IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2016 MTWCC 4

WCC No. 2015-3577

TAMARA L. HOLTZ

Petitioner

vs.

INDEMNITY INS. CO. OF NORTH AMERICA

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Petitioner, a flight attendant, was injured in a motorcycle accident which occurred approximately 40 miles from her hotel during a paid layover in Cincinnati, Ohio. Respondent denied liability for her injuries and moved for summary judgment on the grounds that her injuries did not arise out of or occur within the course of her employment.

Held: This Court granted Respondent's motion for summary judgment because Petitioner's injuries did not arise out of or within the course of her employment under § 39-71-407(2)(a), MCA (2013).

Topics:

Summary Judgment: Disputed Facts. Where Petitioner disagreed with Respondent's interpretation of the facts, but not with the substance of the facts themselves, this Court ruled that no dispute existed as to a genuine issue of material fact.

Summary Judgment: Materiality. Where Petitioner, a flight attendant who suffered an injury after leaving her hotel on a layover, disagreed with Respondent as to the exact time she left the hotel, this Court ruled that the disputed fact was not material, as it did not require resolution by the fact finder in order to resolve the case.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-407. Section 39-71-407(2)(a), MCA (2013), applies to

all breaks, regardless of duration. This Court ruled that a flight attendant's full-day layover constituted a "break" within the meaning of the statute because it was an interval within her scheduled work time in which she was not required or expected to perform job duties, and could attend to personal matters.

Employment: Course and Scope: Breaks. Section 39-71-407(2)(a), MCA (2013), applies to all breaks, regardless of duration. This Court ruled that a flight attendant's full-day layover constituted a "break" within the meaning of the statute because it was an interval within her scheduled work time in which she was not required or expected to perform job duties, and could attend to personal matters.

Employment: Course and Scope: Remote Worksite. Where Petitioner, a flight attendant, suffered an injury while riding a motorcycle during a layover, this Court rejected the argument that her "worksite" consisted of the entire city into which she flew as part of her job duties as a flight attendant.

Employment: Course and Scope: Recreational Activities. Where Petitioner, a flight attendant, suffered an injury while riding a motorcycle during a layover, this Court ruled that she was not within the course of her employment because she was not performing any specific tasks for her employer but rather had no restrictions on where she could go or what she could do during that time.

Employment: Course and Scope: Travel. Where Petitioner, a flight attendant, suffered an injury while riding a motorcycle during a layover, this Court rejected her argument that she was performing an important task for her employer merely by staying on the layover and being available for rerouting if necessary. A traveling employee is not within the course of her employment merely by staying in a city away from home.

Employment: Course and Scope: *Courser* Criteria. Where Petitioner was on a break at the time of her injury, her claim fell under § 39-71-407(2)(a), MCA (2013), and the *Courser* factors are not applicable.

¶ 1 Respondent Indemnity Ins. Co. of North America (Indemnity) moves for summary judgment, arguing that Petitioner Tamara L. Holtz's injury did not arise out of and in the

course of her employment.[1] Holtz opposes the motion on the grounds that there are issues of material fact and that Indemnity is not entitled to judgment as a matter of law.[2]

FACTS

¶ 2 Holtz is a flight attendant for Delta Air Lines, Inc. (Delta).[3] She has specified pre-flight, in-flight, and post-flight job duties.[4]

¶ 3 On June 21, 2014, Holtz signed in at the Salt Lake City, Utah, airport at approximately 7:00 p.m.[5] Holtz received her rotation sheet, which showed her scheduled flights.[6] Holtz was scheduled to depart Salt Lake City at 8:15 p.m. local time on a flight to Seattle, Washington, that was scheduled to land at 9:15 p.m. local time.[7] Holtz was then scheduled to leave Seattle at 11:15 p.m. local time on a flight to Cincinnati, Ohio, which was scheduled to land at 6:26 a.m. local time on June 22, 2014.[8]

