COURT OF APPEALS
DECISION
DATED AND FILED

August 30, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1039 **Cir. Ct. No. 2003CV753**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

NORTHERN STATES POWER COMPANY, D/B/A XCEL ENERGY,

PLAINTIFF-APPELLANT,

V.

CONTINENTAL INSURANCE COMPANY, AS SUCCESSOR INTEREST TO HARBOR INSURANCE COMPANY, FEDERAL INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, MT. MCKINLEY INSURANCE COMPANY, F/K/A GIBRALTAR CASUALTY COMPANY, MUNICH REINSURANCE AMERICA, INC., F/K/A AMERICAN RE-INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, OLD REPUBLIC INSURANCE COMPANY AND WESTPORT INSURANCE CORPORATION, F/K/A PURITAN INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, SR., Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Northern States Power Company, d/b/a Xcel Energy (NSP), appeals a judgment dismissing its claims against various insurance companies (the Insurers). NSP claims the circuit court erred when it determined that a Minnesota judgment in the Insurers' favor was entitled to full faith and credit. We affirm.

BACKGROUND

¶2 This case arises from environmental contamination at four former manufactured gas plants in Wisconsin. Investigation and remediation costs are expected to exceed one hundred million dollars. Following cleanup demands from the Department of Natural Resources and Environmental Protection Agency, NSP submitted claims to the Insurers, which denied coverage.

¶3 In October 2003, St. Paul Mercury Insurance Co., which is no longer a party to this litigation, commenced a lawsuit in Minnesota. NSP filed suit in Wisconsin two weeks later. The Insurers joined the Minnesota action and filed a motion to stay the Wisconsin proceedings. The circuit court denied the motion and the Wisconsin case proceeded until the Insurers obtained an anti-suit injunction in Minnesota. The Minnesota court determined that, because of the similarity of the parties and of the issues in the two suits, continuing both actions would unnecessarily expend judicial resources. In Wisconsin, the circuit court then decided to suspend its scheduling order and hold all proceedings in abeyance pending the outcome of the Minnesota litigation.

¶4 In 2007, the Minnesota court reached the merits of the Insurers' coverage claims. Minnesota allocates damages among successive insurers pro rata

according to each insurer's time on the risk. *See* ***Northern States Power Co. v. Fidelity & Cas. Co. of New York***, 523 N.W.2d 657, 664 (Minn. 1994). The Minnesota court entered summary judgment in favor of certain excess insurers because the allocated damages did not reach the lower limits of their policies. NSP settled with the remaining insurers and a final judgment was entered. The Court of Appeals of Minnesota affirmed on appeal.

¶5 The Insurers filed a motion to dismiss the Wisconsin suit based on the doctrines of full faith and credit and claim preclusion. The circuit court granted the motion, concluding that both doctrines applied:

> [R]eally these two concepts [full faith and credit and claim preclusion] are at least as far as I can see are interrelated here. I deferred to the Minnesota court in staying the scheduling order. The reason or reasons I did that really aren't material. The fact is I did it. I allowed the Minnesota court to proceed and so I believe that good procedure requires that the Minnesota court decision … be given full faith and credit.

DISCUSSION

¶6 On appeal, NSP argues that the circuit court erred in dismissing its claims on full faith and credit and claim preclusion grounds. It theorizes that the Insurers' prior-filed Minnesota action was a "race to the courthouse" designed to avoid application of Wisconsin law, which is allegedly more favorable to NSP's coverage claim. NSP argues that, under these circumstances, the Minnesota judgment is not enforceable in Wisconsin.

¶7 Judicial proceedings of one state are entitled to full faith and credit in other states under Article IV, § 1, of the United States Constitution. The purpose of this clause is "to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as

conclusive of the rights of the parties in every other court as in that in which the judgment was rendered …." ***Conquistador Hotel Corp. v. Fortino***, 99 Wis. 2d 16, 19, 298 N.W.2d 236 (Ct. App. 1980) (citing ***Anderson v. Anderson***, 36 Wis. 2d 455, 463, 153 N.W.2d 627 (1967)). Whether a judgment is entitled to full faith and credit is a question of law. *See* ***Hamilton v. SCM Corp.***, 113 Wis. 2d 25, 28, 30, 334 N.W.2d 688 (Ct. App. 1983).

