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**BORIS DEVELOPMENT CORPORATION, Petitioner v. FUND INSURANCE REVIEW BOARD, Respondents**

**CIVIL ACTION DOCKET NO. CV-96-430**

**SUPERIOR COURT OF MAINE, KENNEBEC COUNTY**

**1998 Me. Super. LEXIS 37**

**February 13, 1998, Decided**

COUNSEL: *1 For Georis Development Corp., Plaintiff: Matthew D. Manahan, Esq., Portland, Me.

For **Fund Insurance Review Board**, Defendant: PHYLLIS GARDINER AAG, AUGUSTA MAINE.

**JUDGES:** Donald H. Marden, Justice, Superior Court.

**OPINIONBY:** Donald H. Marden

**OPINION:**

**DECISION AND ORDER**

This matter is before the court on the Petitioner **Boris** Development Corporation's (**Boris**) petition for review of final agency action pursuant to M.R. Civ. P. 80C.

**I. FACTUAL AND PROCEDURAL SUMMARY**

This action has been brought by **Boris** to challenge the **Fund Insurance Review Board's** (Board) decision that **Boris** must pay a $40,000 deductible on each of four facilities participating in gasoline contamination clean-up under the Groundwater Oil Cleanup Fund (the Fund).

In November 1990, seven separate corporations commonly known as the "Satco" chain of convenience stores, gasoline stations, and bulk oil storage facilities, voluntarily turned over possession of their properties to Casco Northern Bank (Casco), after defaulting on their loan payments to Casco. Thus, Casco became the mortgagee in possession of the various properties. Casco then formed **Boris** to operate the entities. Because all of the properties had suffered *2 gasoline contamination, **Boris** began clean-up operations on the sites.

In October of 1994, **Boris** submitted four applications for Fund coverage to the Fire Marshal, to cover gasoline contamination clean-up costs at four separate "Satco" facilities. The Fire Marshal granted Fund coverage for cleanup costs at the four facilities by letters dated February 22, 1995.

Additionally, the Fire Marshal applied a $40,000 deductible to each of the four facilities pursuant to the version of 38 M.R.S.A. § 568-A(2)(A) (Supp. 1993) in effect at the time, in which the amount of the deductible was based on the "number of facilities owned by the facility owner." P.L. 1993, c. 363, § 10. The Fire Marshall determined that Satco, Inc., owned a total of 21-30 oil storage facilities including the four facilities for which applications had been submitted and approved, and therefore decided that a deductible of $40,000 was applicable to each facility.

**Boris** appealed the determination of the deductible, and a hearing was held on June 11, 1996. At the hearing, **Boris** argued that only three corporations owned the four facilities in question, n1 and that the "owner" of a facility *3 under section 568-A(2) does not include all corporations affiliated with the owner of the facility. The Board denied the appeal, and affirmed the decision of the Fire Marshall. In relevant part, the Board stated the following in its decision:

> One entity was the owner of all four facilities for purposes of determining the amount of the deductible to be applied. . . . The . . . application materials . . . indicated that the facilities were owned and operated by the Satco network, a maze of closely held corporations owned by Howard and Geraldine Saturley. . . . All the entities holding title to these facilities were owned by the Saturleys. . . . Although the land on which the oil facilities had been located was owned by different entities at the time that the applications were submitted, for all four facilities, Casco was the last entity in possession of the properties . . . The statutory scheme for calculating the deductible is based upon the financial responsibility of the owner of the facility as determined by the size of its overall operation.

n1 The record reflects that one corporation owned two of the facilities in question, and that two different corporations owned each of the other two facilities.

*4

Subsequently, **Boris** appealed the Board's decision to this Court, arguing that the Board incorrectly concluded that the term "owner" in 38 M.R.S.A. § 568-A(2) (Supp. 1993) means the corporate owner and all affiliated corporations. **Boris** also argues that the Board erred in affirming the Fire Marshall's decision to calculate the "number of facilities owned" by including facilities owned at any time in the past, rather than those owned at the time of the application.

