

1954

In the Matter of the Order Issued to American Buyers Insurance Company and Producers Mutual Insurance Company, Utah Corporations : Brief of Respondent State of Utah Department of Business Regulation Insurance Commission

Utah Supreme Court

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IN THE Supreme Court, Utah

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

UNIVERSITY OF UTAH

BRIEF OF RESPONDENT STATE OF UTAH
DEPARTMENT OF BUSINESS REGULATION
INSURANCE COMMISSION

1965

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BRIEF OF RESPONDENT STATE OF UTAH
DEPARTMENT OF BUSINESS REGULATION
INSURANCE COMMISSION

STATEMENT OF FACTS

This is an appeal from the order of the District Court of Salt Lake County which upheld an order of the Department of Business Regulation, Insurance Commission, State of Utah, by which order the appellants herein were directed to cease and desist 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 interest or rights therein,

in connection with or as an inducement to the purchase of any insurance.

The facts involved in this case are rather simple and, as found by the Insurance Commissioner as having importance in the determination of this matter, are as follows:

1. The record overwhelmingly establishes the fact that the companies here involved are insurance companies.

A. They call themselves insurance companies by their names: American Buyers Insurance Company; Producers Mutual Insurance Company.

B. They allege that they are in the insurance business in their petition for review. (Para. I (c) & (f).)

C. The Articles of Incorporation state that they have organized for the purpose of "engaging in the business of Life Insurance in all of its branches."

D. The testimony of the representatives of American Buyers Insurance Company shows that they have in force \$11,553,700 worth of insurance (Tr. 21); and have insured 3,679 people (Tr. 22, 26).

E. The testimony of the representatives of Producers Mutual Insurance Company shows that

they have in force \$13,399,242 worth of insurance (Tr. 47); and have insured 4,658 people (Tr. 48).

F. Both companies are in the insurance business and are selling securities together with insurance policies (Tr. 26, 47).

2. Both companies are corporations.

STATEMENT OF POINTS

POINT I.

THE LEGISLATURE OF THE STATE OF UTAH HAS CLEARLY INDICATED THAT IT IS THEIR INTENTION THAT THE SALE OF INSURANCE BE KEPT SEPARATE FROM THE SALE OF SECURITIES; THAT THE MERITS OF THE INSURANCE POLICIES OFFERED BY INSURANCE COMPANIES SHOULD BE CONSIDERED SEPARATE FROM THE MERITS OF ANY SECURITIES WHICH MIGHT BE OFFERED BY INSURANCE COMPANIES OR INSURANCE SALESMEN.

POINT II.

STATUTES OF OUR STATE CLEARLY DEFINE THE WORDS "INSURER" AND "PERSON" AND THE APPELLANTS ARE CLEARLY WITHIN THE STATUTORY DEFINITIONS.

POINT III.

THE APPELLANTS CONTEND THAT THEY ARE EXEMPT FROM THE OPERATION OF THE STATUTES CITED UNDER POINT I; HOWEVER, THE STATUTES CITED IN POINT I ARE CLEARLY APPLICABLE TO SAID COMPANIES.

POINT IV.

THE INSURANCE CODE OF THE STATE OF UTAH PROVIDES FOR SERIOUS PENALTIES TO BE IMPOSED UPON INSURANCE COMPANIES FOR THE VIOLATION OF SECTION 31-27-15, UTAH CODE ANNOTATED 1953.

ARGUMENT

POINT I.

THE LEGISLATURE OF THE STATE OF UTAH HAS CLEARLY INDICATED THAT IT IS THEIR INTENTION THAT THE SALE OF INSURANCE BE KEPT SEPARATE FROM THE SALE OF SECURITIES; THAT THE MERITS OF THE INSURANCE POLICIES OFFERED BY INSURANCE COMPANIES SHOULD BE CONSIDERED SEPARATE FROM THE MERITS OF ANY SECURITIES WHICH MIGHT BE OFFERED BY INSURANCE COMPANIES OR INSURANCE SALESMEN.

The particular section of our Insurance Code which has given rise to this action is found in 31-27-15, U.C.A. 1953, and reads in part as follows:

No insurer, general agent, agent, broker, solicitor, or other person, shall, as an inducement to the purchase of insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow, in any manner whatsoever:

(1) any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto;

* * *

The Supreme Court of the State of Utah had the

statutory predecessor of this section before it in the case of *Utah Association of Life Underwriters v. Mountain States Life Insurance Co.*, 58 Utah 579, 200 P. 673 (1921). On page 677 of the foregoing decision, the court stated as follows:

* * * Then, again, it is manifest that the statute was enacted for the protection of the public and especially for the protection of those who are solicited to enter into life insurance contracts who may lack the experience and the opportunity to guard themselves against the wiles of the experienced life insurance solicitor. The statute should therefore be construed so as to accomplish its purpose and so as to protect those it intends to protect. If the plan that is pursued by the Company in disposing of its capital stock as outlined above is not contrary to the provisions of our statute, then we cannot conceive of any plan which merely disposed of the Company's stock in connection with the contract of insurance that would be contrary thereto. After a careful consideration of all of the evidence which is not and cannot be contradicted or explained, we are all agreed that the plan pursued by the Company in taking subscriptions for stock in connection with contracts of insurance is clearly violative of the provisions of our statute, and if permitted by this court would soon lead back to the very practices in writing life insurance which the statute, we think wisely, prohibits.

