SUPREME COURT OF MISSISSIPPI

Mississippi Windstorm Underwriting Ass'n v. Union National Fire Insurance

86 So. 3d 216 (Miss. 2012) · Decided January 26, 2012

SUMMARY

The Mississippi Supreme Court reviewed disputes concerning assessments imposed by the Mississippi Windstorm Underwriting Association after Hurricane Katrina. The court upheld the Association’s authority to permit a data true-up and enforce a submission deadline, rejected arguments that the assessments were privilege taxes, and affirmed the required allocation of reinsurance consistent with policy-year liabilities. The court also addressed voluntary-writing credits, farm-property exclusions, mobile-home premium reporting, grouping, and the chancery court’s authority to order new rules.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Justice King; Chief Justice Waller; Presiding Justice Carlson; Presiding Justice Dickinson; Justice Randolph; Justice Lamar; Justice Kitchens; Justice Chandler; Justice Pierce
JURISDICTION	Mississippi
DECIDED	January 26, 2012
DISPOSITION	other
PROCEDURAL POSTURE	MWUA appealed, and member insurance companies cross-appealed, from a Hinds County Chancery Court judgment reviewing the Mississippi Insurance Commissioner's decision concerning MWUA's Hurricane Katrina assessments.
STANDARD OF REVIEW	The Supreme Court gives deference to the Insurance Commissioner's decision and upholds it if supported by substantial evidence and not arbitrary or capricious, beyond the agency's authority, or violative of a statutory or constitutional right.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; binding precedent in Mississippi.
PARTIES	Mississippi Windstorm Underwriting Association v. Union National Fire Insurance Company, United States Fire Insurance Company, RLI Insurance Company, OneBeacon Insurance Group, Zurich American

Insurance Company, Homesite Insurance Company, Farmers Insurance Group of Companies

TOPICS

insurance · administrative law · judicial review of agency action · standard of review · statutory interpretation

PRACTICE AREAS

insurance · administrative law · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether the chancery court used the proper standard of review for the Insurance Commissioner's decision.
2. Whether MWUA had authority to allow a true-up and establish and enforce a deadline for corrected data.
3. Whether voluntary-writing credits and farm-property exclusions were mandatory regardless of timely reporting.
4. Whether MWUA allocated reinsurance consistently with the liabilities for the relevant policy years.
5. Whether MWUA assessments were privilege taxes subject to refund and privilege-tax limitations provisions.
6. Whether the mobile-home premium reporting issue required MWUA to recalculate all members' participation percentages or excuse untimely submissions.
7. Whether the chancery court had authority to order MWUA to adopt new rules and regulations.
8. Whether grouping of affiliated insurers' reported data was permitted under the statutes in effect in 2004 and 2005.

HOLDINGS

1. The chancery court should have deferred to the Commissioner's decision rather than reviewing the matter de novo; the Commissioner’s decision is entitled to deference if supported by substantial evidence and not arbitrary or capricious.
2. MWUA had authority to allow a one-time true-up and to establish and enforce the March 1, 2006, deadline.
3. Members were entitled to voluntary-writing credits and farm-property exclusions only if they timely submitted the required information.
4. Reinsurance proceeds must be applied consistently with the liabilities for the relevant policy year, and MWUA's contrary allocation method was arbitrary and capricious.
5. MWUA assessments are not privilege taxes and therefore are not governed by the privilege-tax refund and limitations provisions.

6. The mobile-home reporting issue did not require MWUA to accept untimely voluntary-credit or farm-property submissions or recalculate all members' participation percentages.
7. The chancery court lacked authority to require MWUA to adopt new rules and regulations.
8. The statutes in effect in 2004 and 2005 did not specifically prohibit MWUA from allowing affiliated insurers to group reported data.

KEY QUOTATIONS

> *"Thus, this Court will give deference to the Commissioner's decision as long as it is supported by substantial evidence and is not arbitrary and capricious."* (222)

> *"MWUA did not exceed its authority by giving members an opportunity to submit corrected data and by enforcing the true-up deadline."* (223)

> *"The reinsurance should be applied consistent with the liabilities for any given policy year."* (226)

> *"MWUA assessments are not a privilege tax."* (227)

> *"The Commissioner's and chancellor's findings that grouping is a permissible practice are supported by substantial evidence and are not arbitrary and capricious."* (231)

FACTUAL BACKGROUND

Hurricane Katrina caused MWUA losses exceeding $700 million, while MWUA had only $175 million in reinsurance. MWUA assessed its member insurers and later offered a one-time true-up allowing corrected 2004 premium data by March 1, 2006. The Board denied appeals from the resulting assessment, and the Commissioner affirmed, while the chancery court granted relief on most issues.

PROCEDURAL HISTORY

After MWUA imposed assessments to cover Hurricane Katrina losses and conducted a one-time true-up of members' premium data, the Board denied member appeals. The Insurance Commissioner affirmed the Board, but the Hinds County Chancery Court reviewed the matter de novo and granted relief on most issues, including reinsurance allocation, credits and exclusions, privilege-tax treatment, mobile-home reporting, and rulemaking. The Supreme Court of Mississippi affirmed the chancery court on grouping and reinsurance allocation, but reversed and rendered on the remaining direct-appeal issues and affirmed the grouping ruling on cross-appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand instructions were given. The direct appeal was affirmed in part and reversed in part and rendered; the cross-appeal was affirmed. The assessment figures were to be recalculated using the required reinsurance-allocation method.

CASES CITED

- Owens Corning v. Mississippi Insurance Guaranty Association, 947 So. 2d 944 (Miss. 2007)
- Miss. Ins. Underwriting Ass'n v. Maenza, 413 So. 2d 1384, 1389 (Miss. 1982)
- Miss. Ins. Comm'n v. Miss. State Rating Bureau, 220 So. 2d 328, 333 (Miss. 1969)

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