DECIDED PER CURIAM OCT 24 1972

Supreme Court, U. S.
FILED
JUN 23 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS,
Movant-Plaintiff,
vs.
STATE OF MICHIGAN,
Defendant.

No. 57 **Original**

MOTION FOR LEAVE TO FILE COMPLAINT and COMPLAINT

WILLIAM J. SCOTT
Attorney General of the State of Illinois
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MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

R-4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Movant-Plaintiff,* vs. **STATE OF MICHIGAN,** *Defendant.*	**No.** _____ **Original**

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Illinois, by its special assistant attorney general, invokes the original jurisdiction of this Court and asks leave of this Court to file a Complaint, submitted herewith, against the State of Michigan.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General of the State of Illinois

Counsel for Movant

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973

Of Counsel

STATEMENT IN SUPPORT OF MOTION

The State of Illinois in its sovereign capacity seeks to file an original action in this Court against the State of Michigan, under the authority of Article III, Section 2 of the Constitution of the United States arising out of the State of Michigan's violation of a reciprocal treaty and a disregard of an Illinois judicial injunction with respect to the liquidation by Illinois of a domestic insurance company.

The complaining state, Illinois, has thus suffered a wrong in its sovereign capacity through the action of the defending state, Michigan, furnishing ground for judicial redress. *New York* v. *Illinois,* 274 U.S. 488; *Texas* v. *Florida,* 306 U.S. 398; *Florida* v. *Georgia,* 52 U.S. 293.

Contrary to the reciprocal treaty by which both party states have adopted uniform laws respecting liquidation of Insurance Companies and contrary to a specific injunction of an Illinois Court (entered in the liquidation of a domestic insurance company) prohibiting action against the proceeds of a reinsurance contract between the insolvent insurer (Highway Insurance Company) and its reinsurer (Peerless Insurance Company), the defendant state of Michigan has allowed a direct action and recovery by two workmen's compensation claimants (Jack Federoff and John Shannon) directly against the proceeds of the reinsurance contract. This is in derogation of the reciprocal treaty between Illinois and Michigan, the Illinois injunction and the rights of the Illinois

Liquidator of the insolvent insurer, as well as of the other claimants in the Illinois Liquidation Proceedings. Involved is the effectiveness of an Illinois injunction, the binding effect of a reciprocal treaty between Illinois and Michigan and reinsurance proceeds exceeding a half a million dollars.

This Court has exercised jurisdiction over suits between states in controversies to restrain a breach of treaty or contract between states, and to obtain specific performance thereof. *Kentucky* v. *Indiana,* 281 U.S. 163. This Court has also entertained jurisdiction in suits between states to enjoin the enforcement of a law of one state which would allegedly cause injury in an area in which the complaining state has a legitimate interest. *Pennsylvania* v. *West Virginia,* 262 U.S. 553.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

STATE OF ILLINOIS, *Plaintiff,* vs. **STATE OF MICHIGAN,** *Defendant.*	}	**No. _____ Original**

COMPLAINT

Now comes the State of Illinois and complaining of the State of Michigan alleges:

1. The plaintiff is the State of Illinois and the defendant is the State of Michigan, both being states of the United States of America.

2. Jurisdiction of this Supreme Court of the United States is invoked under and pursuant to Article III, Section II of the Constitution of the United States, and pursuant to 28 U.S.C. §1251(a)(1).

3. The plaintiff alleges that James Baylor is the successor in office to John F. Bolton, Jr. the prior Director of Insurance, of the State of Illinois, and is the existing executive officer in charge of the Department of

Insurance as its Director and in charge of the Bureau of Liquidations as the Liquidator of Illinois Insurance Companies which are insolvent.

4. That at all times pertinent hereto James Baylor, is the official and duly appointed Liquidator of Highway Insurance Company, an insolvent Illinois Insurance Corporation, hereinafter referred to as "Highway."

5. That "Highway" was and is reinsured by the Peerless Insurance Company, hereinafter referred to as "Peerless", and the latter in turn was and is reinsured by Excess Insurance Company, Ltd., hereinafter referred to as "Excess".

6. That Peerless Insurance Company is a New Hampshire corporation with principal office and place of business in New York, and Excess Insurance Company, Ltd. is not an Illinois corporation and its principal office and place of business is other than in Illinois.

7. That at all times pertinent hereto, Jack Federoff was the employee of William J. Ewing, d/b/a Ewing Roofing & Sheet Metal Company, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois.

