

1954

# In the Matter of the Order Issued to American Buyers Insurance Company and Producers Mutual Insurance Company, utah Corporations : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Mulliner, Prince & Mulliner; Rich, Elton & Mangum;

---

## Recommended Citation

Brief of Appellant, *American Buyers Insurance Co.*, No. 8117 (Utah Supreme Court, 1954).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/2135](https://digitalcommons.law.byu.edu/uofu_sc1/2135)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

---

IN THE MATTER OF THE ORDER  
ISSUED TO AMERICAN BUYERS  
INSURANCE COMPANY AND  
PRODUCERS MUTUAL INSURANCE  
COMPANY, UTAH CORPORATIONS.

Case No.  
8117

---

**BRIEF OF APPELLANTS**

---

**MULLINER, PRINCE & MULLINER**

By SEATON PRINCE

Counsel for American Buyer-  
Insurance Company of Utah

**RICH, ELTON & MANGUM**

By MAX K. MANGUM

Counsel for Producers  
Mutual Ins. Co. of Utah

**FILED**  
JAN 18 1954

Clerk, Supreme Court

## I N D E X

Statement of Facts .....	1
Specifications of Error .....	3
Argument .....	5
I. Appellants are Mutual Benefit Associations.....	5
II. Mutual Benefit Associations are Exempt from the General Insurance Code.....	6
Conclusion .....	23

### Table of Cases

Board of Education v. Bryner, 57 Utah 78, 192 Pac. 627..	15
Braddock, by Smith v. Pacific Woodmen Life Asso- ciation, 89 Utah 75, 54 Pac. 2d 1189 .....	7
Commercial Life Ins. Co. v. Wright, 64 Arizona 129, 166 Pac. 2d 943.....	21
Decker v. New York Life Insurance Co., 94 Utah 166, 76 Pac. 2d 568 .....	18
Daniher v. Grand Lodge A.O.U.W., 37 Pac. 245.....	18
Fidelity Life Association v. Hobbs, 161 Kansas 163, 166 Pac. 2d 1001 .....	10, 25
National Aid Life Association v. Abbott, 178 Okla. 319, 62 Pac. 2d 982 .....	9
Neighbors of Woodcraft v. Westover, 99 Colo. 231, 61 Pac. 2d 585 .....	8
State Ex Rel Conner, Attorney General v. Western Mutual Benefit Association, 47 Idaho 360, 276 Pac. 37 .....	8
State v. Royal Neighbors of America, 44 New Mexico 8, 96 Pac. 2nd 705 .....	5, 24
Utah Association of Life Underwriters v. Mountain States Life Insurance Co., 58 Utah 579, 200 Pac. 673 .....	6, 12

## Statutes

Sec. 43-1-1, UCA 1943 .....	13
Sec. 43-11-13 (i), UCA 1943 .....	13
Sec. 43-31-15, UCA 1943 .....	13
Sec. 31-1-14, UCA 1953 .....	4, 11
Sec. 31-7-17, UCA 1953 .....	4, 6, 23
Sec. 31-21-18, UCA 1953 .....	10
Sec. 31-27-15, UCA 1953 .....	4, 6, 23
Sec. 31-29-4, UCA 1953 .....	10
Sec. 31-30-3, UCA 1953 .....	10
Sec. 31-31-1, UCA 1953 .....	1, 5, 11
Sec. 31-31-10, UCA 1953 .....	6
Sec. 31-31-11, UCA 1953 .....	6
Sec. 31-31-15, UCA 1953 .....	4, 7, 12, 13, 14
Sec. 31-32-22, UCA 1953 .....	11
Sec. 31-32-23, UCA 1953 .....	10
Chapter 31, UCA 1953 .....	4

## Texts

42 Am. Jur. 392 .....	18
-----------------------	----

# IN THE SUPREME COURT of the STATE OF UTAH

---

IN THE MATTER OF THE ORDER  
ISSUED TO AMERICAN BUYERS  
INSURANCE COMPANY AND  
PRODUCERS MUTUAL INSUR-  
ANCE COMPANY, UTAH CORPO-  
RATIONS.

