SUPREME COURT

INSURANCE: Filing/denying claim not prerequisite to suing to recover insured loss … petroleum leak subrogation claims barred by 8-year statute for contracts, *Capitol Indemnity* reaffirmed .. Sherlock, McCarter affirmed.

Owners of several facilities, mostly gas stations, sought reimbursement from the Petroleum Tank Release Compensation Board for petroleum leak cleanup costs. After making payments, the Board brought subrogation claims against the owners' insurers. Judges Sherlock and McCarter granted summary judgment to the insurers based on the 8-year contract statute, based largely on *Capitol Indemnity* (Mont. 2006). The Board appeals.

The Board contends that *Capitol Indemnity* is incorrect in that it holds that the statute begins to run when all elements for a claim have accrued, while § 27-2-102(1)(a) mandates that a claim has accrued only after a court is "authorized to accept jurisdiction" – in this case, after it has been submitted to and denied by an insurer. However, filing & denial of an insurance claim is not a statutory prerequisite to suing to recover for an insured loss. Once the loss occurred, § 102(1)(a) did not prohibit the owners from filing suit for payment under their policies, and the Court would have been authorized to accept jurisdiction. While it might not make sense to sue before making a demand, and the suits would be rendered moot if the insurers were to pay what was due, all elements of the claim or cause existed when the events that were insured against occurred. When the spills occurred, the right to maintain an action on the insurance was complete and the insureds (and the Board as their subrogee) had 8 years to commence an action to recover under their policies. To hold otherwise would allow the Board, or any other insured, to endlessly draw out a claim and then sue well after the statute had run. Preventing such a result is the exact reason for our holding in *Capitol Indemnity* and *Nelson* (Mont. 1979). *Capitol Indemnity* is consistent with this Court's precedent and we decline to overrule it. In *Thompson* (Mont. 1969), which the Board cites for the proposition that a party has no claim for indemnification until payment of a judgment, the insurers' obligation to pay was dependent on a 3rd party's recovery in tort, while here the claim under the policies matured when the cleanup obligation arose.

Warner, Cotter, Leaphart, Morris.

Rice specially concurred: For the reasons expressed in my Dissent in *Crumleys* (Mont. 2008), I agree with Respondents that the Board's enabling legislation does not grant it a right of subrogation against insurers of parties who receive reimbursement from the Fund.

Petroleum Tank Release Compensation Board v. Federated Service Ins., Mountain West Farm Bureau Mutual Ins., NFU Property & Casualty, and Mutual Service Casualty Ins., DA 06-837, last brief 8/1/07, decided 6/3/08.

Allan Payne, Marc Buyske, and James Shuler (Doney, Crowley, Bloomquist, Payne, Uda), Helena, and Scott Burnham, UM Law School, for the Board; Christian Nygren (Milodragovich, Dale, Steinbrenner & Nygren), Missoula, and Laura Hanson (Meagher & Geer), Minneapolis, for Federated; Jared Dahle (Nelson & Dahle), Billings, for Mountain West; Jon Dyre & Steven Jennings (Crowley, Hanson, Toole & Dietrich), Billings, for NFU and Mutual Service.