SUPREME COURT OF NEBRASKA

# Chief Industries, Inc. v. Great Northern Insurance Company

268 Neb. 450 (2004) · No. No. S-03-619 · Decided April 23, 2004

## SUMMARY

The Nebraska Supreme Court considered whether Great Northern Insurance had a duty to defend and indemnify Chief Industries in litigation arising from the collapse of grain bins in Saudi Arabia. The court held that a foreign-suits-only amendment relieved Great Northern of its duty to defend a lawsuit filed in the United States but did not eliminate coverage for otherwise covered losses arising from an occurrence within the policy territory. The court affirmed the exclusion of damages to the silos and their components, reversed the coverage determination for inspection and silo-wreckage removal costs, and affirmed coverage for the cost of removing corn.

## CASE DETAILS

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| COURT | Supreme Court of Nebraska |
| WRITING FOR THE COURT | Miller-Lerman, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J. |
| JURISDICTION | Nebraska |
| DECIDED | April 23, 2004 |
| DOCKET | No. S-03-619 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Chief Industries appealed, and Great Northern cross-appealed, from a Hall County District Court judgment declaring that Great Northern had no duty to defend Chief in an underlying federal lawsuit, that certain losses were covered, and that other losses were excluded under the insurance policy. |
| STANDARD OF REVIEW | Interpretation of an insurance policy is a question of law reviewed independently, with the appellate court reaching its own conclusions. |
| PRECEDENTIAL VALUE | Published Nebraska Supreme Court opinion; precedential. |
| PARTIES | Chief Industries, Inc. v. Great Northern Insurance Company |

## TOPICS

duty to defend · duty to indemnify · insurance coverage · declaratory relief insurance · contract interpretation

## PRACTICE AREAS

insurance coverage · insurance litigation · declaratory judgment · contract interpretation

## QUESTIONS PRESENTED

1. Whether the foreign-suits-only amendment relieved Great Northern of a duty to defend a lawsuit filed in the United States when the underlying claim originated within the policy territory.
2. Whether the foreign-suits-only amendment excluded indemnity coverage for losses arising from an occurrence within the policy territory.
3. Whether components manufactured by third parties and by Chief's Caldwell division constituted the named insured's products subject to the policy's product-damage exclusion.
4. Whether inspection, silo-wreckage removal, and corn-removal costs were covered property damage under the policy.

## HOLDINGS

1. The foreign-suits-only amendment relieved Great Northern of its contractual duty to defend Chief once ARASCO filed suit in the United States, even though claims had previously been made within the policy territory.
2. The foreign-suits-only amendment limited the duties to investigate, settle, and defend suits outside the policy territory, but did not eliminate Great Northern's duty to indemnify Chief for otherwise covered losses arising from an occurrence within the policy territory.
3. The entire silo structure, including components manufactured by third parties and components manufactured by Chief's Caldwell division, constituted the named insured's products and was subject to the policy exclusion for property damage to the named insured's products arising out of those products or any part of them.
4. The $43,420 awarded for inspection of the silo wreckage and removal of the silo wreckage was excluded from coverage because those damages were necessarily related to damage to the named insured's product.
5. The policy covered the $29,871 cost of removing corn from the wreckage site, the $4,500 in outbuilding damage, and the $10,136 in increased rail contract penalties, resulting in a judgment of $44,507.

## KEY QUOTATIONS

> *"Because the duty to defend and the duty to indemnify are separate and distinct obligations, it is possible, if perhaps not commonplace, for an insurer to limit its duty to defend without simultaneously limiting its duty to indemnify."* ([3], [4])

> *"We find no error in the district court's findings that the components manufactured by third parties and by Caldwell were part of "the named insured's products" under the policy and that damage to such components was excluded under the policy exclusion for damage to the named insured's products arising out of such products or any part of such products."* ([5])

## FACTUAL BACKGROUND

Chief Industries' subsidiary contracted with Arabian Agricultural Services Company to manufacture, sell, and supervise construction of grain bins and related equipment in Saudi Arabia. The bins collapsed on October 10, 1995, causing damage to the bins, attached equipment, other property, and stored corn. ARASCO later sued Chief in the United States, obtaining a $1,466,507 judgment, and Great Northern denied coverage and declined to defend the federal action under a policy containing a foreign-suits-only amendment and product-damage exclusions.

## PROCEDURAL HISTORY

Chief sought declaratory relief concerning Great Northern's coverage and defense obligations after Arabian Agricultural Services Company sued Chief in the U.S. District Court for the District of Nebraska. In an earlier appeal, the Nebraska Supreme Court dismissed the appeal and cross-appeal because the district court's 1998 order was not final. After the federal jury awarded ARASCO $1,466,507 and the judgment was affirmed by the Eighth Circuit, the Hall County District Court determined that $87,927 was covered and that the remainder was excluded. The Nebraska Supreme Court affirmed the rulings that Great Northern had no duty to defend and that certain losses were covered or excluded, but reversed the treatment of $43,420 in inspection and silo-cleanup damages and remanded with directions to enter judgment for $44,507.

## DISPOSITION

reversed_and_remanded

## REMAND INSTRUCTIONS

Affirm in part and reverse in part, and remand with directions for the district court to enter judgment in Chief's favor in the amount of $44,507.

## CASES CITED

- Chief Indus. v. Great Northern Ins. Co., 259 Neb. 771, 612 N.W.2d 225 (2000)
- Arabian Agri. Servs. Co. v. Chief Indus., Inc., 309 F.3d 479 (8th Cir. 2002)
- Guerrier v. Mid-Century Ins. Co., 266 Neb. 150, 663 N.W.2d 131 (2003)
- Ohio Cas. Ins. Co. v. Carman Cartage Co., 262 Neb. 930, 636 N.W.2d 862 (2001)
- Mapes Indus. v. United States F. & G. Co., 252 Neb. 154, 560 N.W.2d 814 (1997)
- R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002)
- American States Ins. Co. v. Dastar Corp., 318 F.3d 881 (9th Cir. 2003)
- Cincinnati Ins. Co. v. Becker Warehouse, Inc., 262 Neb. 746, 635 N.W.2d 112 (2001)