} Case No.  
8117

---

## BRIEF OF APPELLANTS STATEMENT OF FACTS

---

American Buyers Insurance Company of Utah and Producers Mutual Insurance Company of Utah hereinafter designated as appellants, are both mutual benefit associations as such are defined by the statutes of the State of Utah. This conclusion is compelled by virtue of the introduction and admission in evidence of the certificates of authority of the two companies (R. 21-22, 57 and 42-43 and 60). No evidence to rebut this *prima facie* determination was offered or introduced at the hearing. Section 31-31-1, U.C.A. 1953 provides in part: "A duly certified copy or duplicate of such certificate

(certificate of authority) shall be prima facie evidence that the licensee is a benefit association within the meaning of this chapter." (Material in parenthesis added.)

Appellant companies are engaged in the sale of mutual benefit association life insurance policies to members of their respective associations. The policy holders, through a trust agreement, assign their dividends, if any, on their life insurance policies. The trustees, in accordance with the trust agreement, purchase stock for the policy holders in the company designated by the trust agreement (R. 50-51). It was by this procedure that the securities were sold or offered in connection with the sale of insurance.

The only issue before the Insurance Commission and the Department of Business Regulation at the hearing below was whether these mutual benefit associations could legally offer and sell securities along with and in connection with the sale of insurance (R. 18 and 85). Appellants both admitted that they were selling securities in conjunction with the sale of their insurance policies (R. 25 and 46).

The appellants were duly licensed to sell securities and both companies introduced into the record, certified copies of their "Certificates of Registration" issued by the Utah Securities Commission (R. 58, 58a, 58b, 61, 61a and 61b). The sales force of both companies are licensed both as insurance agents and securities salesmen (R. 32 and 50).

Counsel for the State of Utah stipulated that there was "no question involved in this matter of solvency of these firms." (R. 114-115).

After the conclusion of the hearing before the Insurance Commission and the Department of Business Regulation, an order was entered directing the appellants to cease and desist within ten days, "from selling, offering or promising to give, or allowing in any manner whatsoever any shares of stock or other securities issued or at any time to be issued or any interests or rights therein in connection with or as an inducement to the purchase of any insurance or insurance type benefit." (R. 87).

Thereafter an appeal was taken to the District Court where by stipulation (R. 127) all parties agreed to submit the matter to the District Court for determination upon the record made in the hearing before the Department of Business Regulation and the Insurance Commission. Thereafter the District Court by its order duly entered affirmed the above order of the Department of Business Regulation and the Insurance Commission (R. 155). This appeal is taken from the order of the District Court.

## SPECIFICATIONS OF ERROR

The order of the Department of Business Regulation and the Insurance Commission of the State of Utah is in error in the following particulars :

(a) The Department of Business Regulation, the Insurance Department of the State of Utah and the District Court as a matter of law erroneously conclude

that petitioners are insurers and persons as defined by the Insurance Code of the State of Utah, and therefore they are subject to the general insurance code.

(b) The Department of Business Regulation, the Insurance Department of the State of Utah and the District Court erroneously conclude that petitioners are bound by Section 31-27-15 and 31-7-17, Utah Code Annotated 1953.

(c) The Department of Business Regulation, the Insurance Department of the State of Utah and the District Court have failed to recognize the special treatment to which petitioners are entitled by reason of holding certificates of authority to engage in the insurance business as Mutual Benefit Associations.

(d) The Department of Business Regulation, the Insurance Department of the State of Utah and the District Court have totally disregarded Chapter 31, Utah Code Annotated 1953, and in particular Sections 31-1-14 and 31-31-15 thereof.

(e) The Department of Business Regulation, the Insurance Department of the State of Utah and the District Court have disregarded pertinent and controlling decisions by the Utah and Supreme Courts of other States.

(f) The sale of securities by petitioners in conjunction or in connection with the sale of insurance had been theretofore considered and approved by the Insurance Commission and had by petitioners been carried on for in excess of two years, with the full knowledge and approval of the Insurance Commission.



(g) Said Order is void, arbitrary and capricious and without any support or foundation in the record or at law.

## ARGUMENT

### I

#### APPELLANTS ARE MUTUAL BENEFIT ASSOCIATIONS.

On the present state of the record it must be conceded that appellants are mutual benefit associations as such are defined by the Statutes of the State of Utah. This conclusion is compelled by virtue of the introduction and admittance in evidence of the certificates of authority of the two companies and the fact that no other evidence in rebuttal of this *prima facie* determination was introduced at the hearing. See 31-31-1, UCA 1953.

