

**SCOTTISH UNION & NATIONAL INSURANCE COMPANY;  
LONDON AND SCOTTISH ASSURANCE CORPORATION LTD.; AND ST.  
PAUL FIRE & MAIRNE INSURANCE COMPANY, VS. THE HON.  
HIGINIO B. MACADAEG, JUDG...**

*G.R. No. L-5717 and L-5751. November 19, 1952*

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The petitioners, thru counsel, wrote a letter to the Insurance Commissioner enclosing copy of our decision and after expressing the opinion that it approved a review of his administrative acts, they invited him to "appraise" the Supreme Court of what he considers to be the proper interpretation of Rep. Act No. 447. Then the petitioners submitted to the Commissioner several questions already touched upon in our decision.

The Commissioner could have properly declined to answer the inquiries upon the excuses that, (a) the matters were subjudice, (b) he did not want to appear as taking sides<sup>[1]</sup> in a judicial controversy between policyholders and insurers, because his office is supposed to be impartial to both and (c) anyway, the core of the controversy related to execution of a court's judgment which is a subject peculiarly within the jurisdiction of the courts. He could have adopted the attitude that the incidental pronouncements on the workings of Rep. Act 447 were not binding on his office, the same not having been party to the litigation.

But he must have realized that if he chose to disregard the indications in our decision, and as a result, a policyholder is prejudiced by reason of his having allowed a defendant insurer to withdraw its securities, notwithstanding the court proceedings against such insurer, he might face a litigation for damages (Art. 27 New Civil Code). So, we take it, his action in giving answers designed to be presented to this court, amounts to no more than a desire to submit his views for judicial confirmation, if according to law.

The issue is now clearer with the statements made by the insurance commissioner:

Yu Hun & Co. sued to recover on fire policies issued by the petitioners, who are foreign insurance companies. Although the fire has occurred, the insurers deny liability. Pending the court's decision, the insurers apply for permission to withdraw under the terms of sections 202-A to 202-E of the Insurance Act as amended by Republic Act No. 447.

The insurance commissioner believes that such permission may be granted provided the insurers caused another insurance company doing business in this country to assume whatever liabilities the withdrawing petitioners may have in the pending suits.

The law, in our opinion, does not justify such belief. Under section 202-D of Rep. Act No. 447, the Commissioner may permit the foreign insurer to withdraw (and get back the securities it has deposited for the benefit of policyholders<sup>[2]</sup>) only when he finds that such foreign insurer "has no outstanding liabilities to residents of the Philippines". Being "fully aware" of the pending cases of Yu Hun & Co. against these petitioners, the Commissioner may not declare that these petitioners have no "outstanding liabilities" to residents of the Philippines, unless, assuming judicial powers and with abuse of discretion, the Commissioner should administratively decide that the aforementioned suits are entirely without foundation.

But the Commissioner argues that, inasmuch as the "liabilities" of petitioners to Yu Hun have been "re-insured", the withdrawal may be permitted.

Sec. 202-C which the Commissioner invokes, reads as follows:

"SEC. 202-C.—Every foreign insurance company which withdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policyholders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be re-insured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities."

Carefully analysed, the section consists of three parts. The first speaks of liabilities of the foreign insurer to policy-holders and creditors. The second and third obviously refer to its outstanding policies, i.e. policies on which no claim has as yet arisen, because the risk insured against has not yet happened. In other words the first refers to accrued liabilities (outstanding claims) to be discharged; the second and third to contingent liabilities (outstanding risks) to be re-insured.

The situation of the herein petitioners and Yu Hun & Co. is governed by the first part—not by the second nor the third, that expressly relate to "policies insuring residents". The third, permitting "cancellation" obviously contemplates outstanding policies on which the risk has not yet happened, because evidently the insurer may not cancel a policy on which a claim has already accrued by the occurrence of the risk. Wherefore the inference becomes unavoidable that "policies insuring residents" in the second and third parts imply policies as to which the risk insured against has not yet happened. And the requirement that the foreign insurer "reinsure", backs this interpretation because, usually the subject-matter of the original insurance "must be in existence at the time the contract of reinsurance is made". (32 C. J. p. 46)

But let us suppose it is correct to hold, as the Commissioner holds that the herein petitioners' liabilities to Yu Hun may be considered as "primary liabilities" in the second part of sec. 202-C supra[2-a].

There is no doubt that the whole idea of Rep. Act 447 is to require the foreign insurer to show that it has no more responsibilities to any resident here, and may therefore go home with its securities.

