

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 35

WCC No. 2006-1679

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NELS OKSENDAHL

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

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

**Summary:** Liberty has appealed this Court's Order Granting Petitioner's Motion for Summary Judgment to the Montana Supreme Court. Liberty now moves this Court for a stay of execution of judgment, and to waive posting of a supersedeas bond. Alternatively, Liberty moves for an order requiring Petitioner to repay any monies paid pursuant to this judgment if this Court's Order is reversed on appeal. Petitioner does not oppose the motion to stay but does oppose the motion to waive the posting of a supersedeas bond.

**Held:** Liberty has shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Therefore, the requirement that Liberty post a supersedeas bond is waived.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.346.** Where the insurer provided the Court with a copy of its most recent Annual Statement as authenticated by the Montana State Auditor and Commissioner of Insurance, and the statement reflects a substantial positive balance, the Court was satisfied that adequate security existed for payment of the judgment. The Court waived the requirement that the insurer post a supersedeas bond.

**Appeals (to Supreme Court): Supersedeas Bond.** Where the insurer provided the Court with a copy of its most recent Annual Statement as authenticated by the Montana State Auditor and Commissioner of Insurance, and the statement reflects a substantial positive balance, the Court was satisfied that adequate security existed for payment of the judgment. The Court waived the requirement that the insurer post a supersedeas bond.

**Judgments: Enforcement: Stays of Execution** Where the insurer provided the Court with a copy of its most recent Annual Statement as authenticated by the Montana State Auditor and Commissioner of Insurance, and the statement reflects a substantial positive balance, the Court was satisfied that adequate security existed for payment of the judgment. The Court waived the requirement that the insurer post a supersedeas bond.

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

¶ 2 In Petitioner's Response to Respondent's Motion to Stay and Waiver of Supersedeas Bond, Petitioner states that he does not oppose Liberty's motion to stay but submits that "a supersedeas bond serves a useful purpose in the law to protect the prevailing party, and should be posted by Liberty."<sup>1</sup> Petitioner acknowledges that this Court can waive the bond if it is satisfied that adequate security exists for payment of the judgment and that his counsel has no information at hand to show Liberty is on the verge of financial collapse. Nonetheless, Petitioner notes that "the Enron fiasco and the meltdown of the telecommunications sector caught more than a few knowledgeable financial gurus by complete surprise – and most if not all of these companies looked sound on paper."<sup>2</sup>

¶ 3 Petitioner's argument would be better received if this case was captioned *Oksendahl v. Enron* or *Oksendahl v. TouchAmerica*. However, Bob Gannon has long since fled the friendly environs of Butte for parts unknown and Ken Lay's current residence is better left to the conjecture of theologians and Enron's pensioners than to this Court. In either case, I am quite confident that neither individual is presently working at Liberty. Therefore, painting Liberty with the same malfeasance brush as companies like Enron and

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<sup>1</sup> Petitioner's Response to Respondent's Motion to Stay and Waiver of Supersedeas Bond at 1.

<sup>2</sup> *Id.*

TouchAmerica for no other reason than because it shares the same citizenship in corporate America would seem unfounded.

¶ 4 This case presents the identical issues I recently addressed in *Evans v. Liberty Northwest Ins. Corp.*<sup>3</sup> even to the point of considering the financial viability of this same respondent. In *Evans*, I noted that in order to waive the bond requirement, Liberty must show to the satisfaction of the Court that adequate security exists for payment of the judgment. As in *Evans*, Liberty has again provided the Court with a copy of its Annual Statement for the year ending December 31, 2006. The copy of this Annual Statement is again 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 Liberty post a supersedeas bond.

ORDER

¶ 5 Liberty's motion to stay the judgment and waive the supersedeas bond is **GRANTED**.

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

DATED in Helena, Montana, this 31<sup>st</sup> day of July, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Victor R. Halverson  
Larry W. Jones  
Submitted: July 16, 2007

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<sup>3</sup> 2007 MTWCC 32.