

**STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT
WORKERS' COMPENSATION**

CYNTHIA KEARNS,
Claimant,

v.

ROYAL RIVER CASINO,
Employer,

and

FIRST NATIONS COMPENSATION PLAN,
INC.,
Insurer.

HF No. 116, 2008/09

ORDER OF DISMISSAL

The Department has received and considered the Employer and Insurer's Motion to Dismiss, the Claimant's Resistance to Motion to Dismiss, and the briefs and attachments made to the above submissions. The Insurer has also filed with the Department a Notice of Bankruptcy Stay, pursuant to 11 U.S.C. § 362, effective April 15, 2009. The Stay is in effect as to actions made against Insurer.

SDCL § 62-5-7 clearly states that any employer who fails to comply with the provisions of SDCL §§ 62-5-1 to 62-5-5, shall be deemed to have elected not to operate under the provisions of SDCL Title 62. Employer has elected not to operate under the provisions of SDCL Title 62 and has not obtained workers' compensation insurance, or any alternative allowed by Title 62, authorized to conduct business in the State of South Dakota. Insurer is not an insurer authorized to conduct business in South Dakota. Furthermore, Employer is not a self-insured employer as set forth in SDCL § 62-5-5.

The Division of Labor and Management has no jurisdiction to hear the Petition brought forward by Claimant in this matter, as Employer has not elected to operate under Title 62 in accordance with § 62-5-7. The Department makes no decision or finding on the issue of Employer having tribal sovereignty.

The Department, being fully advised in the premises,

HEREBY ORDERS that Claimant's Petition for Hearing against Employer be Dismissed with Prejudice for lack of jurisdiction.

IT IS FURTHER ORDERED that Claimant's Petition for Hearing against Insurer be Conditionally Dismissed with Prejudice pending the lifting of the Bankruptcy Stay. At the time the Insurer's Bankruptcy Stay is Lifted an Order of Dismissal shall be entered by the Department.

BY THE DEPARTMENT,

Dated this 15th day of May, 2009.

Catherine Duenwald
Administrative Law Judge