8. That at all times pertinent hereto, John H. Shannon was the employee of Star Wrecking Company, Inc., a Michigan corporation, and both are citizens of the State of Michigan and neither is a citizen of the State of Illinois. Star Wrecking Company is a Michigan corporation and does not have its principal office and place of business in Illinois.

9. That Jack Federoff has claimed Workmen's Compensation from his employer, William J. Ewing, and John H. Shannon has claimed Workmen's Compensation from his employer, Star Wrecking; that these respective employers have workmen's compensation policies covering said claims and these policies were issued by Highway and reinsured by Peerless and Excess.

10. That the insurance and reinsurance contracts involved were entered into, executed and issued in the State of Illinois.

11. That the liquidation of Highway was commenced and is pending in the Circuit Court of Cook County, Illinois, under No. 67 CH 3390, and prior to the determination of the instant workmen's compensation claims of Federoff and Shannon, namely on July 6, 1967 and July 28, 1967 nunc pro tunc as of July 6, 1967 and on March 20, 1969, the Chancellor entered specific injunctions in aid of his jurisdiction in the Liquidation Proceedings. A true and correct copy of said injunctions are attached and incorporated as pleading Exhibits A, B and C.

12. That at all times pertinent hereto there was in force and effect by reciprocal treaty in the States of Illinois and Michigan a statute entitled the "Uniform Provisions for Liquidation", Ill. Rev. Stats., Chap. 72, §833.1 et seq., under the terms and conditions of which it is the public policy of both states that *inter alia,* upon the entry or an order of liquidation, no levies, garnishments, attachments, executions or other proceedings shall be commenced against the delinquent insurer or its assets in the reciprocal state. Chap. 73, §833.9. The section reads as follows:

"833.9 §221.9 Attachment and garnishment of assets.) In the event of the commencement of delinquency proceedings in any reciprocal state no action or proceeding in the nature of an attachment, garnishment, execution or otherwise, shall be commenced in the courts of this state against such delinquent insurer or its assets. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

The declaration of purpose expressed in the statute is as follows: (§833.10)

"833.10 §221.10 Declaration of purpose.) The purpose of Sections 221.1 to 221.10 both inclusive is to promote uniformity in the liquidation, rehabilitation, reorganization or conservation of insurers doing business in more than one state. It is intended that Sections 221.1 to 221.10, both inclusive shall be liberally construed to the end that so far as possible the assets of such insurers shall be equally and uniformly conserved in all states, and that claimants against insurers shall receive equal and uniform treatment irrespective of residence or the place of the acts or contracts upon which their claims are based. The provisions of Sections 221.1 to 221.10, both inclusive shall be effective only with respect to this state and other states in which (a) it is provided by law that only the Insurance Commissioner or equivalent supervisory official of the State shall be vested with title to the assets of, and shall wind up the affairs of, delinquent insurers under judicial supervision; and (b) in substance and effect the provisions of Sections 221.1 to 221.10, both inclusive, are in force. The provisions of Sections 221.1 to 221.10, both inclusive, insofar as applicable to any insurer incorporated or organized in a foreign country, shall apply only to the assets, liabilities and business of such insurer within the several states. Added by act approved July 21, 1941. L. 1941, vol. 1, p. 832."

That other provisions of the Illinois Insurance Code, Chapter 73, also provide for liquidation of domestic insurance companies by Illinois Courts under the auspices of the plaintiff herein.

13. That notwithstanding said Illinois law and the reciprocal treaty statute quoted and cited herein and their applicability to the instant facts, the Michigan Supreme Court has rendered a decision authorizing and approving the determination of the liability of Highway and its reinsurers and of rights to the assets of Highway in a manner inconsistent with, contrary to and in flagrant disregard of Illinois law and denying said Illinois the full faith and credit which Article IV, Section 1 of the U.S. Constitution requires. A true and correct copy of said opinion of the Michigan Supreme Court is attached hereto and incorporated herein as pleading Exhibit D. This position of the State of Michigan is in conflict with judicial interpretation of the reciprocal treaty statute in other states. *State* v. *Preferred Accident. Ace Grain* v. *Rhode Island Ins. Co.*, 107 Fed. Supp. 80 (D.C., N.Y., 1952); *Janak* v. *Allstate Ins. Co.,* 319 F. Supp. 215 (D.C. Wisc., 1970). See also: *State* v. *Preferred Accident Ins. Co.,* 149 So. (2d) 632 (La., 1963).

14. That the denial of full faith and credit to the Illinois laws cited and quoted herein, as alleged and applicable to facts pleaded herein, also operates to grant such Michigan citizens as Jack Federoff and John H. Shannon, and their employers, privileges and immunities not accorded to Illinois citizens who are also claimants against Highway and its assets, and said refusal to grant Illinois law full faith and credit also deprives the plaintiff of the due process of law which it

is entitled to as party litigant in the courts of this country.

