

SUPREME COURT OF THE STATE OF MONTANA

Montana Petroleum Tank Release Compensation Board v.
Northwestern National Casualty Company

2009 MT 28 (Supreme Court of the State of Montana 2009) · No. DA 07-0596, DA 08-0073, DA 08-0074, DA 08-0278 · Decided February 3, 2009

SUMMARY

The Montana Supreme Court held that Northwestern National Casualty Company was not required to post a bond or obtain a current certificate of authority before responding to suits brought by the Montana Petroleum Tank Release Compensation Board. Because the claims arose from insurance contracts issued while the insurer was authorized to transact business in Montana, service of process was governed by the irrevocable appointment provision in § 33-1-601, MCA, rather than the unauthorized-insurer provisions of § 33-1-615, MCA. The Court reversed and remanded the district court orders.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Patricia O. Cotter; Patricia O. Cotter; John Warner; James C. Nelson; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	February 3, 2009
DOCKET	DA 07-0596, DA 08-0073, DA 08-0074, DA 08-0278
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeal from orders granting the Board's motions to strike Northwestern's motions to set aside defaults and a default judgment. The District Courts held that Northwestern had to post bond or obtain a current certificate of authority before filing pleadings under § 33-1-615, MCA.
STANDARD OF REVIEW	The Supreme Court reviewed the district courts' conclusions of law for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Northwestern National Casualty Company, Employers Mutual Casualty Company, Ace Property & Casualty Insurance Company v.

TOPICS

insurance

subrogation

statutory interpretation

pleadings

appellate procedure

PRACTICE AREAS

insurance law

civil procedure

appellate procedure

environmental law

QUESTIONS PRESENTED

1. Whether § 33-1-615, MCA, required Northwestern to post bond or obtain a current certificate of authority before filing pleadings in the Board's actions.
2. Whether service of process and Northwestern's ability to defend were governed by § 33-1-601, MCA, because the underlying insurance contracts were issued while Highlands/Northwestern was an authorized insurer, or instead by §§ 33-1-612 and -613, MCA, governing unauthorized insurers.

HOLDINGS

1. Section 33-1-615, MCA, did not require Northwestern to post bond or obtain a current certificate of authority before responding to the Board's suits because the suits arose from insurance contracts issued while Highlands/Northwestern was an authorized insurer.

KEY QUOTATIONS

“The bond and COA requirements of § 33-1-615, MCA, are triggered only when service is effectuated pursuant to §§ 33-1-612 and -613, MCA.” (¶ 15)

“Thus, Northwestern is not required to post bond or obtain a COA in order to respond to the Board’s suit.” (¶ 16)

FACTUAL BACKGROUND

Highlands Insurance Company obtained a Montana certificate of authority in 1964 and later merged with Northwestern National Casualty Company. While authorized to transact insurance in Montana, Highlands issued policies covering three petroleum-related sites. After petroleum releases occurred, the Montana Petroleum Tank Release Compensation Board reimbursed the site owners or successors for response costs and then sued Northwestern seeking subrogation and compensation under the policies. Highlands/Northwestern later entered receivership, its certificate of authority was suspended and ultimately terminated, and the Board served Northwestern in the three actions in 2007.

PROCEDURAL HISTORY

The Board filed three actions in Montana district courts seeking subrogation and compensation under insurance policies issued by Highlands Insurance Company, which later merged with Northwestern. Defaults were entered in all three actions, and one district court entered a default judgment. The district courts struck Northwestern's

efforts to set aside the defaults or default judgment because Northwestern lacked a current certificate of authority and had not posted bond. The Montana Supreme Court consolidated the appeals, reversed the orders, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand the three causes to their respective district courts for further proceedings consistent with the opinion.

CASES CITED

- In re Charles M. Bair Family Trust, 2008 MT 144, ¶ 28, 343 Mont. 138, 183 P.3d 61