See the related statutory provision in Section 31-7-17, U.C.A. 1953.

POINT II.

STATUTES OF OUR STATE CLEARLY DEFINE
THE WORDS "INSURER" AND "PERSON" AND

THE APPELLANTS ARE CLEARLY WITHIN THE
STATUTORY DEFINITIONS.

Section 31-1-10, U.C.A. 1953, defines "insurer" as follows:

"Insurer" includes all persons engaged in the assumption of insurance risks. A reciprocal or inter-insurance exchange is an "insurer" as used in this code.

Section 31-1-9 defines "person" as follows:

"Person" means any individual, company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business trust, or corporation.

The appellants do not contend that they are not "insurers" and "persons" as set out in the above definitions. The Department of Business Regulation, and the Insurance Commissioner, of the State of Utah made an express finding of fact that the appellants are indeed "insurers" and "persons", which finding was sustained by the District Court of Salt Lake County when the appellants took their appeal to that court. Therefore, no question is raised in this appeal as to the sufficiency of the evidence to sustain the findings of fact of the Commission.

POINT III.

THE APPELLANTS CONTEND THAT THEY ARE EXEMPT FROM THE OPERATION OF THE STATUTES CITED UNDER POINT I; HOWEVER, THE STATUTES CITED IN POINT I ARE CLEARLY APPLICABLE TO SAID COMPANIES.

The main issue in this appeal for review centers

around the question as to whether or not these insurance companies are subject to the prohibitions set forth in the statutes above cited in Point I. The claim for exemption rests upon Section 31-31-15 which reads as follows:

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.

It is noted immediately that the exemption, if any exists, is qualified or limited to a great degree. This limited exemption is to be more narrowly construed in view of the fact that in Section 31-31-1 we find that the company shall “* * * comply with all the requirements and provisions of this chapter, and the general insurance laws of Utah relative to said association * * *.”

If this last quoted portion of Section 31-31-1 is to have any significance at all, it would appear that we must find in the general insurance laws of Utah many places where said laws are “clearly applicable” to companies that purport to be mutual benefit associations such as the companies before this Court. It is to be further noted that the terms and scope of Section 31-27-15 (quoted in Point I) are of the very broadest form; and under the definitions of our statutes above set out and the undisputed facts of this case, it must clearly appear that Section 31-27-15 is applicable to these companies. The companies here before the Court, in face of the undisputed evidence of their insurance company activities and of their corporate status, failed to introduce any evidence whatsoever to show that their business was not

that of "the assumption of insurance risks" or that they are not a "person" under the meaning of our statutes. The pride of these companies, as indicated by the record, is that they have written millions of dollars worth of insurance, and that they have consistently used the insurance language and have spoken of their policies as insurance policies.

It is to be further noted that the particular section which prohibits the activity carried on by the appellants is found in the Insurance Code in the chapter entitled, "Unfair or Deceptive Acts or Practices." By the same reasoning as used by appellants and with considerably more force than their argument that they are exempt from Section 31-27-15, the appellants could argue that they are also exempt from Section 31-27-3 which reads as follows:

No person shall knowingly file with any public official nor knowingly make, publish, or disseminate any financial statement of an insurer which does not accurately state the insurer's financial condition.

Perhaps the appellants could argue with some force that they are exempt from the provisions of Section 31-27-18 which reads as follows:

No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy.

The point to be made by this line of discussion is that these insurance companies who are engaged as they are

in the business of selling insurance cannot be reasonably construed to be exempt from those provisions of our statutes which would prevent them from preying upon either other insurance companies or upon a gullible or uninformed public. Section 31-27-15 uses the most all-inclusive language that can be devised to bring everyone in the insurance business under its provisions. Surely this section is clearly applicable to appellants.

POINT IV.

THE INSURANCE CODE OF THE STATE OF UTAH PROVIDES FOR SERIOUS PENALTIES TO BE IMPOSED UPON INSURANCE COMPANIES FOR THE VIOLATION OF SECTION 31-27-15, UTAH CODE ANNOTATED 1953.

Section 31-27-16 provides as follows:

The commissioner may revoke the certificates of authority or licenses of any insurer, general agent, agent, broker, or solicitor guilty of violating any provision contained in sections 31-27-14 and 31-27-15.