Now the second part of sec. 202-C requires the foreign insurer to "reinsure". Our insurance act defines reinsurance as "one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance" (Sec. 88). This kind of reinsurance is not, obviously, what sec. 202-C contemplates, because the foreign insurer is not thereby relieved of local responsibility. Yet the term reinsurance is also sometimes "applied to a contract between two insurers by which the one assumes the risks of the other and becomes substituted to its contracts, so that on the assent of the original policyholders, the liability of the first insurer ceases, and the liability of the second is substituted". (46 C. J. S. p. 196) This is naturally the kind of "reinsurance" contemplated in the second part of section 202-C[3], i. e., a reinsurance that frees the original insurer from liability. However, as Corpus Juris Secundum implies, in such kind of reinsurance, the assent of the original policyholder is essential. "The original insurer will be released only when the insured agrees with the insurer and reinsurer that he will accept the reinsurer[3-a]". Yu Hun & Co. has not agreed.

It is clearly improper to construe the second part of section 202-C as permitting the foreign insurer without the consent of the insured to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil law[4] that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (the policyholder)[5].

In addition to the foregoing consideration, Rep. Act No. 447 should not be so interpreted as to permit foreign insurers to escape the results of pending actions them by withdrawing from the Philippines with all the securities they have deposited, provided they get the sanction of the Commissioner. That would be giving the commissioner discretion to frustrate orders of courts in litigations against foreign insurers and to liberated the latter from claims of local policyholder, whose interest it is his principal duty to protect, and for whose benefit he is given such broad powers of supervision over insurance companies as are seldom conferred upon parallel administrative agencies. And although this Court has refused to heed pleas for preference of resident policy-holders in litigations against foreign insurers[6], it is not disposed to permit any foreign insurer to evade or frustrate efforts to collect from them in our courts.

The explanatory note of House Bill No. 165 which was enacted into R. A. No. 447 is clear.

"Furthermore, in the event that claims would be taken to court, although our courts have jurisdiction over said claims, Philippines policyholders would be greatly inconvenienced in the execution of a favorable judgment. It is then not unlikely that the intervention of our Government, thru our diplomatic representatives abroad, would have to be sought to enforce judgments of our courts against such insurance company as might have withdrawn from this country.

Under this Bill, however, a foreign insurance company operating in the Philippines will not be allowed to withdraw from this country until after it shall have discharged its liabilities to policyholders and creditors in the Philippines." (Underscoring ours)

Undesirable consequences flowing from the Commissioner's attitude are not far to seek. If Yu Hun & Co. obtains judgment against one of petitioners, say the Scottish Union and National Insurance Co, it may not obtain execution directly against the substitute Commercial Union Ass. Co. as the latter is not a party to the litigation. If that substitute refuses to pay[7], Yu Hun & Co. has to sue again. Pending the suit, the substitute may transfer its liability to another foreign insurer, and let Yu Hun & Co. afterwards implead such second substitute, only to be foiled by another "reinsurance", and so on, ad infinitum. And the insurance commissioner may not stop such substitutions and withdrawals of foreign insurers, if his view on reinsuring "liabilities" is upheld.

Another possibility. Five or more foreign insurers, sued in our courts upon policies aggregating half a million pesos decide to withdraw, by "reinsuring" all their liabilities with another foreign insurer. When judgment is obtained against all, execution against the substitute may only be levied on the securities it has deposited here the maximum amount of which is P250,000 only. Under the view of the Commissioner, such "reinsuring" (without the consent of policy-holders) could be done with disastrous effects upon resident policy-holders. Of course we knew that such lone "reinsurer" has or may have other assets in its home office. But shall we require-contrary to the purposes of Rep. Act 447-our residents to pursue their remedy outside of the Philippines?

If it be argued that the Commissioner in that case would not permit "reinsuring" by five or more foreign insurers with one insurer only, the reply is that Rep. Act No. 447 does not empower such officer to select the "reinsurer".

The motion for reconsideration will be denied.

Let a copy of this resolution be furnished the Insurance Commissioner, and the Honorable, the Secretary of Finance.

So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] He is practically testifying as witness for petitioners without Yu Hun & Co. having an opportunity to cross-examine him.

[2] Sec. 179 Insurance Act.

[2-a] No definition of "primary" liability in Insurance Act. Since "primary" equals "original" the word probably refers to original insurance (Sec. 88)-net reinsurance. It may also mean insurance which is specific-not general. (Consolidated Shippers Inc. v. Pacific Employers Ins. Co. et al., 112 Pac. Rep. 2d 673; New Amsterdam Casualty Co. v. Hartford Accident & Indemnity Co., 18 Fed. Supp. 707.) Whether one or the other, it makes no difference in this connection.

[3] Supposing as we said, the interpretation given by the Commissioner to "primary liabilities" is correct.

[3-a] Weill v. Fed. Life Ins. 264 Ill. 425, 106 N.E. 246; Vance on Insurance 2d Ed. p. 950.

[4] And a majority of the legislators who introduced the bill that became Rep. Act No. 447 were lawyers.

[5] Art. 1205 Civ. Code; Art. 1293 New Civ. Code. Unconstitutional impairment of obligations of contracts might even be asserted.

[6] Constantino v. Asia Life 47 Of. Gaz. Suppl. 12 p. 428.

[7] It might allege that although it had assumed "all the liabilities" of the Scottish Union, Yu Hun's claim was not one of them.

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