15. That the denial of full faith and credit to the Illinois laws cited and quoted herein as alleged and applicable to the facts pleaded herein, also operates to impair the obligations of the insurance and reinsurance contracts involved by reading into them diametrically opposite and inconsistent laws and statutes.

16. That a justiciable controversy exists between the plaintiff and the defendant and perhaps others who are as yet unnamed.

17. That the acts and conduct of the defendant alleged herein and such rulings as have been made are null and void because violative of the full faith and credit clause, the prohibition against impairment of the obligation of contracts and the other constitutional provisions alleged herein.

18. That unless this Court enters an order enjoining the holding of further proceedings and the taking of any further action by or on behalf of defendant, and the rulings made with respect thereto, until this Court can determine whether said actions are null and void, the plaintiff (and citizens of the State of Illinois) will be irreparably damaged without adequate remedy at law.

19. That upon the entry of such protective orders as are necessary in aid of this Court's jurisdiction, the facts alleged warrant an early determination of the respective rights and obligations of the parties herein.

20. That the plaintiff has no other adequate remedy whether at law, in equity or otherwise.

Wherefore, the plaintiff prays that this Court enter orders:

1) Allowing the addition of such other parties as the Court may deem necessary to a complete determination of the controversy and to order service of summons in accordance therewith;

2) Enjoining the defendant and all other parties and everyone else from taking any action in the premises until this Court can proceed to a determination of the issue of whether the action and conduct alleged is null and void and in violation of substantial constitutional provisions;

3) Granting such other and further primary relief and in aid of jurisdiction as this court may deem meet;

4) Determining the rights of the parties as follows:

(a) That the reciprocal treaty between Illinois and Michigan be held binding upon the State of Michigan and that the State of Michigan must abide by its terms. The Illinois Liquidation Proceedings of Highway Insurance Company conducted under the Insurance Code pertaining to liquidation of domestic insurance companies, being Chapter 73, and particularly the "Uniform Provisions for Liquidation" portions thereof, and the order of Chancellor O'Brien entered therein is entitled to full faith and credit by the Judicial Courts and Workmen's Compensation Tribunals of the State of Michigan;

(b) That the determination of the rights of Jack Federoff and John H. Shannon and their respective employers and of the plaintiff by the Workmen's

Compensation tribunal and Judicial Court of the State of Michigan is null and void as to the Liquidator and the Reinsurers.

(c) That the determination respecting the rights and liabilities of Highway, Peerless, Excess and of the plaintiff is null and void;

(d) That the order of Illinois Chancellor O'Brien in the Highway liquidation proceedings be enforced according to its terms and that this Court enter such orders in aid of jurisdiction as is necessary to give it full faith and credit;

(e) That the defendant and the workmen's compensation claimants be relegated to such rights and liabilities as any of them may have under Illinois law and as is enforceable in the Liquidation Proceedings in accordance with the applicable Illinois law.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General of the State of Illinois
Counsel for Plaintiff

ROBERT J. O'ROURKE
First Assistant Attorney General

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
100 W. Monroe Street
Chicago, Illinois 60603
(312) 346-1973
Of Counsel

PROOF OF SERVICE

I, JOSEPH B. LEDERLEITNER, Special Assistant Attorney General of the State of Illinois and a member of the Bar of the Supreme Court of the United States hereby certify that on the 22nd day of June, 1972, I served copies of the foregoing Motion for Leave to file Complaint and the Complaint on the Governor and Attorney General of the State of Michigan by depositing 5 copies in a United States post office or mail box, as certified mail, return receipt requested with air mail postage prepaid and addressed to:

HONORABLE GEORGE MILLIKEN
Governor of Michigan
State Capital Building
Lansing, Michigan

HONORABLE FRANK J. KELLEY
Attorney General of Michigan
525 W. Ottawa
Lansing, Michigan

JOSEPH B. LEDERLEITNER
Special Assistant Attorney General
State of Illinois

An Attorney for Plaintiff

FORM 317

PLACITA—CIRCUIT COURT OF COOK COUNTY (ORDER)

United States of America

STATE OF ILLINOIS, } ss.
County of Cook }

PLEAS, before the Honorable *CORNELIUS J. HARRINGTON* one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at the Court House, in the City of Chicago, in said County, and State on the THIRD day of JULY, in the year of our Lord, one thousand nine hundred and sixty SEVEN and of the Independence of the United States of America, the one hundred and ninety SECOND

PRESENT:—The Honorable *CORNELIUS J. HARRINGTON*
Judge of the Circuit Court of Cook County.