See also, *State v. Royal Neighbors of America*, 44 New Mexico 8, 96 P. 2d 705 (New Mexico 1939). At Page 709 the Court discusses the effect of a duly certified copy or duplicate of the license as proof that the company was a fraternal benefit society. In fact the Court went far beyond anything necessary to these appellants in establishing their status. The New Mexico Court went so far as to hold that when the particular company involved was licensed as a fraternal benefit society its status was irrevocably established for the particular period involved.

The record in this case establishes the fact, without contradiction, that appellants are *mutual benefit associa-*

tions, which associations are authorized to write various kinds of insurance. The first sentence of Section 31-31-10, Utah Code Annotated 1953, refers to "contracts of life insurance" issued by these associations. Section 31-31-11 limits the "amount of insurance" risk which these associations may assume. Thus appellants are by statute special kinds of companies or associations engaged in writing limited policies of insurance. The fact that they are incorporated, and the fact that they are *successfully* writing insurance for the *members* of the association does not alter their statutory nature. They are still *mutual benefit associations*.

THERE REMAINS FOR DISCUSSION, THEN, THE SOLE QUESTION AS TO WHETHER IT IS ILLEGAL FOR APPELLANTS, AS MUTUAL BENEFIT ASSOCIATIONS, TO SELL SECURITIES IN CONJUNCTION WITH THE ISSUANCE OF POLICIES OF LIFE INSURANCE.

## II

### MUTUAL BENEFIT ASSOCIATIONS ARE EXEMPT FROM THE GENERAL INSURANCE CODE.

Prohibition against security sales in connection with insurance sales is claimed by the Attorney General's Office by reason of Sections 31-7-17 and 31-27-15, UCA 1953, and also by reason of the Supreme Court of Utah decision in the case of *Utah Association of Life Underwriters v. Mountain States Life Insurance Co.* 58 Utah 579, 200 P. 673.

Conversely, appellants claim exemption from the General Insurance Laws of the state, and particularly the above cited sections, by reason of 31-31-15 UCA 1953, which reads as follows:

“Exemptions from other provisions of code.  
—Except as provided in this chapter, every such association shall not be subject to the other provisions of this code unless the context clearly indicates applicability to such association.”

Appellants urge to this Commission the applicability and determinativeness of the decision by the Utah Supreme Court in the case of *Braddock, by Smith v. Pacific Woodmen Life Association*, 89 Utah 75, 54 P. 2d 1189. In this case the plaintiff sued as beneficiary of a certificate of fraternal benefit insurance issued on the life of his father. The defendant association denied liability on the ground that certain statements made by the assured in his application for insurance were warranties and since they were untrue they thereby voided the policy. By General Insurance Statute of the State of Utah it is provided that the policy shall constitute the entire contract between the parties and that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The defendant association contended that inasmuch as it was a fraternal benefit association it was therefore not subject to the General Insurance Laws. The Supreme Court held for the defendant association, stating that by reason of Revised Statutes 1933, 43-9-4, 43-1-1, fraternal benefit societies were not subject to the general provisions of the Insurance Code.

Appellants earnestly submit that while in the Pacific Woodmen case the company involved was a fraternal organization, as distinguished from appellants who are mutual benefit associations, still the legal proposition is the same. Both classes of organizations enjoy a statutory exemption from the General Insurance Laws of Utah. *There is no reason for this Court to make a distinction between a fraternal organization and any other type of exempted organization by honoring one exemption and disallowing the other.*

Indeed the cases have not made any such distinction, as evidenced by the fact that exemption has been granted to the following:

See *State Ex Rel Conner, Attorney General v. Western Mutual Benefit Association*, 47 Idaho 360, 276 P. 37 (Idaho 1929). In this case the Idaho Supreme Court held that the Western Mutual Benefit Association was exempt from the General Insurance Statutes of the State of Idaho, despite the fact that the company did not have a representative form of government; that it wasn't governed by the lodge system; that it did not have an initiation or ritualistic form of work; and that the benefits it paid were not confined to a limited class of persons. The Court held this company to be a benevolent order or society, which, under the laws of Idaho, was granted an exemption from the General Insurance Code.

See also, *Neighbors of Woodcraft v. Westover*, 99 Colo. 231, 61 P. 2d 585 (Colorado 1936). In this case the Colorado Supreme Court held that the company was a fraternal society operating on the lodge plan, and that

it had been admitted to do business in Colorado as a fraternal benevolent society. The General Insurance Laws of the State provided that the suicide of a policyholder after the first year should not be a defense against the payment of a policy. This general provision relating to suicide was directed by the terms of the statute to the policies of "any life insurance company." There was a provision in the general Colorado Insurance Statutes as follows:

"This act shall not apply to fraternal benefit societies as defined in Chapter 139 of the laws passed at the 18th Session of the General Assembly of the State of Colorado, except as therein otherwise expressly provided."