¶ 4 Holtz was then scheduled for a one-day layover in Cincinnati.[9] Holtz was scheduled to be picked up at her hotel in Cincinnati on June 23, 2015, at 7:00 a.m. local time, and then to work a flight leaving Cincinnati at 8:20 a.m. local time and landing in Salt Lake City.[10]

¶ 5 Delta neither restricted where Holtz could go nor what she could do during her layovers.[11] However, provided that it follows the FAA Regulations requiring an 8-hour "legal rest" after flight attendants work a certain number of hours,[12] Delta may "reroute" its flight attendants, meaning Delta can change the flights on which they are to work.[13] Holtz explained, "[T]hey can at any point call us and change this trip rotation. . . . If Delta calls you either on your cell phone or in your hotel room and they say we have a new trip

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[1] Respondent/Insurer's Motion for Summary Judgment with Supporting Brief (Opening Brief), Docket Item No. 12.

[2] Petitioner's Answer Brief to Insurer's Motion for Summary Judgment (Response Brief), Docket Item No. 19.

[3] Holtz Dep. 22:21 – 23:1.

[4] Holtz Dep., Ex. 1.

[5] Holtz Dep. 27:13-16.

[6] Holtz Dep. 27:18-21, Ex. 2.

[7] Holtz Dep., Ex. 2.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] Holtz Dep. 38:3-8.

[12] Holtz Dep. 34:16 – 35:8.

[13] Holtz Dep. 36:2-21.

schedule for you, you've been rerouted . . . ."[14] Holtz estimates she is rerouted 25-30% of the time.[15] Although Delta did not require Holtz to carry her cell phone on her layover,[16] she testified, "They have sent – they have been known to send hotel security to your hotel room . . . [i]f you do not answer the phone . . . ."[17]

¶ 6 Delta paid Holtz $2.40 per hour as a "per diem wage" upon her signing in at the Salt Lake City airport on June 21, 2014, for the entire time she was away, which is called "time away from base."[18] Delta did not otherwise reimburse Holtz for her meals while she was on layover.[19] In addition to her "per diem wage," Delta paid Holtz her flight attendant wages from the time the airplane's brakes were released until they were engaged upon landing.[20]

¶ 7 On June 22, 2014, Holtz's flight to Cincinnati landed on time at the Cincinnati Northern Kentucky International Airport, which is west of Cincinnati in Hebron, Kentucky.[21] She finished her post-flight duties and took a crew shuttle to the Millennium Hotel in downtown Cincinnati, a trip that took approximately 30 minutes.[22] Delta provided the shuttle, and booked and paid for Holtz's hotel room.[23]

¶ 8 Holtz checked into the Millennium Hotel around 7:30 a.m.[24] Holtz had stayed at the hotel on her previous layovers in Cincinnati.[25] The area within walking distance of the hotel has shops and restaurants.[26] Holtz had previously eaten at restaurants in the area.[27]

¶ 9 Holtz took a nap in her room and woke up around noon.[28] Thereafter, Michael and Cheryl Scotland, friends who intended to take Holtz to lunch, arrived at the Millennium

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[14] Holtz Dep. 36:9-17.

[15] Holtz Dep. 37:6-15.

[16] Holtz Dep. 37:16-18.

[17] Holtz Dep. 37:20-22.

[18] Holtz Dep. 45:5 – 46:7, Ex. 2.

[19] Holtz Dep. 40:14 – 41:19.

[20] Holtz Dep. 49:11 – 50:5.

[21] Holtz Dep. 44:12-15. *See also* Affidavit of Joanne ("Jody") Griffiths, ¶ 5, Docket Item No. 14.

[22] Holtz Dep. 42:10-22, 44:19 – 45:4.

[23] Holtz Dep. 38:17-20, 41:20-24. *See also* Affidavit of Joanne ("Jody") Griffiths, ¶¶ 7, 8.

[24] Holtz Dep. 45:1-4.

[25] Holtz Dep. 38:23-24, 44:16-18.

[26] Holtz Dep. 52:16-18, 52:25 – 53:2.

