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January 14, 1980



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ARIZONA ATTORNEY GENERAL

INTERAGENCY
Mr. J. N. Trimble
Director of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Re: I80-001 (R79-308)

Dear Director Trimble:

You have asked the following question:

Does the Director of Insurance have the discretionary power under A.R.S. § 20-625(A) to refuse to petition for appointment as ancillary receiver despite the fact that ten or more persons have filed a petition requesting the appointment of an ancillary receiver?

The language of A.R.S. § 20-625(A) is mandatory in that it requires the Director of Insurance to petition for appointment as ancillary receiver when ten or more persons have filed a petition requesting the appointment of an ancillary receiver.

A.R.S. § 20-625 provides, in part:

A. When under this article an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in the state, the court shall appoint the director of insurance as ancillary receiver. The director shall file a petition requesting the appointment on the grounds set forth in § 20-619 if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver, or if ten or more persons resident in this state having claims against such insurer file a petition with the director requesting the appointment of an ancillary receiver.

B. . . . The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the of the proceedings. . . . [Emphasis added].

It is a fundamental principle of statutory interpretation that no other rules of construction will be employed to contradict the clear import of plain and unambiguous statutory language. Arizona State Bd. of Accountancy v. Keebler, 115 Ariz. 239, 240, 564 P.2d 928, 929 (App. 1977). The language of A.R.S. § 20-625.(A) clearly requires the Director of Insurance to petition the court for the appointment of an ancillary receiver whenever either of two conditions exists: (1) "the director finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver", or (2) "ten or more persons resident in this state having claims against such insurer file a petition with the director requesting the appointment of an ancillary receiver."

The Director may exercise his discretion in determining whether or not there are sufficient assets within the state to satisfy the appointment of an ancillary receiver. See State v. Annat, 68 Abs. 453, 123 N.E.2d 71, 77 (1954). However, if the Director makes the determination that sufficient assets do exist within the state, the statute requires that he petition for the appointment of an ancillary receiver.

The second condition of A.R.S. § 20-625(A) is objective upon its face and, therefore, leaves no room for discretion. Once ten or more persons petition the Director, pursuant to the statutory provision, the Director is required to petition for the appointment of an ancillary receiver.

Since this second condition is independent of the sufficiency of assets condition, it is irrelevant that the insurer has little or no assets within this state. This interpretation is consistent with the language of A.R.S. § 20-619 which states that the Director may petition the court to appoint him an ancillary receiver of a foreign insurer "having assets, business or claims" in this state. [Emphasis added].

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Although the appointment of an ancillary receiver may seem needless if the insurer has no assets within the state, some purpose may still be served by such an appointment. For example, ancillary receivers may be necessary if the domiciliary state has not enacted the Uniform Insurers Liquidation Act and has little or no authority in non domiciliary states. Also, proving claims in domiciliary state may be a serious burden upon those creditors who reside outside that state. Other purposes may have been in the minds of the legislators in enacting these provisions, nevertheless, the language of A.R.S. § 20-625(A) is clearly mandatory in its directive.

It should be noted, however, that A.R.S. § 20-625(B) provides in pertinent part that:

Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

This language incorporates A.R.S. § 20-624(A) as it relates to the compensation of receivership staff and the payment of receivership expenses. A.R.S. § 20-624(F) states that the compensation of the special deputies, counsel, clerks, assistants and other expenses of the receivership are to be paid out of the funds of assets of the receiver. Therefore, the Director's administration of an ancillary receivership is necessarily limited by the funds or assets of the insurer readily available to the receiver.

Very truly yours,



BOB CORBIN
Attorney General