The Court held that it was the consistent intention of the legislature to exempt fraternal benefit societies from the operation of the general insurance laws of the state.

See also, *National Aid Life Association v Abbott*, 178 Okla. 319, 62 P. 2d 982 (Okla. 1936). This case involved a *mutual benefit company*. The question before the Court was whether the General Insurance Laws of the State of Oklahoma applied to this type of company. The Court cited prior decisions with respect to fraternal benefit societies wherein the Court had held that by virtue of the intention of the legislature these companies were exempt from the general insurance laws, and then said:

"The Fraternal Benefit Act and the Mutual Benefit Act are of such character that we have no hesitancy in applying the case of *National*

Benevolent Society v. Russell insofar as it affects Section 10-519." (This section has to do with the operations of mutual benefit companies.)

Thus the Court held that the mutual benefit company was not subject to the general insurance laws of the state.

See also, *Fidelity Life Association v. Hobbs*, 161 Kansas 163, 166 P. 2d 1001 (Kansas 1946). In this case the Kansas Supreme Court held that it was the intent and purpose of the legislature to place fraternal benefit societies in a class by themselves, make them amenable to conditions, and subject them to regulatory powers and supervision different from those of insurance companies in general. See particularly the discussion at 166 Pac. 2d., Page 1006.

Moreover, it should not be overlooked that the mutual benefit associations are not the only organizations granted exemptions under the Utah Insurance Code. In this regard note the following sections under UCA 1953:

- 31-32-23 applicable to cooperatives.
- 31-21-18 applicable to mutual fire companies.
- 31-30-3 applicable to hospital service plan.
- 31-29-4 applicable to fraternal benefit associations.

It is worthy of note that even though cooperative associations are granted the exemption by the section above cited, still by Section 31-32-22, UCA 1953, said cooperative associations, their officers, directors, agents and employees are subject to all the provisions of Chapter 27 of the Code, and Chapter 27, of course, contains one of the prohibition sections upon which the Attorney

General places reliance. There is no reference anywhere in the chapter of the code relating to *mutual benefit associations* which requires that said associations comply with Chapter 27.

If the Attorney General's contention is sound that the legislature intended these unusual organizations and associations to be bound by the general regulatory provisions of the Insurance Code, why, then, did the legislature specifically enact Section 31-32-22, Utah Code Annotated 1953? Certainly the fact that the legislature specifically directed that cooperative insurance companies must comply with all of the provisions of Chapter 27 of the Insurance Code must have indicated that without this specific mandate these companies would not have been subject to this chapter of the Code.

In connection with these various statutory exemptions particular attention is called to Section 31-1-14 UCA 1953, which reads as follows:

“Construction of code—Particular paramount over general.—Provisions of this code relating to a particular kind of insurance or a particular type of insurer prevail over provisions relating to insurance in general or insurers in general.”

Now let us discuss Section 31-31-1, wherein it is stated:

“Every association (mutual benefit association) \* \* \* which desires to do such a business in this State shall comply with all the requirements and provisions of this chapter, and the General Insurance Laws of Utah *relative to said association* \* \* \*.” (Italics added.)

The Attorney General apparently wishes this Court to ignore the meaning of the word "relative." This word cannot be ignored since to do so requires the interpreter to completely disregard and wipe out the effect of 31-31-15. Acceptance of the word "relative" in the context in which it is used results, however, in a reasonable interpretation of the two sections, and this is amply supported by the case law on the subject, that each statute is to be construed so that the whole is made harmonious.

Scrutinizing the various legislative enactments also furnishes some light on this matter. Initially the mutual benefit insurance section first appeared in the Code in 1935. It should be observed that at the date of decision in the *Mountain States Life Insurance Company* case (1921), which is heavily relied upon by the Attorney General, there were no statutory provisions for mutual benefit associations in the State of Utah. Furthermore, the Mountain States Life Insurance Company was not a domestic mutual benefit association and did not claim to be. Thus, since the statutes before the Court in that decision were entirely different from those now on the books in the State of Utah, and since subsequent to the decision by the Utah Supreme Court in that case the legislature saw fit to amend the insurance laws extensively, we feel that the case *has no bearing at all on mutual benefit association companies*. Let us enlarge upon these statutory changes referred to in the preceding sentence.

