

Personnel Probe

Back-to-back BIA lawsuits could spur an investigation into classified files

By Jeff Hinkle

TWO MULTI-MILLION DOLLAR LAWSUITS aimed at the Bureau of Indian Affairs could spark a court-ordered, wide-open examination of the agency's personnel files, hiring practices and management procedures.

Lawyers representing the families of four tourists — who were killed earlier this year in a traffic pile-up triggered by a drunk BIA driver — say they plan to request access to the agency's personnel records. They believe those files will prove the agency is sloppy in its oversight of workers and that drinking on the job by BIA staff is a prevalent problem.

Those allegations come on the heels of the disastrous events that unfolded one day last winter when Lloyd Larson climbed behind the wheel of a BIA truck.

On the afternoon of January 25, Larson, a BIA construction inspector, was clocked driving in excess of 70 miles per hour on the wrong side of Interstate 40 north of Albuquerque, N.M. A state lawman pursued him for several miles in an attempt to force Larson off the road, but those efforts were in vein. Once Larson crested a hill, he ran head-on into the eastbound Nebraska car, instantly killing its four passengers, Larry and Rita Beller and Edward and Alice Ramaekers, who were on the final leg of an off-season vacation.

A blood-alcohol test measured Larson at 2.5 — nearly three times the state limit. He later confessed to polishing off at least eight beers shortly before the deadly encounter, although police say that he may have consumed as many 11 beers. Further digging revealed that Larson had a long history of DUI citations and arrests on his record.

In May, Larson, a member of the Navajo Nation, pled guilty to four counts of second-degree homicide in connection to the collision and promised to aid the attorneys for the vic-

tims' families in their case against his former employers. Those lawyers maintain that Larson's BIA bosses knew about his tainted driving record and that they took no action to monitor him or to keep him off the road. In

"There is a 'don't ask, don't tell' policy at the BIA," charges Randi McGinn, the attorney representing the Ramaekers family. "What we hope the outcome of this case will be is that — whether you're a government agency or a pri-



Roadside crosses mark the site where Larry and Rita Beller and Edward and Alice Ramaekers were killed in a head-on collision with BIA employee Lloyd Larson.

fact, Larson's supervisors pulled strings in 1994 to reinstate his driver's license after it was revoked following two DUI convictions that year.

But those same attorneys say that Larson's arrest record represents only the tragic tip of the iceberg. Drinking and driving, they say, is a widespread problem among BIA workers who toil in remote stretches of Indian Country with minimal supervision. Perhaps most troubling is their assertion that BIA supervisors take a lax attitude towards the problem.

vate company — if you're letting people drive your car, you have to ask and you can't stop asking."

She says such intervention is particularly important when it comes to BIA road workers who check out vehicles for weeks at a time while they survey hundreds of miles of open country.

If a judge agrees with McGinn's assertions, it could cost the BIA plenty. The Ramaekers are demanding \$37 million in damages, while

Beller family members are seeking more than \$72 million.

In keeping with the standard policy involving pending legal matters, spokespeople for both the BIA and the Justice Department — the agency that represents all arms of the federal government when it comes to legal matters — declined to comment on the matter.

But the lawyers representing the two families, on the other hand, seem anxious to discuss their cases.

"Based on what we have uncovered so far it is hard to imagine Larson's case was an isolated incident," says Lynn Sharp, the lawyer representing the Bellers. "Right now the BIA is taking this righteous stand, saying they are cleaning up the problem and screening their employees. What we're saying is that they should have been doing that all along."

Among the evidence gathered at the accident site last January, was a note penned by Larson assuring his immediate supervisor, Bobby Pablo, that — in spite of a recent drunk driving arrest near the town of Crownpoint, N.M. — his status as a licensed driver remained intact.

"The tribal court ... can't revoke my driving privileges anyway if it isn't a major accident," wrote Larson in the signed memo he later faxed to his boss.

"Pablo did not take any action after seeing that," says Sharp. "And we know that that letter went to certain levels in the chain of command and there was no action taken. I interpret that to mean that until there was a serious accident, no one was concerned."

Just a few months before the Larson accident, there was another collision brought on a BIA worker who had been drinking. On September 4, 2001 Tommy Moses, a BIA employee driving an agency Jeep, was arrested at the scene of an accident in Gallup, N.M., after he collided with another car. Moses was driving on a revoked license at the time and told the arresting officer that he had had "six or seven cans of beer for lunch" prior to the wreck. Although no one was killed, another motorist was injured.

And while two intoxicated BIA employees does not incriminate the whole agency, Sharp says his research suggests those two incidents are far from exceptions.

