

March 17, 1950

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**ARIZONA ATTORNEY GENERAL**

*Wilson*  
Carl W. Betz, Actuary  
Division of Insurance  
Arizona Corporation Commission  
Phoenix, Arizona

Re: Assumption Contract Between  
National Travelers Insurance  
Company, and Safety Drivers  
Insurance, Inc.

Dear Carl:

In answer to the request in your letter of February 24, 1950, we have examined the contract referred to above, a copy of which is enclosed.

Safety Drivers Insurance, Inc., is a creature of statute and its authority to do any act is limited to those things which do not conflict with the statute under which it was created. This opinion is based upon the premise that National Travelers Insurance Company is not a benefit insurance corporation or a benefit stock corporation under Arizona statutes.

The Benefit Insurance Corporation Law of 1943, as amended, makes certain very definite and mandatory requirements of a benefit company. Section 61-1009 makes provision for a mortuary fund and specifically limits the uses to which such fund can be put; Section 61-1003 makes very definite requirements for the formation of a benefit company including membership of at least 500 Arizona citizens; Section 61-1017 provides, among other things, for the levy of assessments on members; Section 61-1013 provides for a minimum membership of at least 500, after such corporation goes into operation. These safeguards for the benefit of a member are all mandatory and are considerably more strict than those provided for a legal reserve company.

The legislature has seen fit to provide for the consolidation of one benefit company with another benefit company, without the consent of all members (Section 61-1014, ACA 1939).

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However, in such a case both companies are amenable to the same statutory regulations; hence the aforementioned safeguards for members are not thereby obviated. In a like manner the legislature was careful to guard the safety of members of a benefit corporation in the event such corporation converts to a benefit stock corporation under Section 61-1053. It should be pointed out that neither of these provisions has any application to a transaction between a benefit company and a company which is neither a benefit company nor a benefit stock company.

The contract under consideration is not one of reinsurance in the correct sense of the word, but is rather, as the title indicates, an assumption contract. The effect of it is that the obligation of "Reinsured" to its members is assumed by "Reinsurer" in consideration of which all the business and assets of "Reinsured" are to be transferred to "Reinsurer".

Such a transfer would have the effect of substituting something else for the aforementioned mandatory safeguards. This substitution is not permissible unless the procedure therefor is specifically provided. We are unable to find any statutory procedure for such a transfer of the business and assets of a benefit corporation to a stock corporation such as "Reinsurer" in the contract under examination.

It is, therefore, our opinion that the proposed assumption contract between National Travelers Insurance Company, a stock corporation, and Safety Drivers Insurance, Inc., a benefit corporation, is not permissible under Arizona law.

Very truly yours,

FRED O. WILSON  
Attorney General

WILBERT E. DOLPH, JR.  
Assistant Attorney General

WED:rc