[27] Holtz Dep. 52:19-24.

[28] Holtz Dep. 53:4-10.

Hotel on their motorcycle.[29] The Scotlands were accompanied by Randy and Kim Ogden, who were on their motorcycles.[30] Although Holtz met Michael when he worked for Delta, he had retired and none of the others were current Delta employees.[31]

¶ 10 Holtz got on the back of Michael's motorcycle and Cheryl got on the back of Randy's. The group planned to take a scenic ride, cross the Ohio River on a ferry, and have lunch in Kentucky.[32] After leaving Cincinnati, the group proceeded by motorcycle southeast on U.S. Highway 52, also known as the Ohio River Scenic Byway.[33] Holtz described it as a scenic, country road that is "remote."[34]

¶ 11 At approximately 2:42 p.m., Randy crashed into Michael's motorcycle.[35] Holtz suffered a leg injury in the accident.[36] The accident occurred 40.4 miles away from the Millennium Hotel.[37] Holtz estimates that they had been riding for 40 minutes before the accident occurred.[38]

¶ 12 Indemnity denied liability for Holtz's claim on the grounds that Holtz's injury did not arise out of or in the course of her employment.[39]

LAW AND ANALYSIS

¶ 13 This case is governed by the 2013 version of the Montana Workers' Compensation Act (WCA) because that was the law in effect at the time of Holtz's injury.[40]

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[29] Holtz Dep. 53:14 – 54:3; 69:5-15.

[30] Holtz Dep. 54:24 – 55:2, 69:5-15; Affidavit of Scott Marshall, Ex. A-7 to A-8, Docket Item No. 13.

[31] Holtz Dep. 54:1-8, 66:1-7.

[32] Holtz Dep. 69:19 – 70:2.

[33] *See* Holtz Dep. 70:13-24; Affidavit of Scott Marshall, ¶ 3.

[34] Holtz Dep. 71:8-10, 85:18-23.

[35] Affidavit of Scott Marshall, ¶ 6, Ex. A-1 to A-8.

[36] Holtz Dep. 89:7-13.

[37] Holtz Dep. 86:6 – 87:4, Ex. 6.

[38] Holtz Dep. 79:16-20.

[39] Opening Brief at 1.

[40] *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201(1)(a), MCA.

¶ 14 This Court renders summary judgment when the moving party demonstrates an absence of a genuine issue of material fact and entitlement to judgment as a matter of law.[41] After the moving party meets its initial burden to show the absence of a genuine issue of fact and entitlement to judgment, the burden shifts to the party opposing summary judgment either to show a triable issue of fact or to show why the undisputed facts do not entitle the moving party to judgment.[42]

Issue 1: Whether there are any issues of material fact.

¶ 15 Holtz first argues that issues of material fact preclude summary judgment.[43] Indemnity argues that Holtz's purported issues of fact are "simply clarifications" and do not create any triable issues of fact.[44]

¶ 16 Holtz argues that an issue of material fact exists concerning Indemnity's statements: "Delta pays its Flight Attendants an hourly per diem rate when they are on a layover," and "Delta did not pay for meals or otherwise reimburse its Flight Attendants for other expenses during the layover."[45] Holtz notes that she received $2.40 per hour the entire time she was on her rotation, including her scheduled layover.[46] She argues that Delta pays this fee to reimburse flight attendants for travel expenses.[47] However, from Holtz's deposition testimony, this Court understands that Delta paid Holtz $2.40 per hour starting when she signed in at Salt Lake City and until she returned to Salt Lake City and signed out. This Court also understands that when Indemnity stated that Delta did not pay for or otherwise reimburse Holtz for meals, it meant that Holtz did not submit receipts for her meals and receive a payment from Delta for the cost of her meals in addition to her per diem wage. There are no triable issues of fact regarding Holtz's wages.

