

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 4, 1965

To George F. Mahoney, Commissioner

Dept. Insurance

From John B. Wlodkowski, Ass't Attorney General

Dept. Attorney General

Subject Voting Rights of Guaranty Capital Certificate Holders.

Facts: A domestic mutual insurance company proposes to establish a guaranty capital with funds contributed by a foreign mutual insurance company. In return for its contribution and in order to protect its investment, the foreign mutual company is to share in the management of the domestic mutual company by obtaining the right to elect a proportionate number of the domestic company's directors. This voting privilege is to be exercised by persons who are not policyowners in the domestic company.

Question: Whether a certificate holder of a guaranty capital fund is entitled to voting privileges in a domestic mutual insurance company in which he is not a policyholder?

Answer: No.

Opinion: One of the characteristics of a mutual insurance company is its mutuality.

This feature is evidenced "by the co-operation of members, uniting for

that purpose, each taking a proportionate part in the management of its affairs and being at once insurer and insured, contributing to a fund from which all losses are paid, and wherein the profits are divided among themselves in proportion to their interests".

18 Appleman, Insurance Law and Practice §10041.

Since membership in a mutual insurance company must be accompanied by insurance, Wisconsin Town Mut. Reinsurance Co. v. Calumet County Mut.

Fire Ins. Co., 224 Wis. 109, 271 N.W. 51, it follows that the policyholders

constitute its members, who in turn elect its board of directors or trustees.

Atlantic Life Ins. Co. v. Moncure, 35F.2d 360.

It should be emphasized that an insurance company can only be "mutual" when there is no group but its policyholders who have an interest in it or power over it. Equitable Life Assn.Soc. of U. S. v. Bowers, 87 F.2d 687.

Therefore, a mere contributor or holder of a certificate to a guaranty fund who is not a policyowner cannot become a member and elect the directors of a mutual insurance company. Otherwise, if the provision of working capital were allowed to be coupled with voting rights, it would appear that a stock company is created and the mutual company no longer exists.

It should be observed that our statutes, in treating the subject of guaranty fund, preserves this distinction in voting rights between shareholders of a stock company and members of a mutual company. "[They] shall be subject to the same provisions of law relative to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies." 24 M.R.S.A. § 507.

Furthermore, there is a statutory prohibition against the possession of voting rights by holders of certificates of guaranty capital established when a change of purpose is desired by a mutual insurance company.

24 M.R.S.A. § 505.

In conclusion the above proposal is not only inimical to the concept of mutuality which is fundamental to a mutual insurance company, but it sets forth a combination for which the statutes have not expressly provided.

John B. Wlodkowski
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Ass't Attorney General