

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 32

WCC No. 2006-1580

BOBBY EVANS

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

**ORDER GRANTING STAY OF EXECUTION OF JUDGMENT AND
WAIVER OF SUPERSEDEAS BOND**

Summary: Respondent has appealed this Court's Findings of Fact, Conclusions of Law and Judgment to the Montana Supreme Court. Respondent now moves this Court for a stay of execution of judgment and to waive posting of a supersedeas bond. Petitioner objects.

Held: Although styled as opposition to both the stay of judgment and waiver of the supersedeas bond, Petitioner concedes in his brief that the posting of a supersedeas bond would allay his concerns and allow the Court to issue a stay. Regarding the requirement that Respondent post a bond, Respondent has shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Therefore, the requirement that Respondent post a supersedeas bond is waived.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.346. Where the parties do not stipulate that a bond is not required, Respondent must show to the satisfaction of the Court that adequate security exists for payment of the judgment in order to waive the bond requirement. Respondent provided the Court with an authenticated copy of its annual statement reflecting a positive balance in excess of \$200,000,000. The Court is thereby satisfied that adequate security exists for payment of the judgment and the bond requirement is therefore waived.

Appeals (to Supreme Court): Supersedeas Bond. Where the parties do not stipulate that a bond is not required, Respondent must show to the satisfaction of the Court that adequate security exists for payment of the judgment in order to waive the bond requirement. Respondent provided the Court with an authenticated copy of its annual statement reflecting a positive balance in excess of \$200,000,000. The Court is thereby satisfied that adequate security exists for payment of the judgment and the bond requirement is therefore waived.

Judgments: Enforcement: Stays of Execution. Where the parties do not stipulate that a bond is not required, Respondent must show to the satisfaction of the Court that adequate security exists for payment of the judgment in order to waive the bond requirement. Respondent provided the Court with an authenticated copy of its annual statement reflecting a positive balance in excess of \$200,000,000. The Court is thereby satisfied that adequate security exists for payment of the judgment and the bond requirement is therefore waived.

¶ 1 Respondent moved this Court for an order staying the judgment in this matter and waiving the requirement that Respondent post a supersedeas bond. Alternatively, Respondent requests the Court to issue an order requiring Petitioner to repay any monies paid pursuant to the Court's judgment if Respondent prevails on appeal.

¶ 2 In "Petitioner's Brief in Opposition to Stay of Judgment and Waiver of Supersedeas Bond," Petitioner initially states that he opposes any stay of judgment or waiver of the required supersedeas bond. Petitioner then goes on to state, however, that, "the purchase of a supersedeas bond will obviate Petitioner's concerns regarding ultimate payment of the judgment and allow the Court to issue a stay of judgment pending the appeal."¹ Petitioner goes on to reiterate this position twice more in his brief. In light of these statements, I consider Petitioner's opposition to be directed towards the requested waiver of the bond requirement rather than the stay of execution. I therefore confine my analysis to whether Respondent has satisfied the requirements for waiver of the bond.

¶ 3 A motion for stay and waiver of bond is governed by § 39-71-2910(2), MCA, which provides:

The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may

¹ Petitioner's Brief in Opposition to Stay of Judgment and Waiver of Supersedeas Bond at 2.

request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. . . . A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

¶ 4 Additionally, ARM 24.5.346 provides, "If the parties stipulate that no bond shall be required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement." The rule further states that except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a) and 7(b).

¶ 5 The parties in this case do not stipulate that a bond is not required. Therefore, in order to waive the bond requirement under ARM 24.5.346, Respondent must show to the satisfaction of the Court that adequate security exists for payment of the judgment. Respondent has provided the Court with a copy of Liberty Northwest Insurance Corporation's (Liberty) Annual Statement for the year ending December 31, 2006. The copy of this annual statement is authenticated by the attestation of the Montana State Auditor and Commissioner of Insurance as a true and exact copy of the document filed by Liberty with the National Association of Insurance Commissioners. The annual statement reflects a positive balance in excess of \$200,000,000. I have reviewed Liberty's annual statement and I am satisfied that adequate security exists for payment of the judgment. Accordingly, I am waiving the requirement that Respondent post a supersedeas bond.

ORDER

¶ 6 Respondent's motion to stay the judgment and waiver of supersedeas bond is **GRANTED**.

¶ 7 Respondent's motion for an order requiring repayment of benefits is **DENIED** as moot.

DATED in Helena, Montana, this 20th day of July, 2007.

(SEAL)

\s\ James Jeremiah Shea
JUDGE

c: Patrick R. Sheehy
Larry W. Jones
Submitted: July 16, 2007