¶ 17 Holtz also disagrees with Indemnity's contention that Delta had "no control over Holtz during the layover and did not restrict Holtz's activities during the layover."[48] Likewise, Holtz argues that a material issue of fact exists as to whether she was performing "any of her Flight Attendant job duties when the accident occurred."[49] Holtz

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[41] ARM 24.5.329(2).

[42] *Amour v. Collection Professionals, Inc.*, 2015 MT 150, ¶ 7, 379 Mont. 344, 350 P.3d 71 (citation omitted).

[43] Response Brief at 3-5.

[44] Respondent/Insurer's Reply Brief in Support of Motion for Summary Judgment (Reply Brief) at 2, Docket Item No. 21.

[45] Response Brief at 3.

[46] *Id.*

[47] *See* Response Brief at 3.

[48] Response Brief at 4.

[49] Response Brief at 4-5.

maintains that she was performing job duties the entire time she remained in Cincinnati and Delta had a significant amount of control over her because Delta flew her there, she stayed in a hotel where Delta told her to stay, Delta had the right to reroute her, and she was subject to be on-call for a trip rotation "at a moment's notice."[50] However, Indemnity does not dispute that Delta flew Holtz to Cincinnati, provided shuttle service to the hotel, paid for the hotel, and scheduled her for a day-long layover, or that Delta could have rerouted her.[51] Thus, these facts are not disputed. Although Holtz disputes Indemnity's interpretation of these facts, "[a] mere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact."[52]

¶ 18 Holtz also argues that a material issue of fact exists as to what time she left the hotel.[53] Holtz testified that the Scotlands picked her up at the Millennium Hotel at approximately 1:00 p.m.,[54] they rode for approximately 40 minutes before the accident, and the accident report states that the accident occurred at 2:42 p.m.[55] She now concedes that the accident report is correct and the Scotlands picked her up around 2:00 p.m.[56] Although this Court understands that Holtz was on a "legal rest" and could not have been rerouted before approximately 2:26 p.m.,[57] the exact time Holtz left the hotel is not a material fact. "A material fact is a fact that involves the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact."[58] Under Montana law, this Court need not find the exact time Holtz left the hotel. Moreover, for purposes of ruling on Indemnity's summary judgment motion, this Court considers the evidence in a light most favorable to Holtz and draws all reasonable inferences in her favor.[59]

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[50] *Id.*

[51] Opening Brief at 2-3.

[52] *Gliko v. Permann,* 2006 MT 30, ¶ 25, 331 Mont. 112, 130 P.3d 155 (citation omitted) (internal quotation marks omitted).

[53] Response Brief at 4.

[54] Holtz Dep. 53:14-18.

[55] Response Brief at 4.

[56] *Id*.

[57] Opening Brief at 7 (citing 14 C.F.R. § 121.471 (year unknown)).

[58] *Harrington v. The Crystal Bar, Inc.*, 2013 MT 209, ¶ 10, 371 Mont. 165, 306 P.3d 342 (citation omitted) (internal quotation marks omitted).

[59] *Victory Ins. Co. v. Montana State Fund*, 2015 MT 82, ¶ 27, 378 Mont. 388, 344 P.3d 977 (explaining, "[A] court considering summary judgment must view the evidence in a light most favorable to the non-moving party and all reasonable inferences are to be drawn in favor of the party opposing summary judgment . . . .").

¶ 19 Holtz has not set forth any disputed issue of material fact that would require this Court to weigh the evidence and make findings. Thus, Indemnity has met its burden of establishing that there are no issues of material fact.

Issue 2: Whether Holtz's injury arose out of and in the course of her employment.

¶ 20 For an injury to be compensable under the WCA, it must arise out of and in the course of employment.[60] The phrase "arising out of" denotes a "causal connection between the injury and employment."[61] The phrase "'in the course of employment,' generally refers to the time, place, and circumstances of an injury in relation to employment."[62]

¶ 21 Section 39-71-407(2)(a), MCA, which the Legislature enacted in 2011, states:

> (2) An injury does not arise out of and in the course of employment when the employee is:
>
> (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break . . . .