Section 31-7-17 contains a mandatory revocation of an insurance company's certificate of authority when it violates that provision, which provision is the same in purport as Section 31-27-15 which was used by the Insurance Commission as its authority to issue its cease and desist order. It is not the effect nor the purpose of the order of the Insurance Commission herein appealed from to put these companies out of business by revoking their certificates of authority, but the order merely requires that the practices of these companies in selling securities and selling insurance be separated. The order of the

Insurance Commission is clearly fair and equitable in face of the serious penalties set forth in our statutes.

DISTINCTIONS AND OBSERVATIONS

I. The majority of the authorities cited by the appellants are cases involving fraternal benefit associations which under our law, and under the statutes governing the cases cited, have express and unequivocal exemptions and, therefore, are not authorities for the proposition for which the appellants contend. The few cases involving mutual benefit associations are decided under statutory provisions which are different from our Section 31-31-15 and have strongly worded exemptions. However, by the same token the mutual benefit provisions of the insurance laws of those states are much more complete and far-reaching than the very short and limited treatment given to the field of mutual benefit associations in our own Insurance Code.

II. The appellants lay considerable stress upon the fact that prior statutory provisions, particularly governing mutual benefit associations, had an express prohibition against the activities such as carried on by appellants; but, in the 1947 codification of our insurance laws, that specific prohibition was not carried over into the particular section of the Insurance Code dealing with mutual benefit associations. However, it appears to counsel that this is of no particular significance inasmuch as a careful review of the insurance sections of our previous statutes shows that almost every different type of insurance company named in those previous enactments

was covered by this specific prohibition against the selling of stock and securities. However, when the 1947 Code was adopted, the various specific prohibitive sections under the various types of insurance companies were all removed and put into a single chapter known as Section 31-27, and entitled "Unfair or Deceptive Acts or Practices" and given the widest kind of language so that all insurance companies were included under the prohibition unless there is a specific and unequivocal exemption therefrom. It appears that the intention of the Legislature was nothing more than to cut down and eliminate duplication in the various sections of the insurance law in respect to this point, and does not appear to be an intent to give these companies a green light on acts and practices which have for many years been considered as unfair and deceptive.

III. The appellants have seemed to put some stress upon the alleged fact that the Insurance Commissioner did at one time issue certificates of authority to these companies. It is the view of counsel that appellants have overstated their case when they have imputed knowledge to the Insurance Commissioner of activities in their full scope and effect as carried on by these companies. The record clearly shows that in the State of Utah there are more than 521 insurance companies certified by the Insurance Commissioner and it is presumptuous indeed to impute full knowledge of the activities of these 521 insurance companies to the Insurance Commissioner. It is true that the articles of incorporation were filed with the Insurance Commissioner.

It could hardly be contended by appellants that should the Insurance Commissioner inadvertently, inappropriately, or wrongfully make an order, or issue a certificate of authority, he is forever bound by that action and is prevented from correcting that mistake. Stated another way, it would seem clear that if an administrative agency grants some order or certificates of authority which they have no power or right under applicable statutes to grant, the order or certificate of authority so granted is open to attack or correction by direct action of the administrative agency issuing said order or granting said authority. We see by the decisions of our own court that the order or certificate of authority granted wrongfully by the Insurance Commissioner is open to collateral attack in the courts of our State. (See *Utah Association of Life Underwriters v. Mountain States Life Insurance Co.*, supra, where the Supreme Court revoked the certificate of authority of the Mountain States Life Insurance Co. which had been issued by the Insurance Commissioner under a claim of authority by said commissioner.) The doctrine of administrative interpretation of the law cannot be binding upon the courts and is used only as an aid by the courts in helping resolve a problem which has arisen because some party has complained of an action of the administrative agency, and certainly would not have any application where the agency itself has decided to correct what later experience has indicated to be an obvious mistake. This last line of reasoning is not to be taken as an admission that the Insurance Commissioner, prior to this time, had con-

strued the statutes of our State in the manner contended for by appellants.

CONCLUSION

It would appear to counsel that the action taken by the Department of Business Regulation and the Insurance Commissioner is eminently fair and unquestionably in harmony with the facts and the law applicable thereto. The facts clearly establish that appellants are both "insurers" and "persons" within the meaning of our Insurance Code and must of necessity fall clearly under the prohibitive language of Section 31-27-15, U.C.A. 1953. The only organizations given an exemption from general insurance laws are hospital service plans, fraternal benefit associations, mutual fire companies, and cooperatives. However, cooperatives and mutual fire insurance companies are by their terms specifically brought under Section 31-27-; the exemption from the other part of the Insurance Code is unequivocal except for the places where they are specifically brought under other provisions; the significance of this fact would seem to be that mutual benefit associations will be brought under many of the general provisions of the Insurance Code without the Legislature having taken the job of setting them forth specifically.

It is respectfully submitted that the order brought to the Court for review was a proper order, amply supported, and arrived at a just result.

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