¶8 Judgments from another state must be accorded full faith and credit when three requirements are met. First, the judgment must be authenticated pursuant to WIS. STAT. § 806.24(2).[1] *See* ***State v. Smith***, 2005 WI 104, ¶¶29-33, 283 Wis. 2d 57, 699 N.W.2d 508; *see also* 28 U.S.C. § 1738 (2006). Second, the judgment of the foreign jurisdiction must be final. *See* ***Hamilton***, 113 Wis. 2d at 30. Finally, the judgment sought to be enforced must have been rendered by a court with "adjudicatory authority over the subject matter and persons governed by the judgment …." ***Baker v. General Motors Corp.***, 522 U.S. 222, 233 (1998). When these requirements are satisfied, "the full faith and credit obligation is exacting." ***Id.***

¶9 The Minnesota judgment meets each of these three criteria. NSP does not dispute the judgment's authenticity or finality. And although NSP is clearly dissatisfied with Minnesota as a forum state, NSP's brief falls far short of alleging deficiencies in subject matter or personal jurisdiction. *See* ***W.H. Pugh Coal Co. v. State***, 157 Wis. 2d 620, 634, 460 N.W.2d 787 (Ct. App. 1990) (court need not address undeveloped arguments).

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶10 NSP contends that full faith and credit is "not an iron clad rule." This is a true enough statement as it pertains to the laws of foreign jurisdictions. States need not always give full faith and credit to the legislative acts of other states. *See* ***Baker***, 522 U.S. at 232-33 ("The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'"); *see also* ***Pink v. A.A.A. Highway Express, Inc.***, 314 U.S. 201, 210 (1941) (citing ***Klaxon Co. v. Stentor Elec. Mfg. Co.***, 313 U.S. 487, 497-98 (1941); ***Pacific Emp'rs Ins. Co. v. Industrial Accident Comm'n***, 306 U.S. 493 (1939); ***Milwaukee Cnty. v. M.E. White Co.***, 296 U.S. 268, 273 (1935); ***Alaska Packers Ass'n v. Industrial Accident Comm'n***, 294 U.S. 532 (1935)) ("This court has often recognized that, consistent with the appropriate application of the full faith and credit clause, there are limits to the extent to which the laws and policy of one state may be subordinated to those of another."). In addition, one state need not adopt the practices of another regarding the time, manner, and mechanisms for enforcing judgments. ***Baker***, 522 U.S. at 235.

¶11 While the extent of full faith and credit due to foreign laws may be muddled, there is no such confusion regarding foreign judgments. ***Baker*** could not have made this clearer. "Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments." ***Id.*** at 232. "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." ***Id.*** at 233. Again, the ***Baker*** court characterized this obligation as "exacting." ***Id.*** There is no room for play in the joints of the Full Faith and Credit Clause as it relates to judgments.

¶12 NSP also argues the Minnesota court's judgment is not entitled to full faith and credit because it was preceded by an anti-suit injunction. NSP points to ***Baker***, 522 U.S. at 235, in which the Supreme Court observed, "Orders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State or interfered with litigation over which the ordering State had no authority." The Court cited an anti-suit injunction as one example of the latter, stating that such injunctions "have not controlled the second court's actions regarding litigation in that court." ***Id.*** at 236.

¶13 The ***Baker*** Court's discussion of anti-suit injunctions would be relevant if the Insurers were attempting to enforce that order.[2] They are not. The Insurers are asking that a final judgment of a foreign court be given full faith and credit. As we have explained, the judgment is entitled to that.

¶14 NSP also argues that this case is analogous to a Montana case, ***Wamsley v. Nodak Mutual Insurance Co.***, 178 P.3d 102 (Mont. 2008). There, the Montana Supreme Court determined that judicial rulings in North Dakota regarding choice of law and insurance policy stacking were not entitled to full faith and credit because they impermissibly interfered with simultaneous litigation in Montana. ***Id.***, ¶¶59-60. The court concluded that "the declaratory judgment in North Dakota was brought for the purpose of preempting the District Court in Montana from exercising control over the judicial processes necessary to resolve

[2] The more appropriate time to argue the enforceability of the anti-suit injunction was in 2006, when the matter came before the circuit court. Under ***Baker v. General Motors Corp.***, 522 U.S. 222 (1998), the court could have continued the Wisconsin action, but chose instead to defer to Minnesota and held all proceedings in abeyance.

this dispute." ***Id.***, ¶59. NSP argues that the Insurers' suit in Minnesota was brought for a similar purpose.

¶15 We do not find ***Wamsley*** analogous to this case. We decline to inquire into the subjective motivation of the Insurers in bringing suit in Minnesota. In any event, NSP filed the Minnesota action in 2003, six years *before* Wisconsin adopted the "all-sums" approach to damage allocation that the Insurers allegedly sought to avoid. *See* ***Plastics Eng'g Co. v. Liberty Mut. Ins. Co.***, 2009 WI 13, ¶¶51-60, 315 Wis. 2d 556, 759 N.W.2d 613. Thus, whatever the Insurers' motivation, it could not have been that Minnesota provided a more favorable approach to allocation at the time.

¶16 Having determined that the Minnesota judgment is entitled to full faith and credit, we have no need to reach the issue of whether the doctrine of claim preclusion bars further litigation in Wisconsin. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 (cases should be decided on the narrowest possible grounds).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.