¶ 22 This Court agrees with Indemnity that Holtz's injury did not arise out of and within the course of her employment under the three factors in this statute. First, Holtz was on a paid break, a point she initially concedes.[63] Although she thereafter argues that § 39-71-407(2)(a), MCA, applies only to 15-minute breaks,[64] the Legislature did not limit the statute to short breaks; thus, it applies to all breaks, regardless of duration. Although Holtz also questions whether a full-day layover can be considered a break,[65] Holtz's layover satisfies the definition of "break" because it was an interval within her scheduled work time when she was not required or expected to perform her job duties, and could attend to personal matters.

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[60] § 39-71-407(1), MCA.

[61] *Parker v. Glacier Park, Inc.*, 249 Mont. 225, 228-29, 815 P.2d 583, 585 (1991) (citation omitted).

[62] *Pinyerd v. State Comp. Ins. Fund*, 271 Mont. 115, 119, 894 P.2d 932, 934 (1995) (citation omitted).

[63] Response Brief at 5 ("Holtz agrees that she was injured while riding on the back of a motorcycle, during a paid break; however, she does not agree with the insurer's argument that she was 'not performing any of her job duties when the injury occurred.'").

[64] Response Brief at 9.

[65] *Id.*

¶ 23 Second, Holtz was not at any of Delta's worksites at the time of the accident, another point she initially concedes.[66] She was on the Ohio River Scenic Byway, more than 40 miles from her hotel, and farther than that from the airport. Delta's employees did not perform their work at the accident site. Although Holtz thereafter argues, "she was in Cincinnati at her employer chosen worksite for that day,"[67] her interpretation of the word "worksite" is overly broad. As used in § 39-71-407(2)(a), MCA, the phrase "worksite of the employer" means a place where an employer carries on its business and at which its employees perform their job duties.[68] Thus, while the evidence shows that Delta has a "worksite" near Cincinnati — the Cincinnati Northern Kentucky International Airport — the greater Cincinnati metropolitan area, in its entirety, is not one of Delta's "worksites."

¶ 24 Third, Holtz was not performing any specific tasks for Delta at the time of the accident. Holtz was not performing any of her specified job duties at the time of the accident. She was on a scenic motorcycle ride going to lunch with friends. The Montana Supreme Court has explained that an employee is not within the course of her employment during a lunch break "because normally the duration of the lunch period, when lunch is taken off the premises, is so substantial and the employee's freedom of movement so complete that the obligations and controls of employment can justifiably be said to be in suspension during this interval."[69] It stands to reason that if an employee on a lunch break is not within the course of her employment, then an employee with no restrictions on where she can go or what she can do during a day-long layover is not within the course of her employment.

¶ 25 This Court disagrees with Holtz's contention that since Delta could have rerouted her, she "was performing an important task for her employer at the moment of her injury. She was staying in Cincinnati as required by Delta."[70] The Montana Supreme Court has held that a traveling employee is not within the course of her employment merely by

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[66] Response Brief at 3 (stating it is undisputed that, "The accident scene was not located on Delta's property or worksite.").

[67] Response Brief at 9.

[68] *See Griffin v. Indus. Accident Fund*, 111 Mont. 110, 115, 106 P.2d 346, 348 (1940) (citations omitted) ("[U]nless . . . the premises on which the injury occurred were used in connection with the actual place of work where the employer carried on the business in which the employee was engaged, there can be no recovery."). *See also Heath v. Montana Mun. Ins. Auth.*, 1998 MT 111, ¶ 20, 288 Mont. 463, 959 P.2d 480 (relying upon *Griffin* and holding that a city employee was not yet within the course of her employment when she fell on a sidewalk but had not yet "reached the sidewalk leading into her workplace and was, therefore, not on a sidewalk used only by employees or persons conducting City business").

[69] *See Carrillo v. Liberty Northwest Ins*., 278 Mont. 1, 7-8, 922 P.2d 1189, 1193-94 (1996) (internal quotation marks omitted) (citing 1 *Larson's Workmen's Compensation Law*, § 15.51 at 4-157 and quoting § 15.54 at 4-183 (1996)).