## II. DISCUSSION

Under M.R. Civ. P. 80C, this Court reviews an agency decision "for 'an abuse of discretion, errors of law, or findings not supported by the evidence.'" *Fecteau v. State Employee Health Comm'n*, 1997 ME 36, P5, 690 A.2d 500, 501 (quoting *Centamore v. Department of Human Serv.*, 664 A.2d 369, 370 (Me. 1995); *see also Hale-Rice v. State Retirement System*, 1997 ME 64, P8, 691 A.2d 1232, 1235.

### A. Statutory Interpretation of "Owner" in Section 568-A(2)

The Law Court has previously stated that "statutory interpretation is a question for the court." *Maine Beer & Wine Wholesalers Ass'n v. State*, 619 A.2d 94, 97 (Me. 1993). *5 Furthermore, as explained in *Beer & Wine Wholesalers*:

> The fundamental rule in statutory interpretation is that the legislative intent as divined from the statutory language controls the interpretation of the statute. Unless the statute reveals a contrary intent, the words must be given their plain, common, and ordinary meaning. . . . To determine legislative intent when there is an ambiguity in the statute, however, the court may look beyond the words themselves to the history of the statute, the policy behind it, and contemporary related legislation.

*Id.* (quotations omitted)(citing *State v. Edward*, 531 A.2d 672, 673 (Me. 1987)). Accordingly, when the plain language of section 568-A(2) is considered, the statute in no way suggests that "owner" includes any affiliated corporations beyond the actual corporate owner.

First, the plain language of the statute requires this conclusion. n2 Second, in looking to other portions of the Fund statute, an "owner" is referred to as a "person," which is defined to include "any natural person, firm association, partnership, or corporation." 38 M.R.S.A. § 562-A(16). There *6 is no indication whatsoever that the term "corporation" means anything but its plain and singular meaning. Third, the language of the statute demonstrates that the Legislature was fully aware of the difference between corporations and affiliated corporations, as evidenced by the specific exclusion of coverage in section 568-A(1)(E) for any "subsidiary" or "parent corporation" of an oil refinery. If the Legislature intended the term "owner" to include affiliated corporations, it could have used more explicit language. Finally, an examination of the legislative history of section 568-A(1)(A) confirms the above interpretation, even though such an inquiry is unnecessary for such unambiguous language. *See Maine Beer & Wine Wholesalers*, 619 A.2d at 97. Specifically, in 1991 the Legislature clarified that the deductible was to be determined according to the number of facilities owned by "facility owners and not operators." Comm. Amend. A to L.D. 1826, Statement of Fact (115th Legis. 1991).

n2 The Respondent points out that an agency's interpretation of a statute that it administers is entitled to great deference and should be upheld unless the statute clearly compels a contrary result. *Lucas v. Maine Comm'n of Pharmacy*, 472 A.2d 904, 907 (Me. 1984). Thus, the Respondent argues that the interpretation of the **Fund Insurance Review Board** should be accorded substantial deference. This rule, however, does not apply to the instant case because a contrary legislative intent is "manifest in the language of the statute itself." *Central Maine Power Co. v. Public Util. Comm'n*, 458 A.2d 739, 741 (Me. 1983).

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Thus, the plain language of the statute requires the conclusion that the term "owner" does not include any affiliated corporate entities. Accordingly, the Board erred as a matter of law in its interpretation of section 568-A(2).

### B. Interpretation of "Owner" Under Doctrine of Piercing the Corporate Veil

The Board's decision increased the liability of the corporate owners in this case by reducing the amount of Fund coverage through the calculation of larger deductibles. In effect, this decision pierces the corporate veil of the owner corporations. Therefore, the question

is whether the Board's decision is consistent with the applicable common law rules for piercing the corporate veil.