As before stated, Laws of Utah 1935, Chapter 41, sanctioned mutual benefit associations. In 1941 the legis-



lature enacted Section 43-11-13 (i), wherein mutual benefit associations were specifically prohibited from offering, giving, or selling securities in conjunction with the sale of insurance. At that precise time the Insurance Code definition of "insurance company" included "all corporations, associations, partnerships and individuals engaged as principals in the insurance business, excepting fraternal and benevolent orders and societies." 43-1-1, Utah Code Annotated 1943). Also at that same time "insurance companies" were then prohibited from offering, giving or selling securities in conjunction with the sale of insurance by virtue of the general prohibition found in Section 43-3-33 and 34, Utah Code Annotated 1943. Nevertheless the legislature in 1941 enacted the special prohibition found in Section 43-11-13 (i) mentioned above.

By the Laws of Utah 1947, not only was Section 13(i), Chapter 44, Laws of 1941 (the section prohibiting mutual benefit companies from selling securities in conjunction with insurance) *removed*, but there was *added* the exemption section, 43-31-15, Utah Code Annotated 1943, Pocket Parts, which section has been retained and carried forward from that date to the present, where it now appears as Section 31-31-15, Utah Code Annotated 1953. So we have a legislative history wherein mutual benefit associations were in 1941 expressly subjected to the prohibition against selling stock in conjunction with the issuance of life insurance policies, and a subsequent removal of that specific prohibition from the chapter pertaining to mutual benefit associations. Concurrently with the removal of the prohibition we find the legislature

enacting for the first time the section exempting mutual benefit associations from the General Insurance Code. It cannot be supposed that the legislature's actions were meaningless. The mandate of the legislature seems plain and unambiguous; namely, that these mutual benefit associations shall not be subject to the other provisions of the Code unless the *context clearly indicates applicability to such association*.

The Attorney General argued below that since the appellants were engaged in the assumption of insurance risks, and were "persons" as defined in the general insurance Code that they were necessarily therefore subject to the entire insurance code. Appellant companies do not deny that they are engaged in the assumption of insurance risks, nor do they deny that technically they are "persons" as defined in Section 31-1-9, Utah Code Annotated 1953. But they do point out that mutual benefit associations are not subject to the other provisions of the Insurance Code, unless the context clearly indicates *applicability to such association*. If by virtue, alone, of the broad definition of "person" and "insurer" these associations are to be brought under section 31-27 15 Utah Code Annotated 1953, then by the same token each and every section and chapter of the general Insurance Code would likewise apply to these respondents. This follows because all parts of the general Insurance Code, without exception, apply to and govern either "persons" or "insurers." Such a construction would therefore completely nullify and wipe out the language of section 31-31-15, exempting these companies from the remaining provisions of the Code. That such a construc-

tion was never intended by the legislature is manifest. Our own Supreme Court very clearly recites the rule which governs a case such as this in *Board of Education v. Bryner*, 57 Utah 78, 192 Pac. 627, at 629 (Utah 1920). Our Supreme Court there said:

"It follows that in order to determine the intention and purpose of the lawmaker, and to harmonize conflicting provisions where such occur, it at times becomes necessary for the courts to expand or to restrict the ordinary and usual meaning of words, phrases, or clauses found in a particular section or statute. In that connection it is also necessary to observe the cardinal rule of construction that every word and phrase must be given some force and effect if possible, and this notwithstanding the fact that in doing so the effect of the particular section or statute may thereby be enlarged or restricted as the case may be. When, therefore, the language of a section or statute is ambiguous and doubtful, and on reading the language there is doubt whether it should be applied in accordance with its ordinary and usual meaning or whether it should receive an enlarged or restricted construction and effect, it is the duty of the courts to look beyond the statute if by doing so they can better determine the intention and purpose of the lawmakers. Moreover, as a means of ascertaining the true intention of the lawmakers, it may also be necessary to inquire into and scan the history of the particular statute in question, and in connection therewith consider the general purpose of the lawmakers in formulating and passing laws upon a particular subject and that is particularly true in cases where different sections or provisions relating to the same subject-matter are conflicting or ambiguous."