[70] Response Brief at 9.

staying in a city away from home.[71] The court has also held that unless an exception to the going and coming rule applies, an employee who is specially called into work is not within the course of her employment until she arrives at work.[72] In addition, this Court agrees with Indemnity that even if Holtz was performing a specific task for Delta by staying in Cincinnati, Holtz was not within the course of her employment at the time of the accident because Holtz had travelled outside of Cincinnati, was not attending to any employment-related matters and, despite Holtz's claim, could not have been rerouted "at a moment's notice."[73]

¶ 26 Although this case falls under the 2013 WCA, Holtz urges this Court to disregard § 39-71-407(2)(a), MCA (2013), and rule that she was within the course of her employment. This Court is not persuaded by any of her arguments.

¶ 27 Holtz first argues that she was within the course of her employment under *Carrillo v. Liberty Northwest Ins.*[74] In *Carrillo*, the Montana Supreme Court adopted a four-factor test[75] to determine whether an employee on a coffee break was within the course of her employment and held that Carrillo was in the course of her employment when she was hit by a car while crossing a street on a 15-minute, paid coffee break while en route to purchase a gift for her supervisor.[76] Nevertheless, *Carrillo* is inapplicable to this case for two reasons. First, in response to *Carrillo* and *BeVan v. Liberty Northwest Ins. Corp*.[77] – where the court held that an employee who was in a car accident while driving back to work from her home while on her 15-minute break was within the course of her employment – the 2011 Legislature enacted § 39-71-407(2)(a), MCA, which changed the factors to use in determining if an employee on a break is within the course of her

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[71] *Correa v. Rexroat Tile,* 217 Mont. 126, 130, 703 P.2d 160, 163 (1985) ("Appellant makes the argument . . . that employees working away from home should be considered in a 'travel status' on a 24-hour, around the clock basis, regardless of the nature of their activity. If such is the law elsewhere we refuse to adopt it here."). *See also Dale v. Trade St., Inc*., 258 Mont. 349, 352-53, 854 P.2d 828, 830 (1993) (citing *Correa*, 217 Mont. at 129-31, 703 P.2d at 163) ("It is well-established in Montana that traveling employees are not covered 24 hours a day, without limitation, regardless of the conduct or activity in which they are involved. The employee must remain in the course and scope of employment while traveling in order for the injury to be compensable.").

[72] *State Comp. Mut. Ins. Fund v. James*, 257 Mont. 348, 849 P.2d 187 (1993) (holding that hotel employee who was called into work because a computer program was not working properly was not within the course of her employment while she was driving to work).

[73] *See Dale*, 258 Mont. at 351, 355-56, 854 P.2d at 829, 832 (holding that claimant, a truck driver, was not within the course of his employment after he parked his truck outside of Miles City and went into town with his brother as he had "temporarily abandoned the course of his employment and during which he attended to no employment-related matters. During the deviation from his scheduled route, the continuity of Dale's employment here was severed and remained so as he had not returned to the point of deviation from the path of duty.").

[74] 278 Mont. 1, 922 P.2d 1189 (1996).

[75] *Carrillo*, 278 Mont. at 9-12, 922 P.2d at 1194-96.

[76] *Carrillo*, 278 Mont. at 2, 12, 922 P.2d at 1190, 1196.

[77] 2007 MT 357, 340 Mont. 357, 174 P.3d 518.

employment. Therefore, this Court uses the factors set forth in § 39-71-407(2)(a), MCA (2013), since that was the law in effect at the time of Holtz's accident.[78] Second, in *Carrillo*, the court explained that its holding was limited to short coffee breaks and did not apply to longer breaks, such as lunch breaks.[79]

