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Insurance Law- Business and Investment Limitations - Authority of Foreign Life Insurer to Acquire a Fire and Casualty Subsidiary

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INSURANCE LAW — BUSINESS AND INVESTMENT LIMITATIONS — AUTHORITY OF FOREIGN LIFE INSURER TO ACQUIRE A FIRE AND CASUALTY SUBSIDIARY— Plaintiff, a Connecticut life insurer, proposed to acquire a controlling stock interest in a fire and casualty insurance company.[1] The New York Superintendent of Insurance, supported by the state Attorney General,[2] advised that plaintiff would thereby disqualify itself from doing business in the state under the business and investment limitations of the Insurance Law.[3] Plaintiff sought a declaratory judgment that its proposal was permissible. The supreme court denied plaintiff's motion for summary judgment, granted defendant's cross-motion and dismissed the complaint; the appellate division affirmed.[4] On appeal, *held*, reversed, three judges dissenting. The legislature did not intend to extend the business limitations of the Insurance Law to prevent a parent-subsidiary arrangement, at least where the parent's admitted assets are sufficient to satisfy the investment requirements of the statute.[5] *Connecticut Gen. Life Ins. Co. v. Superintendent of Ins.*, 10 N.Y.2d 42, 176 N.E.2d 63, 217 N.Y.S.2d 39 (1961).

The Superintendent's position rested largely upon two distinct, though interrelated, categories of restrictions in the Insurance Law: the

1 Both plaintiff and the fire and casualty company were organized in Connecticut and licensed in New York. Plaintiff's object was to improve its marketing position by this transaction since its agents would thus be enabled to engage in "one-stop selling" of several lines of insurance. Two of plaintiff's largest competitors had been so situated for over fifty years.

2 1956 N.Y. ATTY. GEN. OPS. 177.

3 N.Y. INS. LAW §§ 42 (3), 81 (13), 193 (2).

4 11 App. Div. 403, 207 N.Y.S.2d 335 (1960).

5 "Admitted assets" refers generally to those assets held or invested in accordance with the Insurance Law. Other assets may not be considered in determining technical solvency. See N.Y. INS. LAW § 70.

business limitations sections[6] and the investment limitations sections.[7] The former class forbids a foreign life insurer to write any other lines of insurance except annuities and accident and health. This type of restriction, commonly known as a multiple-line prohibition, purports to aid in preserving the reserves of the life business (for which claims are relatively predictable as to frequency and amount) from the less stable and more risky kinds of insurance. When the general insurance laws were enacted they tended to compartmentalize insurance into three distinct groups: life, fire, and marine and casualty, the latter usually being thought to include all lines not embraced by the other two. The modern statutes generally have abolished this grouping in favor of isolating only life, and often title insurance, from the kinds of insurance permitted to be written by a single company.[8] Life insurance is apparently the only line in which it is now felt there are sufficient underwriting peculiarities to warrant its insulation from other risks. In rejecting defendant's contention that this transaction would violate the business limitations, the court refused to presuppose that plaintiff would employ its subsidiary for the purpose

[6] N.Y. INS. LAW § 42(3): "No foreign insurer shall be licensed to do in this state any kind or kinds of insurance which are not permitted to be done by domestic insurers . . . ."

N.Y. INS. LAW § 193(2): ". . . no foreign life insurance company licensed to do business in this state shall, . . . do any kind or kinds of business other than those specified in paragraphs one, two and three of section forty-six." Paragraphs one, two and three of § 46 refer to and define, respectively, life insurance, annuities, and accident and health insurance.

[7] N.Y. INS. LAW § 81(13): "No such [domestic] insurance company shall invest in or loan upon any common stocks or shares of any institution in excess of two per cent of the total issued and outstanding common stocks or shares of such institution, nor shall the amount so invested exceed one-fifth of one per cent of the admitted assets of such insurance company . . . ."

N.Y. INS. LAW § 90(1): "The Superintendent may refuse a new or renewal license to any foreign insurer, if he finds that its investments do not comply in substance with the investment requirements and limitations imposed by this chapter upon like domestic insurers . . . . For the purposes of this subsection, the investments of a foreign insurer shall be deemed to comply in substance . . . if, after disallowing as admitted assets . . . any of its investments which do not comply with such investment requirements and limitations, . . . the resulting surplus to policyholders . . . would not be reduced below an amount which is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; but in no event below an amount equal to the minimum surplus to policyholders required [for like domestic insurers]."

[8] One state has recently repudiated the multiple-line doctrine altogether, provided the company "maintain separate reserves in trust" for all of its life business. WIS. STAT. ANN. §§ 201.04-.05 (1957). Many states, including New York, also permit a life insurer to write related lines (e.g., annuities, accident and health). As a policy matter, the Wisconsin solution probably results in as much security as the multiple-line prohibition but with greater economy and efficiency, which inures to the benefit of both the public and the industry. See generally, BICKELHAUPT, TRANSITION TO MULTIPLE-LINE INSURANCE COMPANIES (1961); KIMBALL, INSURANCE AND PUBLIC POLICY 117-19 (1960); Heins, *Multiple Line Underwriting and Wisconsin Insurance Laws*, 1957 WIS. L. REV. 563, 567-68.