It is a basic principle of law that corporations are "'separate legal entities with limited liability.'" *Theberge v. Darbro Inc.*, 684 A.2d 1298, 1301 (Me. 1996)(quoting *Anderson v. Kennebec River Pulp & Paper Co.*, 433 A.2d 752, 756 n.5 (Me. 1981)). Moreover, courts have been "reluctant to disregard the legal entity of corporations and will do so with caution and only when necessary in the interest of justice." *Brennan v. Saco Construction Inc.*, 381 A.2d 656, 662 (Me. 1978). *8

However, in the context of statutory interpretation, the Law Court has explained that "a court will disregard the fiction of a corporation's separate entity whenever the concept is asserted in an endeavor to circumvent a statute and defeat legislative policy." *Id.* More recently, the Law Court has further explained that:

> In the absence of bad faith, the corporate entity will not be disregarded to extend liability for corporate debt to shareholders . . . and although the Legislature is free to abrogate a long-standing rule of common law, such intent is not to be presumed in the absence of clear and explicit language.

*Curtis v. Lehigh Footwear, Inc.*, 516 A.2d 558, 560 (Me. 1986). When these principles are applied to the instant case, it must be concluded that the Board erred as a matter of law when it looked beyond the actual corporate owner for purposes of determining the correct deductible under section 568-A(2).

First, the plain language of section 568-A(2) demonstrates that there is no legislative policy to look beyond the singular corporate owner when calculating a deductible, and therefore, the corporate entity in this case can not be disregarded *9 on the basis that it "defeats" or "circumvents" a legislative policy that does not exist. Second, the record is devoid of any indication that corporate entities in this case were created in "bad faith." To the contrary, the only evidence on this point suggests that the corporate structure resulted from historical circumstances in acquiring the various facilities. Finally, there is no explicit language in section 568-A(2) to support the legislative intent to abrogate the common law rule concerning separate corporate entities. *See Curtis*, 516 A.2d at 560. It is instructive to note that in *Curtis*, the Law Court determined that there was no explicit language to support the legislative intent to extend liability to parent corporations under a severance pay statute, even where the statute defined an employer to include persons who "indirectly" owned a covered establishment. In section 568-A(2), even less explicit language was used, and thus "owner" can not be interpreted to include affiliated corporations.

Therefore, the applicable common law rules regarding corporate liability do not support the conclusion that the term "owner" in section 568-A(2) includes affiliated *10 corporations, and the Board erred as a matter of law to the extent that it held otherwise.

**C. Distinguishing "Owner" and "Mortgagee in Possession"**

The Board's decision, in part, based the determination of the deductible on the rationale that "Casco was the last entity in possession of the properties when they existed as oil storage facilities" and that all four applications were filed by one entity, acting on behalf of Casco, as was the present appeal." Under Maine law, however, a mortgagee in possession is not considered the owner of that property. *Pettengill v. Turo*, 159 Me. 350, 359, 193 A.2d 367, 373 (1963). Therefore, the Board erred as a matter of law to the extent that it considered Casco, a mortgagee in possession, in its determination of the deductible under section 568-A(2).

**D. Correct Time to Determine Number of Facilities Owned**

On appeal, **Boris** claims that the Board erred by determining the deductible based on the number of facilities owned at any time in the past. The Respondent, however, argues that this is not what the Board decided. Instead, the Respondent argues that the Board determined the deductible by considering the number of facilities *11 owned at the time the oil contamination was discovered and reported to the Department of Environmental Protection. The Board's decision, however, does not clearly express any consideration of the timing for determining the number of facilities owned. The decision merely states that "the Fire Marshall determined that Satco, Inc., owned a total of 21-30 oil storage facilities . . . and therefore a deductible of $40,000 was applicable to each facility," and then the Board goes on to affirm the calculation. The rationale concerning timing is unclear. However, as discussed above, this determination is erroneous as a matter of law to the extent that it looks beyond the actual corporate owner of each facility. Additionally, the plain language of section 568-A(2) indicates that the time of the application is the correct time to determine the number of facilities owned. This is because the statute is written in the present tense, and there is no indication that the Legislature intended section 568-A(2) to require a retroactive calculation. n3

Therefore, to the extent that the Board affirmed the determination of the deductible by considering facilities owned prior to the time of the application, *12 it erred as a matter of law.