The legislative history of this prohibition against selling securities with insurance has already been recited in this brief. However as conclusive evidence that the legislature itself is not in accord with the position that mutual benefit associations are, merely because they are "insurers", subject to the general insurance code provisions governing insurers, we call attention to section 31-31-12, Utah Code Annotated 1953. This section specifically requires that agents of mutual benefit associations must be licensed pursuant to Chapter 17 of the Insurance Code. An examination of Chapter 17 readily discloses that all persons authorized by an "insurer" to solicit applications for insurance are agents, who must be licensed by the Commission. Thus, if the attorney general's argument is sound, all agents of mutual benefit associations were required to be licensed by virtue of the provisions of Chapter 17. The legislature, however, did not believe this to be true, as they enacted a specific section applying to agents of mutual benefit associations. Again we must conclude that there was a reason for the enactment of Section 31-31-12, Utah Code Annotated 1953. The obvious reason was that without the enactment of this section, the legislature had concluded that agents of mutual benefit associations would not be required to be licensed by the Insurance Commission.

We submit that this legislative history compels the conclusion that by repealing Section 43-11-13 (i), U.C.A. 1943, and at the same time granting mutual benefit associations an exemption from the general Insurance Code

(31-31-15, Utah Code Annotated 1953), left these companies free to offer, seek, or give securities in conjunction with the sale of insurance.

Almost immediately after the legislature in 1947 deleted the prohibition against the sale of stock in conjunction with the sale of insurance from the mutual benefit association chapter of the Code, the Insurance Department was called upon to make a contemporaneous ruling. As the Insurance Commission well knew certificates of authority were issued to appellant mutual benefit associations and their policies were approved by the Insurance Department. At the same time, the Business Regulations Commission, through its Securities Division and the Insurance Division, was fully aware of the fact that appellant mutual benefit associations were offering stock in conjunction with the sale of their insurance policies. This is all a matter of public record in the Insurance Commission. The law books are full of cases holding that the practical interpretations by the department of government charged with the administration or enforcement of a particular law are entitled to the highest respect from the Courts. This rule is particularly true when the administrative determination is contemporaneous with the first working of the statute. There are sound reasons why the Courts give such great weight to these practical contemporaneous rulings of an administrative body. They have been recited as follows:

1. The respect due the administrative authority.
2. The officers concerned are usually able men and masters of the subject.

3. The same men are frequently the drafters of the law they are called upon to interpret.

The officials of the Insurance Commission that approved the activities of appellants for the past several years were just such men as described above. If the Courts attach such great weight and significance to administrative rulings because of the foregoing reasons, how much more appropriate it would seem that the Insurance Commission should have attached the same weight to its own previous rulings and determinations, particularly in view of the legislation which is now on the books and the legislative history already set forth in this brief. For a complete discussion of this rule of law, that public administrative rulings are entitled to weight, see 42 *Am. Jur.*, Page 392, et seq. See also, *Decker v. New York Life Insurance Company*, 94 Utah 166, 76 P. 2d 568, at 572. Surely this Court will now honor this established rule of law.

Another factor which should not be overlooked in consideration of this problem is that the Utah Supreme Court, as long ago as 1894 in the case of *Daniher v. Grand Lodge A.O.U.W.*, 37 P. 245, ruled that a fraternal company doing general insurance business in the State of Utah would have its policies construed and determined by the general law applicable to mutual life insurance corporations. Subsequent to this early decision of the Utah Supreme Court the legislature saw fit to step in and modify the ruling in the *Daniher* case. Thus our legislature has specifically provided that several kinds of associations are exempt from the General Insurance

Laws. We must presume that the legislature was fully aware of the Utah decision in the Daniher case and that their subsequent exemptions granted to these various groups and associations was so that the Daniher decision would not continue to be the law of the state.

During the course of the oral argument below the Attorney General and counsel for the intervening life underwriters remarked that appellants were in effect attempting to enjoy complete immunity from all the insurance laws of the state which placed the appellants in a much more favorable position than other companies writing similar insurance. We respectfully direct the Court's attention to the fact that any such immunity is narrow and well defined, and moreover merely qualifying for the immunity places certain burdens and limitations upon those organizations so qualifying, and also upon the agents, officers, and employees that work for them.

The appellants must comply with the provisions of Chapter 31, which, among other things, provide that a minimum of 300 persons must have applied in writing to said association for membership and benefits therein, or at least \$200,000 of insurance benefits must have been applied for. Also, a bond in the penal sum of \$5,000 must be executed and certain registration and examination fees must be paid dependent upon the number of members or insurance in force. Chapter 31 also places a limit of \$3,000 on any one risk that a benefit association may assume, and amounts in excess thereof are only permitted by reason of reinsurance, etc. These are all

limitations that are applicable to mutual benefit associations as distinguished from legal reserve life insurance companies.