of evading multiple-line provisions. This reasoning is supported by the general corporate law principle that a subsidiary's business is not attributable to its parent[9] and, except for fraudulent or illegal purposes, the former may engage in a business forbidden to its parent.[10] This rationale is tempered by dictum which is a clear warning to plaintiff that, should it later disregard corporate formalities in a manner offensive to the statute, defendant would be justified in refusing to renew its license.[11]

Of greater significance are the investment limitations which permit insurance companies to invest in common stocks only within very narrow limits in order to preserve the insurance fund, thus placing the insurer in a position somewhat analogous to that of a trustee. Chief among these restrictions is section 81 (13) which limits an investment to two percent of the outstanding shares of another company.[12] These provisions, standing alone, would categorically prohibit a stock investment of this magnitude. However, the strictness of section 81 (13) is mitigated by section 67 (1) which authorizes an insurer to "invest in or acquire the whole or any part of the capital stock of any other insurer."[13] If a repeal by implication, which is not favored by the courts, is to be avoided here, section 81 (13) must be regarded as a general law not affecting the operation of 67 (1)—a special law applicable in only a particular class of cases,[14] *i.e.*, investments by insurers in the common stock of other insurers. The Legislature, by enacting section 67 (1), conferred a broad and substantial privilege upon insurance companies, its manifest intent being to sanction horizontal integration within the insurance industry. As a corollary to this construction, investments made under the authority of section 67 (1) in the stock of other insurers comply by definition with the statutory requirements, and are therefore includible in admitted assets for the purpose of determining whether a foreign insurer's investments "comply in substance" within the meaning of section 90 (1).[15]

9 People v. American Bell Tel. Co., 117 N.Y. 241, 22 N.E. 1057 (1889); People *ex rel.* Edison Light & Power Co. v. Kelsey, 101 App. Div. 205, 91 N.Y. Supp. 709 (1905).

10 Jenkins v. Moyse, 254 N.Y. 319, 172 N.E. 521 (1930); Berkey v. Third Ave. Ry., 244 N.Y. 84, 155 N.E. 58 (1926).

11 Principal case, 176 N.E.2d at 67, 217 N.Y.S.2d 44.

12 See text of statute cited at note 7 *supra.*

13 N.Y. Ins. Law § 67 (1). "Any domestic insurer and any foreign or alien insurer authorized to do business in this state may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers . . . provided such retention, investment [or] acquisition . . . is not inconsistent with any other provision of this chapter and [that no monopoly or substantial reduction of competition results]."

14 See, *e.g.*, Cimo v. State, 306 N.Y. 143, 116 N.E.2d 290 (1954); Peterson v. Martino, 210 N.Y. 412, 104 N.E. 916 (1914); People *ex rel.* Terry v. Keller, 158 N.Y. 187, 52 N.E. 1107 (1899); Baker v. Springer, 270 App. Div. 639, 62 N.Y.S.2d 907 (1946).

15 Perhaps the court neglected to explore fully these implications of § 67 (1) since it was convinced that plaintiff's "admitted assets, capital and surplus apparently are sufficient to insure against insolvency and to protect policyholders in this state" even if

These provisions are representative of a trend in state insurance laws toward a liberalization of investment limitations.[16] The overriding public policy sought to be effectuated by investment regulation is the maintenance of insurer solvency and preservation of the insurance fund, which represents the savings interest of policyholders and guarantees the ability of the insurer to perform contractual obligations as claims arise. While section 67 (1) demonstrates a relaxation of the investment limitations pertaining to a specific class of common stock, section 90 (1) continues to implement the policy of protection by requiring that a minimum quantity of each insurer's assets be placed in investments prescribed by the legislature and that these be quantitatively "reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs." Although this scheme of regulation appears to provide ample safeguards, the dissenting Chief Judge urged on policy grounds alone that no life insurer be permitted to invest in any stock of another kind of insurer. This seems to be a legislative conclusion which is wholly unwarranted in view of the legislature's apparent satisfaction with its own statutory investment standards and its present proclivity to liberalize them.[17]

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the investment involved in this litigation were not allowed as an admitted asset. Principal case, 176 N.E.2d at 67, 217 N.Y.S.2d 44. On the other hand, the court may have rejected this construction by implication when it remarked that plaintiff "is entitled to invest in a subsidiary provided its remaining assets are sufficient to comply with section 90 (subd. 1)." Principal case, 176 N.E.2d at 69, 217 N.Y.S.2d 47.

16 VANCE, INSURANCE 43 (3d ed. 1951). Some authorities suggest that too rigid investment restrictions are self-frustrating in an economy beset by continuing inflationary pressure, and that business initiative is unduly stifled by over-cautious regulation. Berle, *Conceptual Framework for Regulation of Business Enterprise*, in WORLD INSURANCE TRENDS 157 (1957); Walsh, *The Pattern of State Regulation of Private Insurance*, *id.* at 163; Comment, 57 YALE L.J. 1256, 1267-75 (1948).

17 As a result of the delay caused by the appeals in this case, Connecticut General lost its opportunity to acquire the controlling stock of National Fire Insurance Company of Hartford, as was originally intended. Plans have since been announced by which Connecticut General would acquire at least eighty per cent of the presently outstanding stock of Aetna Insurance Company, a fire insurer. J. Commerce, Nov. 14, 1961, p. 36.