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STATE OF MAINE

Inter-Departmental Memorandum Date May 26, 1965

To George F. Mahoney, Commissioner Dept. Insurance

From John B. Wlodkowski, Ass't Attorney General Dept. Attorney General

Subject Merger of a Domestic and a Foreign Mutual Insurance Company

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Facts: A domestic mutual insurance company is proposing to merge with a foreign mutual insurance company. The domestic company's charter does not contain any provision for merger.

Question: Whether a domestic mutual insurance company may merge with a foreign mutual insurance company in the absence of legislative authority?

Answer: No.

Opinion: 24 M.R.S.A 504 is the only statutory provision in the insurance section which specifically mentions the merger of mutual companies and, furthermore, limits its operation exclusively to domestic mutuals. Inasmuch as this section falls under the chapter heading Organization and Operation and under the subchapter I heading General Provisions, it would appear that if the legislature intended to include the merger of a domestic with a foreign company, such merger would have been expressly included within the above chapter or subchapter particularly when the 500 section of Title 24 contains provisions affecting both domestic and foreign companies. It must be remembered that a domestic mutual is a particular class of a corporation and therefore its proper treatment lies well within Title 24, the title containing laws governing the operations of insurance companies.

It is our belief that since the legislature has expressly provided for the merger of domestic mutuals and not for the merger of a domestic with a foreign company, the legislature intended to prohibit the merger of a

domestic mutual with a foreign company. This conclusion is rendered necessary by the maxim expressio unius est exclusio alterius. Whereas 24 M.R.S.A 504 affirmatively designates a form of conduct, the manner of its performance and operation and the kind of corporation to be included, there is an inference that all omissions were intended by the legislature. Therefore, by limiting its expression of merger solely to the merger of domestic mutual companies, it would appear that the legislature intended to prohibit the merger of a domestic mutual with a foreign mutual company.

It has been argued that 24 M.R.S.A 651 brings the merger of a domestic and a foreign insurance company within the general laws governing corporations, as set-out in Title 13. However, section 651 comes within subchapter III which is entitled Issue of Contract by Incorporated Companies. In addition, section 651 bears the heading "Incorporation required; Lloyd's". These specific headings have nothing whatsoever to do with the power to merge or consolidate which exists only by virtue of plain legislative enactment. As we interpret section 651 it is expressly limited to those powers relating to the issuance of insurance contracts and cannot be construed liberally so as to give rise to the implication that it is permissive for a domestic to merge with a foreign corporation as otherwise provided for in another title.

In conclusion, we would like to cite the following in support of our position:

> Corporations can consolidate or merge only where the legislature has expressly authorized them to do so by some statutory or

charter provision, and where no such statutory or charter authorization exists, any attempt to consolidate or merge is ultra vires and void. So it follows that if the statute expressly limits the right to consolidate to domestic corporations, a domestic and a foreign corporation cannot be consolidated thereunder. And statutes authorizing the consolidation of domestic with foreign corporations do not, of course, authorize the consolidation of two or more domestic corporations. 15 Fletcher, Cyclopedia of the Law of Private Corporation, §7048.

John B. Wlodkowski

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Ass't Attorney General