¶ 28 Holtz next argues that her injury arose out of and in the course of her employment under *Michalak v. Liberty Northwest Ins. Corp*.[80] Michalak's employer rented wave runners for its company picnic on Flathead Lake, an event for which the employer invited its employees and vendors.[81] Michalak's supervisor asked him to oversee the wave runners, including instructing riders on how to ride them safely, monitoring the wave runners' fuel and oil levels, and enforcing time limits.[82] Michalak crashed while riding a wave runner "during the performance of his duties" at the picnic and he suffered serious injuries.[83]

¶ 29 The court applied the four-factor test from *Courser v. Darby School District #1*[84] to determine whether Michalak was in the course of his employment:

> (1) whether the activity was undertaken at the employer's request; (2) whether the employer, directly or indirectly, compelled the employee's attendance at the activity; (3) whether the employer controlled or participated in the activity; and (4) whether the employer and the employee mutually benefited from the activity. Each factor's presence or absence "may or may not be determinative," and each factor's significance "must be considered in the totality of all attendant circumstances."[85]

The *Michalak* court concluded that since the employer hosted the company picnic and since Michalak's supervisor assigned Michalak the duty of supervising the wave runners, he was in the course of his employment under the *Courser* factors.[86]

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[78] *See* § 1-2-103, MCA (stating, in relevant part, "[S]tatutes establish the law of this state respecting the subjects to which they relate.").

[79] *Carrillo*, 278 Mont at 7-8, 922 P.2d at 1193-94.

[80] 2008 MT 3, 341 Mont. 63, 175 P.3d 893.

[81] *Michalak*, ¶¶ 5, 6.

[82] *Michalak*, ¶ 8.

[83] *Michalak*, ¶¶ 6, 8, 26.

[84] 214 Mont. 13, 692 P.2d 417 (1984).

[85] *Michalak*, ¶ 13 (citation omitted).

[86] *Michalak*, ¶¶ 14-16, 19.

¶ 30 This Court agrees with Indemnity that *Michalak* is of no precedential value to Holtz. She was on a break and, therefore, this case falls under § 39-71-407(2)(a), MCA (2013), and not the *Courser* factors. Moreover, Holtz was not in the course of her employment at the time of the motorcycle accident under the *Courser* factors. Unlike the employer in *Michalak*, Delta did not sponsor or otherwise participate in Holtz's motorcycle ride; request that she take the motorcycle ride; compel her attendance at the location of the accident, more than 40 miles from her hotel; nor assign her any job duties to perform while on the motorcycle ride. Thus, *Michalak* does not support Holtz's case.

¶ 31 Finally, Holtz urges this Court to rely upon *Garver v. Eastern Airlines*,[87] where an intermediate court of appeals in Florida held that a flight attendant was within the course of her employment when she was in a car accident on her way to a friend's house during a layover in Los Angeles.[88] Notwithstanding, the law of Montana in this area is more restrictive than the law of Florida.[89] This Court also agrees with Indemnity that *Garver* is inapplicable because § 39-71-407(2)(a), MCA, controls under the facts of this case.[90]

¶ 32 At the time of the motorcycle accident, Holtz was not within the course of her employment as a matter of law. Accordingly, Indemnity is entitled to summary judgment.

ORDER

¶ 33 Indemnity's motion for summary judgment is **granted.**

¶ 34 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

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[87] 553 So. 2d 263 (Fla. Dist. Ct. App. 1990).

[88] *Garver*, 553 So. 2d at 264, 268.

[89] *Compare Garver*, 553 So. 2d at 264-65, 267 (stating that under Florida law, a traveling employee is within the course of her employment "continuously during the trip," unless she departs on a personal errand, and remains in the course of employment while engaged in "reasonable" activities), *with Correa,* 217 Mont. at 130, 703 P.2d at 163 (holding that under Montana law, a traveling employee is not within the course of employment continuously during her trip).

[90] *See Hampson v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 57, ¶ 30 (refusing to follow cases from other jurisdictions because "Montana workers' compensation benefits are governed by Montana statutes, which often are unique.").

DATED this 6th day of April, 2016.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Thomas J. Murphy.
Jeffrey B. Smith

Submitted: October 1, 2015