

Applicants set forth 4 reasons why the provisions of 33-2-1212 MCA do not apply to the Transaction at issue: (1) By its plain language, the Bulk Reinsurance Statute does not apply to the Transaction, (2) The Transaction is more than reinsurance, (3) The conversion statute provides comprehensive review and approval, and (4) Analysis and approval under the Conversion Statute was intended by and is compliant with prior Order.

CSI has presented arguments addressing the above contentions, as discussed below.

Applicants contend that the Bulk Reinsurance Statute, by its plain terms applies only to “domestic mutual insurers.” 33-2-1212 MCA. A “domestic mutual insurer” is “an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.” 33-3-102(1) MCA. BCBSMT is not a domestic mutual insurer. Although it is incorporated without capital stock, its corporate powers are exercised exclusively by its Board of Directors. More importantly, its governing body, the Board of Directors, is not elected by the policyholders. Rather, only the Board of Directors nominates and elects the Directors. Accordingly, BCBSMT is a mutual benefit corporation, not a “domestic mutual insurer.”

CSI agrees that, “if read in a vacuum”, the Bulk Reinsurance Statute applies to “domestic mutual insurers” and that BCBSMT is not a “domestic mutual insurer.” However, CSI contends that the Bulk Reinsurance Statute must not be read in a vacuum. Rather, it must be read in the context of the Health Service Corporation Scope Statute. 33-30-102 MCA.

This statute reads as follows:

33-30-102. Application of this chapter -- construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-3-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111. (2) A law of this state other than the provisions of this chapter applicable to health

service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail.

CSI points out that BCBSMT is a “health service corporation” and thus subject to Title 33 Chapter 30. Further, that statute clearly provides that all health service corporations are not only subject to the provisions of Title 33 Chapter 30 (the Scope Statute), but also numerous other statutes, including 33-2-1212 MCA (The Bulk Reinsurance Statute). Finally the Scope Statute provides that if there is a conflict between the Scope statute and any other provision of Montana state law applicable to health service corporations, the provisions of the Scope Statute prevail.

In addressing CSI’s interpretation of the Scope Statute, Applicant puts forth various persuasive arguments.

Applying all of the statutes referenced in 33-30-102 MCA, to this transaction leads to incongruous results.

When one reviews the statutes enumerated in 33-30-102 MCA, it is apparent that each and every statute and section thereof cannot have a “blanket” application to this transaction. Rather, the enumerated statute has to be analyzed in light of the nature of the insurer and the transaction at issue. For example, “Title 33, chapter 1” is to apply to all health service corporations, yet part 14 of Title 33, chapter 1 relating to the regulation of property and casualty actuarial opinions obviously has no application. “Title 33, chapter 15” is listed but the provisions of chapter 15 relating to property and casualty policy simplification requirements (part 3), cancellation requirements (part 11), or other property and casualty sections scattered throughout the chapter would likewise have no application to health service corporations. “Title 33, chapter 18” is also listed. However, by its plain language 33-18-210 MCA would only be enforced against title, property, casualty and surety insurers- not health service corporations. Likewise,

while health service corporations that are “domestic mutual insurers” come within the Bulk Reinsurance statute (33-2-1212 MCA), *mutual benefit corporations*, like BCBSMT, which are not “domestic mutual insurers” are not covered.

BCBSMT Policyholders have no right to vote, however their interests are protected under the Conversion Statute.

CSI contends that the Conversion statute, applied alone, neglects a vital purpose of the Bulk Reinsurance Statute; namely to provide members a voice when policies are transferred to an entity with which they did not contract. Accordingly, CSI argues that application of the Bulk Reinsurance Statute is necessary to ensure that the policyholders are not disenfranchised in this transaction.

Recognizing that while subsection (3) of the Bulk Reinsurance Statute requires a vote of “members,” BCBSMT notes that that term is undefined in the Insurance Code. “Members” is, however, defined in the nonprofit law.

“Member” means a person who, pursuant to a provision of a corporation’s articles or bylaws, “have the right to vote for the election of a director or directors.” 35-2-114(21)(a) MCA.

It is uncontested that BCBSMT’s corporate powers are exercised exclusively by its Board of Directors. More importantly, its governing body, the Board of Directors, is not elected by the policyholders. Rather, only the Board of Directors nominates and elects the Directors. (The corporate powers of the corporation shall be exercised by its Board of Directors, who shall have the sole voting power on all matters.” Art. Inc., art. V) Thus, BCBSMT’s policyholders are not “members” with voting rights triggering protection under the Bulk Reinsurance Statute.

BCBSMT’s policyholders’ rights, nonetheless, will be protected under the Conversion Statute which requires that the Transaction only be approved if it is determined to be

“equitable to the public interest, enrollees, insureds, shareholders, and certificate holders.” 50-4-717(2)(g)(i) MCA. Policyholders can submit written comments or testimony or appear at the public hearing and present testimony for consideration. In addition to protecting the public’s interest, the Conversion Statute review must then additionally consider whether it is in the best interests of the policyholders. As Applicants point out, to require a separate vote from policyholders who at most have a year-long contract with BCBSMT sets up a circumstance in which the policyholders (concerned only with the assignment of their policies) may wrest control of the entire Transaction and the public assets. By law, however, it is the Commissioner and the Attorney General, not the policyholders, who are vested with the duty to determine whether the transaction is in the public interest.

The Conversion Statute Adequately protects the policyholders as well as the public.

The protections afforded by the Bulk Reinsurance Statute are also addressed in the Conversion Statute: both statutes require that a transaction agreement be filed with the Commissioner; that there be a public hearing on the agreement prior to approval; that the Commissioner act on the matter in a reasonable time; that the Commissioner find that the agreement is fair and equitable to each insurer involved; and that the Commissioner find that the agreement will not reduce policyholder protection or service.¹

The Conversion Statute requires a comprehensive analysis of all aspects of the Transaction, including, but not limited to consideration of its community impact and antitrust implications; a noticed public hearing in which any member of the public, including BSBSMT

-
- ¹ a transaction agreement filed with the Commissioner (compare 33-2-1212(1) with 50-4-707(2)(d), (e))
 - a public hearing on the agreement prior to approval (compare 33-2-1212(1) with 50-4-709(e), -710)
 - approval by the Commissioner in a reasonable time (compare 33-2-1212(2) with 50-4-702, -713)
 - Commissioner finding that the agreement is fair and equitable to each insurer involved (compare 33-3-1212(2) with 50-4-717(2)(d), (2)(e), (3)(b))
 - Commissioner finding that the agreement will not reduce policyholder protection or service (compare 33-3-1212(2) with 50-4-717(2)(g)(i)).

policyholders and members, may voice an opinion on the fairness of the Transaction and the distribution of the public assets with joint oversight of the Transaction implementation by the Commissioner and Attorney General to ensure protection of the public assets and members' interests. 50-4-707, -710 through -712, MCA. The Commissioner and Attorney General each must make an independent determination that the Transaction is in the "public interest" 50-4-715, -717 MCA.

Since the Conversion Statute addresses the concerns expressed in the narrower Bulk Reinsurance Statute, there is no need to subject the Transaction to both statutes.

The Bulk Reinsurance Statute does not apply to this Transaction. Applicants' motion is granted.

DATED this 11th day of January, 2013.

/s/ W. William Leaphart

W. William Leaphart

Hearing Examiner

cc: Jacqueline T. Lenmark, Esq.
Kelley Hubbard, Esq.
Jesse Laslovich, Esq.
Sybil Shults