> n3 This interpretation comports with the Board's own interpretation of the statute. As explained in a 1995 decision, the **Fund Insurance Review Board** stated:
>
> > The plain language of the statute is clear that the applicant must be the owner/operator of the facility *at the time the application is made*. The statute is written in the present tense. To imply that it includes previous owners and operators as applicants would give unlimited retroactive application to the statute and there is no indication that the Legislature intended such an effect.
>
> *In the Matter of Saucier*, Fund Ins. Review Bd. 3 (Feb. 7, 1995)(emphasis added).

**E. Attorney's Fees**

The Petitioner argues that it is entitled to attorney's fees that were incurred in pursuing its appeal to the Board, and also those fees incurred in its appeal to this Court. An award of attorney's fees in this case is governed by 38 M.R.S.A. § 568-A(3-A), which provides that: "If the appeal *13 panel overturns the commissioner's decision, reasonable costs, including reasonable attorney fees, incurred by the aggrieved applicant in pursuing the appeal to the review board must be paid from the fund. Reasonable attorney fees include only those fees incurred from the time of a claims-related decision forward." According to this language, the Petitioner will be entitled to an award of reasonable attorney fees "from the time of a claims-related decision forward," which includes those fees incurred in pursuing its appeal to this Court. Therefore, on remand the Board shall award such reasonable attorney's fees to the Petitioner in accordance with section 568-A(3-A).

**III. CONCLUSION**

Therefore, the entry shall be:

> The decision of the **Fund Insurance Review Board** is REVERSED, and this matter is REMANDED for further proceedings not inconsistent with this decision. On remand, attorney's fees shall be awarded to the Petitioner in accordance with 38 M.R.S.A. § 568-A(3-A). Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this Decision and Order into the Docket by reference.

Dated: February 13, 1998

Donald H. Marden *14

Justice, Superior Court

Date Filed 10/3/96 Kennebec (County) Docket No. CV96-430

Action Petition for review

Georis Development Corp. vs. **Fund Insurance Review Board**

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Defendant's Attorney

PHYLLIS GARDINER AAG

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| Date of Entry | |
|---|---|
| 10/3/96 | Petition for review of final agency action filed. s/Manahan, Esq. |
| 11/14/96 | Agency record filed. s/Gardiner, AAG |
| 11/19/96 | Notice of briefing schedule mailed to attys of record. |
| 12/18/96 | Petitioners brief filed. s/Manahan, Esq. |

| Date of Entry | |
|---|---|
| 1/23/97 | Respondents brief filed. s/Gardiner, AAG |
| 2/6/97 | Petitioners reply brief filed. s/Manahan, Esq. |
| 3/6/97 | Hearing had on Oral Argument with Justice Marden, presiding, Tape 372, Matthew Manahan, Esq., for Petitioner and Phyllis Gardiner, AAG., for Respondent.<br><br>Case under advisement. |
| 2/13/98 | DECISION AND ORDER, Marden, J.<br>The decision of the **Fund Insurance Review Board** is REVERSED, and this matter is REMANDED for further prodeedings not inconsistent with this decision. On remand, attorney's fees shall be awarded to the Petitioner in accordance with 38M.R.S.A. 568-A(3-A). Pursuant to M.R.Civ. P. 79(a), the Clerk is hereby directed to incorporate this Decision and Order into the Docket by reference.<br>Copies of Decision and Order mailed to attys. of record.<br>Copies mailed to Deborah Firestone, Garbrecht Law Library and Donald Goss.<br><br>Notice for removal of record mailed. |

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