

April 8, 1948

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ARIZONA ATTORNEY GENERAL

Mr. Carl W. Betz  
Actuary, Arizona Corporation Commission  
Capitol Annex Bldg.  
Phoenix, Arizona

Dear Mr. Betz:

We have before us your letter of February 5, 1948 and enclosures requesting an opinion from this office as to whether Texas reinsurer is bound by the obligations of an original Arizona policy despite the fact that the reinsurer, according to the provisions of a Texas statute, is specifically prohibited from undertaking at least some of those obligations in cases of original issuance.

Specifically, the original policies provided for cash surrender values (for which there is no provision in the By-Laws of the reinsurer) and for limited payment periods (contra to a specific prohibition of the Texas statutes).

The only warning of these possible limitations appears in the certificate of reinsurance as follows:

"This certificate (of reinsurance)...., the by-laws (of the reinsurer)....now in effect and as they may hereafter be amended, the laws of the State of Texas, and the rules and regulations of the Board of Insurance Commissioners of the State of Texas, shall supersede all conflicting provisions, if any, contained in the policy hereby reinsured (except that the amounts of the life, health and accident benefits in said Association policies shall remain unchanged and shall continue in full force and effect) shall constitute the contract....".

Texas has already held that a Texas insurance company acting in the capacity of reinsurer can undertake obligations both in excess of their by-law limitations on the issuance of original policies, and in excess of the specific section of

the statute here involved (Art. 4859F, Vernon's Texas Civil Statutes), Am. Ins. Co. of Texas v. Jenkins (1940), 138 S.W. (2d) 847. Therefore, there is no question that under Texas law as it stands since the date of the Jenkins case, supra, the reinsurer here in question legally could be liable for both the cash surrender values and limited payment periods as per the original policy.

It would seem that the statement in the reinsurance certificate which says the amount of benefits of the original policies shall remain unchanged, would be sufficient to keep the cash surrender values in tact as per the original policies inspite of the lack of provision therefore in the By-laws.

And as the law of Texas since the Jenkins case is that, on policies of reinsurance, companies are not bound by the provisions of Art. 4859F of the statutes, the inhibition there found upon limited payment plans is also of no effect.

For these reasons it is our opinion that in regard to the cash surrender values and limited payment plan, the reinsurer is liable as per the terms of the original policy.

Very truly yours,

EVO DE CONCINI  
Attorney General

EDWARD JACOBSON  
Assistant Attorney General

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