In his written case brief, Sharp cites "reliable sources" who tell of BIA superintendents driving home drunk from BIA functions and employees showing up intoxicated at work.

Since filing that brief, he says, other information has come across his desk.

"[The] names of others ... are starting to surface," he says. "We are hearing from people inside the Indian community, and we've heard from a couple of whistleblowers within the BIA. We've also gotten a couple of letters from people saying, 'Finally, something is being done about this problem.'"

McGinn also says her investigation shows that drinking and driving among BIA workers goes beyond the arrest records of Larson and Moses.

"We have evidence that these are not isolated cases. I won't comment on it now, but it will come out in court," she says.

If it goes to court, that is.

Under the Federal Tort Claims Act, anyone suing a branch of the U.S. government for negligence must first make their case in writing, notifying all interested parties. According to the law, federal officials then have six months to respond. They can settle or begin negotiations towards a settlement. Or they can choose to fight it out in court. If the Feds decide to fight, no jury will hear the case. Only a judge will render a verdict.

In light of the facts of the case, Sharp is optimistic that the matter will be resolved quickly.

"My gut is they will settle," he says. "They can't afford to let it see the light of day. Larson was driving their truck, using their credit card. He has already pleaded guilty to four counts of murder."

Sharp is not alone in this conclusion.

"It's such an outrageous case, I can't see how it won't be settled," says a tort law professor with the University of New Mexico at Albuquerque who has watched the case from the sidelines. "If they can show that the BIA has been involved in any kind of cover-up, it puts a lot of pressure on the government to settle."

But not everyone agrees.

An attorney with the Indian Law Resource Center in Helena, Mont., says that generally Uncle Sam does not roll over when it comes to lawsuits.

"As a rule the government fights these claims," he says. "The government gets sued all the time and they rarely settle out of court."

But the two legal experts — both of whom asked not to be identified — agree on one thing. If the Justice Department does decide to fight the two hefty lawsuits, it could mean open season on the BIA's personnel files.

"The process of discovery would allow the plaintiffs' attorneys to look into all of the BIA management procedures, the driving records of their employees, the BIA's recruiting practices, its training practices and issues of how much control it has over its employees," says the Montana lawyer.

The professor concurs.

"There would be broad discovery. If they wish to show a pattern of cover-ups, the attorneys could request to see anything involved in that pattern of cover-ups," he says.

McGinn would not speculate on whether there might be an early settlement for her clients. "This is the kind of case the government should settle. The liability is clear, but we are preparing to go to trial," she says.

The question of liability gets a little fuzzier when the role of the overlapping law enforcement agencies that patrol the Navajo Reservation in northeastern New Mexico and northwestern Arizona comes into question.

Going back to 1986, Larson had nine arrests and convictions for DUIs on his driving record. That list occurred in six different jurisdictions on or around the reservation. But it was only after last January's crash that the local press began to connect the dots and complete a picture showing just how murky Larson's driving record really was.

For Duane Beyal, managing editor of the Navajo Times, that may be the biggest lesson in the case.

"The main problem it shows is how all of these different law enforcement agencies and various jurisdictions are unwilling or unable share information," says Beyal. "You've got the BIA, the tribal police, the police in Gallup and others who had arrest records for Larson, but no one put it all together."

That oversight was not lost on the Beller and the Ramaekers survivors. Members of both families have since contacted Navajo tribal officials — as well as officials from other tribes — to urge them to begin sharing information with state authorities regarding driving records.

Sharp and McGinn say there have been discussions in the past in their state to get tribes to exchange police blotters. Sharp says those talks have always languished before, but the Larson case has put them in the forefront.

But McGinn says many area tribes scream sovereign immunity when state officials start talking about gaining access to tribal records.

"[W]hen we contacted the tribal police in Crownpoint to get Larson's record from there, we were told we needed Larson's signature. Anywhere else in the state, that information would be considered public information," she says.

When asked if there might be any future legal action in the works directed at the Navajo government for their failing to make any part of Larson's driving record available to state officials, Sharp had no comment.

"But one has to wonder if they should share some of the responsibility for what happened," he says.

Robert Allan, legal counsel for Navajo President Kelsey Begaye, says last April his tribe entered into an agreement with New Mexico authorities to begin sharing the criminal records of tribal members.

But as to Sharp's suggestion that the tribe should shoulder some of the blame for last January's tragedy, Allen had only this to say: "I think it's unfair to scapegoat the Navajo Nation for issues that face every jurisdiction in the country," he says. "It sounds like a racially motivated comment aimed at a windfall for his clients." □