

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 01-198

HARLAN and ELINOR SWANSON, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 HARTFORD INSURANCE COMPANY )  
 OF THE MIDWEST, )  
 )  
 Defendant. )

**FILED**  
 MAR 27 2001  
*Ed Smith*  
 CLERK OF SUPREME COURT  
 STATE OF MONTANA  
**ORDER**

The United States District Court for the District of Montana has certified to this Court, pursuant to Rule 44, M.R.App.P., the following questions of law:

1. Is subrogation by the insurer to recover medical payments advanced to its insured, and later paid by the tortfeasor, void in Montana as against public policy?
2. Is it the public policy in Montana that an insured must be totally reimbursed for all losses as well as costs, including attorney fees, involved in recovering those losses before the insurer can exercise any right of subrogation regardless of any contract language providing to the contrary?
3. Does a provision in an insurance policy issued in Colorado, stating that Colorado law governs the insurer's subrogation rights for PIP benefits, violate Montana's public policy if Colorado law allows subrogation regardless of whether the insured has been made whole and fully compensated, including attorney fees and costs?

In its certification order, the United States District Court has also set forth a statement of the facts of this case relevant to the above questions.

IT IS HEREBY ORDERED that this Court accepts certification of the above questions. This Court will decide the certified questions on the basis of the statement of facts


*Stacy Law Bank*  
 APR 1 2001  
 OF MONTANA

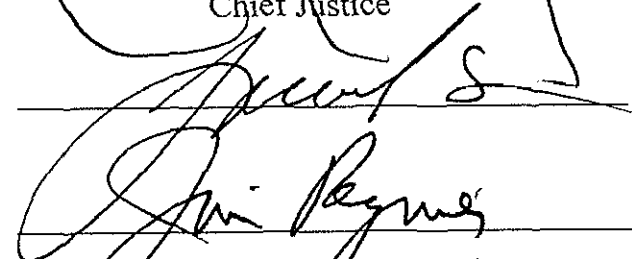
submitted by the United States District Court and the arguments to be submitted by the parties.

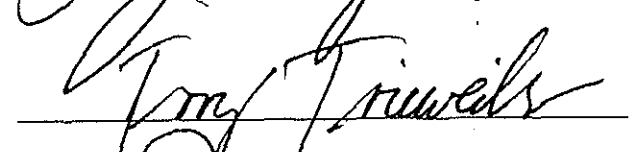
IT IS FURTHER ORDERED that the parties shall, in accordance with the Montana Rules of Appellate Procedure, prepare, file, and serve briefs addressed to the certified questions, with the opening brief to be filed by the plaintiffs on or before 30 days from the date of this Order.

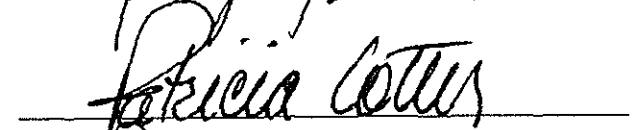
The Clerk of this Court is directed to give notice of this Order by mail to counsel of record for the parties and to the Honorable Leif B. Erickson, Federal Magistrate Judge, United States District Court for the District of Montana.

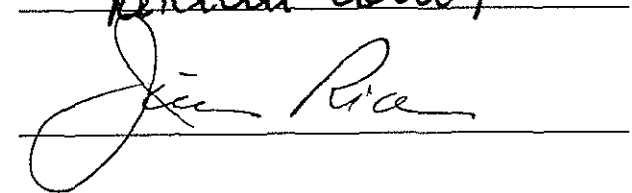
Date this 27<sup>th</sup> day of March, 2001.

  
\_\_\_\_\_  
Chief Justice

  
\_\_\_\_\_  
Jim Payne

  
\_\_\_\_\_  
Tony Trivels

  
\_\_\_\_\_  
Patricia Cotter

  
\_\_\_\_\_  
Jim Rice

\_\_\_\_\_  
Justices