conclusion of this Court is that the trial court has
21 subject matter jurisdiction over this matter requires that we
22 affirm the trial court as to that issue.

23 The finding that the trial court erred in its
24 apportionment of negligence and the finding of this Court that
25 the apportionment be assigned at sixty percent (60%) for
26 Defendants Blackwater and the Tribes and forty percent (40%)

1 for Defendants McCrea, Bladwin and Glacier Carriers require
2 that the judgment of the trial court be and is reversed.

3 The finding of this Court that the trial court's award of
4 damages is not excessive and speculative requires that we
5 affirm the trial court as to its award of damages in the amount
6 of \$3,152,803.00 plus interest at ten percent (10%) per annum.

7 IT IS SO ORDERED.

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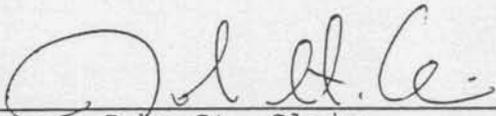
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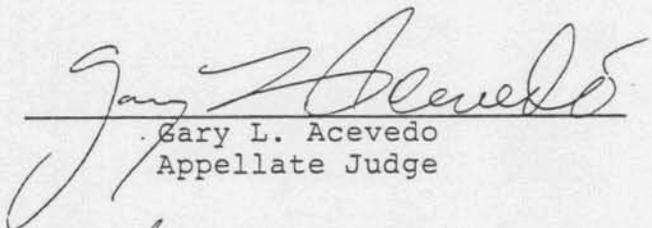
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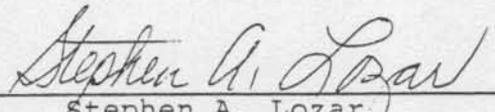
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John St. Clair
Chief Appellate Judge



Gary L. Acevedo
Appellate Judge



Stephen A. Lozar
Appellate Judge