Indiana Law Journal

Volume 17 | Issue 3 Article 4

2-1942

Mutual Insurance Contracts

CONFLICT OF LAWS

MUTUAL INSURANCE CONTRACTS

The New York Superintendent of Insurance brought suit in Georgia to recover assessments levied by order of the New York Supreme Court against twenty-four Georgia policy holders of an insolvent New York Mutual Insurance company. The policies did not provide for such assessments nor refer to the holders as "members" of a mutual company. Held, defendants were not liable as members.[1]

In some cases, a contract of insurance has been held to be governed, as to matters of construction, interpretation, and validity, by the laws and usages of the place where the contract is made.[2] On the other hand, many decisions state that the pertinent law is determined by the place where the contract is to be performed.[3] An express statement in the policy,[4] the contemplation of the parties,[5] or legislation,[6] often establishes the rule to be employed. But it appears settled that contracts of mutual insurance companies are governed by the law of the domicile of the corporation.[7] The Georgia court in the principal case failed to consider the last mentioned rule[8] and stated that since no facts were alleged as to the place of making or performing the contract, the law of the forum should apply.[9]

An assessment by decree of court such as was made by the New York court in this case, is conclusive only as to the amount

---

[1] Pink v. A.A.A. Highway Express, 191 Ga. 502, 13 S. E. (2d) 337 (1941).

[2] Rosenthal v. New York Life Insurance Co., 304 U.S. 263 (1938); Mutual Life Insurance Co. v. Cohen, 179 U.S. 262 (1900); Metropolitan Life Insurance Co. v. Cohen, 96 F. (2d) 66, 68 (C. C. A. 2nd, 1938). The contract is made where the final act is performed which is necessary to its completion and to make it more binding on both parties. Equitable Life Assurance Society v. Clements, 140 U. S. 226 (1891); Wheeler v. Business Men's Ass'n of America, 247 Fed. 677 (W. D. Mo. 1918); Northwestern Mutual Life Insurance Co. v. Elliot, 5 Fed. 225, (C. C. D. Ore. 1880).

[3] Scudder v. Union National Bank, 91 U. S. 406 (1875); Davis v. Aetna Mutual Fire Insurance Co., 67 N. H. 218, 34 Atl. 464 (1892). The place of contracting theory is arbitrary, incoherent, and tends to create uncertainty. The rule abandons the vested right theory and is not in accord with the actual phenomina of judicial decision. Cook, *Contracts and the Conflict of Laws* (1936) 31 ILL. L. REV. 143.

[4] Mutual Life Insurance Co. v. Hill, 193 U. S. 551 (1904); New York Life Insurance Co. v. Dodge, 246 U. S. 357 (1918).

[5] Eagle v. New York Life Insurance Co., 48 Ind. App. 284, 91 N. E. 814 (1910).

[6] Fidelity Mutual Life Insurance Co. v. Miazza, 93 Miss. 18, 46 So. 817 (1908).

[7] Supreme Council of Royal Arcanum v. Green, 237 U. S. 531 (1915)

[8] Pink v. A. A. A. Highway Express, 191 Ga. 502, 514, 13 S. E. (2d) 337, 344 (1941).

[9] Scudder v. Union National Bank, 91 U. S. 406 (1875); BEALE, CONFLICT OF LAWS (1935) § 311.1.

of and the necessity for an assessment.[10] Here the Georgia court did not deny the conclusiveness of the decree of the New York court, although it did fail to use the law of New York to determine the contract questions involved.[11]

Thus by application of the Georgia contract law, the policy holders were held not to be members of the New York mutual insurance company[12] and obviously the decree was not binding on those who were not members. The case seems justifiable, for it is highly probable that the same result would have been attained if the correct law, namely that of the domicile of the corporation, had been applied.[13]