There is nothing new or novel in creating what at first blush appears to be advantageous positions for designated and well defined organizations. As heretofore noted, the Utah Insurance Code itself, in addition to mutual benefit associations, sets up many different types of organizations, namely fraternal benefit, cooperatives, mutual fire companies, etc. Without fear of contradiction, appellants believe it can safely be stated that every state in the union, to a greater or lesser degree, has substantially identical legislation. Perhaps the Utah legislature granted these exemptions in an effort to stimulate the organization and growth of local companies whose capital and surplus would remain in the state and aid our economic growth. Whatever the reason, the legislature has granted these exemptions.

Nor are these exempting statutes confined to states alone as witness the advantageous federal tax treatment accorded to charity institutions, insurance companies, cooperatives, and building and loan societies to enumerate a few. All such organizations enjoy what may appear to be definite advantages, yet, all are properly excluded and exempted provided they have complied with the statutory definitions authorizing their existence. These statutory enactments are, of course, many and varied, and the restrictions and limitations therein contained must be complied with or the apparently favored position will be lost. But who can say whether such a



position is in truth "favored". Perhaps merely compliance with the statutes involved is sufficiently onerous so that others will not choose to be bound. To permit the mutual benefit associations to compete or actually to exist, the legislature may deem it necessary to exclude them and other similarly situated organizations from certain general provisions of the law. If it is found that the exclusion or exemption is too broad, the cure for this condition must be accomplished through action of the legislature. An excellent example of the curtailment of a once granted exemption may be found in the comparatively recent action of the Congress of the United States so far as the taxation of cooperatives and savings and loan companies are concerned.

During the argument before the Insurance Commission and the District Court the Attorney General and the attorney for the intervenor companies inferred that there was something inherently wrong or evil connected with appellants sales activities and operations. In the first place, there is nothing in this record to justify any such inferences. There is no question of solvency of appellant companies (R 114-115) involved in this case. The procedure followed by both companies is almost identical with that set forth in the case of *Commercial Life Insurance Company v Wright*, 64 Arizona 129, 166 Pac. (2d) 943 (Arizona 1946). We quote from this case at page 950-951:

"In considering the effect of the agreement, resort to the following general principles of law is not only helpful but determinative of the issues herein. These general principles are:

“‘It may be laid down as a broad general rule that the right to receive money due or to become due under a contract may be assigned, even though the contract itself may not be assignable. \* \* \*’ 4 Am. Jur., Assignments, section 14.

“‘\* \* \* an assignment of a debt not yet due and which may never become due is effective if it appears that there is an existing contract or employment out of which the debt may arise, \* \* \*.’ 2 Williston on Contracts, Revised Edition, page 1183.

“‘Except as stated in section 151, a right expected to arise in the future, under a contract or employment in existence at the time of the assignment, can be effectively assigned.’ 1 Restatement of the Law, Contracts, vol. 1 sec. 154.

“‘It has been held that \* \* \* dividends belong solely to the insured and may be secured by his creditors. \* \* \*’ 2 Appleman on Insurance Law and Practice, sec. 1345, page 806.

“The trust agreement is without taint of illegality. It is an agreement by which certain trustors, being policyholders in Commercial Benefit, and being entitled by virtue of their policies to share in any dividends which may be declared by Commercial Benefit, assign such future dividends, as they become payable, to the bank and agree that when a sufficient trust fund exists they will accept, in return therefor, the capital stock of petitioner. The agreement is made upon a sufficient consideration, and without doubt the holder of an insurance policy may assign to another the money to become due under the terms of the insurance contract, whether by dividend or otherwise.

“We do not believe that there is any merit to the contention of the Attorney General that

the benefit company by accepting assignments would be engaging in any illegal act, nor jeopardizing its assets to the injury of its certificate holders. The benefit company does not agree with the Commercial Life to deliver to the trustee the surplus dividend from its mortuary fund. The benefit company merely consents to the assignment by such of its policyholders as may choose to execute the trust agreement, and agreed to pay their dividends to the trustee. The Corporation Commission has complete power to see that benefit corporations charge proper premiums for benefit certificates issued and create out of premiums paid mortuary and reserve funds sufficient to pay benefit claims and general operating expenses."

