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Recent Development: Arkansas Insurance Dep't. Final Rule 126: "Insurance Business Transfers"

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RECENT DEVELOPMENTS

ARKANSAS INSURANCE DEP'T. FINAL RULE 126: "INSURANCE BUSINESS TRANSFERS"¹

Pursuant to Act 1018 of 2021, "An Act to Establish the Arkansas Business Transfer Act," the Arkansas Insurance Department has promulgated Final Rule 126 "to provide standards and procedures for the transfer and novation of insurance policies from a transferring insurer to an assuming insurer through a transaction known as an 'insurance business transfer.'" The Rule requires that the applicant submit an Insurance Business Transfer Plan—along with a nonrefundable \$10,000 fee—to the Department detailing the transaction. One critical element of this Plan is the Independent Expert Opinion Report. An independent expert will produce a written report to be included in the Plan and will assist the court and the Commissioner of the Insurance Department in their review of the transaction. Under Final Rule 126, "The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business." Within thirty days of the Commissioner's approval of the Plan, the Rule requires the applicant to petition the court for approval. Final Rule 126 became effective on January 1, 2022.

BENTONVILLE SCHOOL DISTRICT V. SITTON²

The parents of several Bentonville School District students challenged the constitutionality of a mask mandate policy

1. 12 Ark. Reg. 8 (Dec. 2021).

2. Bentonville Sch. Dist. v. Sitton, 2022 Ark. 80, ___ S.W.3d ___.

imposed by the District in August 2021 for the 2021-2022 academic year. The Benton County Circuit Court entered a temporary restraining order (“TRO”) on October 12, 2021, enjoining the District’s enforcement of its policy, ruling that the mandate violated the Plaintiffs’ constitutional rights and was enacted without proper authority. Later the same month, declining COVID-19 infection rates led the District to allow the mask mandate to lapse.

The Arkansas Supreme Court held that the grounds on which the circuit court had granted the TRO had been rendered moot, but that the case fell under the substantial-public-interest mootness exception. Because a substantial public interest existed in the issues being considered, and because the Court would likely prevent future litigation by considering those issues, the Court proceeded to the merits of the case. The Court held that the mask mandate policy was a proper exercise of the District’s authority, one which did not violate the Plaintiffs’ constitutional rights; therefore, the Plaintiffs had failed to show that irreparable harm would result in the absence of a TRO.

Justice Womack concurred in the judgment but authored a separate opinion, arguing that the District’s appeal was moot. Special Justice Brill penned a concurrence, as well, contending that the United States and Arkansas constitutions do not protect a parent’s right to micromanage an elected school board; rather, disgruntled parents may voice their grievances at the ballot box. In her dissent, Justice Webb argued that the majority’s consideration of the merits in this case overstepped the abuse-of-discretion standard of review that accompanies TRO appeals. Even if consideration of the merits were proper, Justice Webb continued, the majority wrongly held that the mask mandate was within the District’s authority and did not violate the plaintiffs’ parental rights.

***PENNINGTON V. BHP BILLITON PETROLEUM
(FAYETTEVILLE), LLC***³

Oil-and-gas royalty holders sued their lessees for breach of contract related to the lessees' improper deduction of certain costs from the monthly payments made to the royalty holders. Some of these underpayments had occurred within the statutory five-year period and some had occurred outside the period. The United States District Court for the Eastern District of Arkansas certified the following question to the Arkansas Supreme Court:

In the oil and gas leases at issue in this case, does the five-year statute of limitations set forth in Arkansas Code section 16-56-111(a) bar Plaintiffs from bringing a breach of contract lawsuit for alleged underpayments of monthly royalties that occurred within the statute of limitations period because similar underpayments of monthly royalties took place outside of the limitations period?

The Court held that the damage element of breach of contract would have been established each month that lessees underpaid the royalty holders, and that the existence of some underpayments outside of the limitations period did not bar recovery for underpayments within the limitations period.

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3. Pennington v. BHP Billiton Petroleum (Fayetteville), LLC, 2021 Ark. 179, 631 S.W.3d 555.