We emphasize that in the case now before this Court there is likewise no taint of illegality, insolvency, or injury to the public involved. There is one and only one question before the court and that is, are appellant companies exempt from Sections 31-27-15 and 31-7-17, U.C.A. 1953. It is not proper for this Court to permit the Insurance Commissioner to determine what is good and bad, and what is in the interest of certain companies and the general public. That is a function of the legislature alone.

## CONCLUSION

In conclusion, we should like to cite two cases which we believe clearly show the proper rule in a matter of this kind.

In *State v. Royal Neighbors of America*, 44 N. M. 8, 96 P. 2d 705, at Page 709 (New Mexico 1939) the Court makes this very pertinent statement:

“It may be that the line of demarcation between the character of policy written by the old line insurance companies and fraternal benefit societies has become less distinct as the years have passed and the business of insuring the lives of its members has become the major purpose of, and largely the justification for, the existence of fraternal benefit societies. It may be true that the state, by legislation that sets these defendants apart from the field of insurance companies generally, has failed to sense what plaintiff so ably urges to be a fact, viz., that such societies no longer substantially perform functions of genuine fraternal societies; that they are not organizations with subordinate lodges where are taught and exemplified lessons of fraternal brotherhood, charity, morality, good citizenship and other kindred subjects. It may be true that today less attention is given to the ritualistic and fraternalistic work espoused by the lodge and more to the solicitation of insurance among the membership; and yet, admission of these facts would still not favor a different status for defendants.

“Paraphrasing somewhat the language used by the Arkansas court in the case of *Modern Woodmen of America vs. State*, supra: ‘It may be true that these societies have in a large measure departed from their original purpose of much fraternalism and small benefits for that of small fraternalism and large benefits, and that they have taken on many of the characteristics of old

line insurance companies.' 'But, it has substantially complied with the statutes of this state,' the court went on to say, 'and whether it may continue to operate as a fraternal beneficiary society in this state presents a question addressed to the general assembly and not to us.'

"The legislature has provided for admission into this state and license for such fraternal benefit societies. The definition we accept did not always have legislative sanction; but, regardless of that fact, both before and after the enactment of the fraternal code of 1921, the determination of the status of defendants by the Superintendent of Insurance, the one agency legally authorized by statute to make such determination, became final. Any question as to the wisdom of setting up by legislation the distinction thus made is not for the courts."

It should be noted that this case involves the very type of problem which is before this Court, that is, whether a fraternal benefit society is subject to the general insurance laws of the state

The other case to which we refer is *Fidelity Life Association v. Hobbs*, 161 Kansas 163, 166 P. 2d 1001 (Kansas 1946). Again this is a case involving the precise point of law present before this Court, that is, whether the general insurance laws of the state apply to an exempted association. Let us quote from this decision at Page 1006:

“However, we are equally mindful of other legal principles applicable to the commissioner of insurance which are just as fundamental, if not more so, as the ones to which we have last referred and are so elemental as to require no citation of authorities. One is that the Legislature makes the law and that its fiats must be observed by him. Another is that the statute is the source of his power and all of his acts must be within the limits of the authority it confers upon him. Still another is that it is the province of the courts to construe the statute and, when called upon to do so, determine the scope of his official authority. And lastly, another is that it is not for the courts to substitute their judgment for that of the Legislature but to give its enactments the force and effect the language found therein requires.

“That it was the intent and purpose of the Legislature to place fraternal benefit societies in a class by themselves, make them amenable to conditions and subject them to regulatory powers and supervision different from those of insurance companies in general cannot be a subject of doubt when 40-201, to which we have already referred, is carefully read and critically analyzed.”

Thus, we would suggest that whether mutual benefit associations are to be permitted to sell stock in conjunction with or in connection with the sale of insurance is a question which has been determined for the present by the legislature. If there are those who believe that

this policy is in error, the remedy is legislative—not judicial. Those who would therefore invoke a prohibition against the sale of stock in conjunction with the sale of insurance by mutual benefit associations should be directed by this Court to take their problem to the legislature as the state of the laws at present clearly indicates the controlling policy now in effect.

Respectfully submitted,

MULLINER, PRINCE & MULLINER

By SEATON PRINCE

Counsel for American Buyers  
Insurance Company of Utah

RICH, ELTON & MANGUM

By MAX K. MANGUM

Counsel for Producers  
Mutual Ins. Co. of Utah