JOHN J. STAMOS
[redacted] Attorney.

JOSEPH I. WOODS
[redacted] Sheriff of Cook County.

Attest: JOSEPH J. McDONOUGH, Clerk.

Be it remembered, that heretofore, to wit: on the 6th day of JULY 19 67

the following among other proceedings were had in the Circuit Court of Cook County and entered of record, to wit:

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY-DIVORCE DIVISION

PEOPLE, ex rel. JOHN F. BOLTON, JR., Director of the Department of Insurance of the State of Illinois, Plaintiff,	)	67CH 3390
vs.	)	No. In Chancery
HIGHWAY INSURANCE COMPANY, an Illinois Stock Insurance Company, Defendant.	)	

ORDER

This cause coming on to be heard upon the complaint, and Notice of Motion filed by the People, ex rel. John F. Bolton, Jr., plaintiff, against Highway Insurance Company, defendant, the court having jurisdiction of the parties and subject matter hereto, and having heard the arguments of counsel, and the Court being fully advised in the premises:

The Court hereby finds that the Complaint alleges facts if proved that may be sufficient cause for the liquidation of HIGHWAY INSURANCE COMPANY, defendant herein, and such finding is made pursuant to the provisions of Chapter 73 of the Illinois Revised Statutes.

Therefore, IT IS HEREBY ORDERED that the aforesaid JOHN F. BOLTON, JR., Director of the Department of Insurance of the State of Illinois, take immediate possession of all the business, affairs, of defendant HIGHWAY INSURANCE COMPANY and is authorized to deal with the property and business of

the defendant HIGHWAY INSURANCE COMPANY in his name as said Director of Insurance or in the name of the defendant HIGHWAY INSURANCE COMPANY:

IT IS HEREBY FURTHER ORDERED that an injunction issue without bond pursuant to the statutes in such case made and provided, restraining defendant HIGHWAY INSURANCE COMPANY, its officers, directors, employees, agents and all other persons from transacting any company business or disposing of its property until the further order of this court, or from interfering with the conduct of the business by the said Director of Insurance or from attempting to do so; and further restraining all persons from obtaining preferences, judgments, attachments or other like liens and from the making of any levy against defendant HIGHWAY INSURANCE COMPANY or of its property and assets while the same are in the possession and control of said Director or until further order of this court.

ENTER: JUDGE HARRINGTON

JUL 6 - 1967

CIRCUIT COURT

JUDGE

STATE OF ILLINOIS, }
County of Cook } ss.

I, Joseph J. McDonough, Clerk of the Circuit Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain ORDER made and entered of record in said court in a certain cause NOW pending in said Court on the CHANCERY side thereof,

wherein PEOPLE, ex rel. JOHN F. BOLTON, JR., ETC. plaintiff

and HIGHWAY INSURANCE COMPAN Y, ETC. defendant

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, JULY 7th 19 67

Joseph J. McDonough Clerk.

JOSEPH J. McDONOUGH, Clerk of the Circuit Court of Cook County

United States of America

STATE OF ILLINOIS, }ss.
County of Cook.

PLEAS, before the Honorable.....
one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at the Court House, in the City of Chicago, in said County, and State, on the 28th day of JULY, in the year of our Lord, one thousand nine hundred and ~~sixty~~ 67 and of the Independence of the United States of America, the one hundred and ninety SECOND

PRESENT:—The Honorable .....
Judge of the Circuit Court of Cook County.

JOHN J. STAMOS
~~EDWARD X. HANRAHAN~~, State's Attorney.
JOSEPH I. WOODS
~~RICHARD J. ELROD~~, Sheriff of Cook County.
JOSEPH J. McDONOUGH
Attest: ~~MATTHEW J. DOYLE~~, Clerk.

Be it remembered, that heretofore, to wit: on the 28th day of JULY 19 67 the following among other proceedings were had in the Circuit Court of Cook County said and entered of record, to wit:

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

PEOPLE, ex rel. JOHN F. BOLTON, JR., Director of the Department of Insurance of the State of Illinois,	)	
Plaintiff,	)	No. 67 CH 3390
vs.	)	
HIGHWAY INSURANCE COMPANY, an Illinois Stock Insurance Company,	)	
Defendant.	)	

DECREE

This cause coming on to be heard on the Complaint and after more than 10 days have passed after due and proper service upon Defendant, and after due and proper notice being given to Defendant of said hearing, and Defendant is in default for want of appearance and answer herein and the Court having heard evidence and arguments of counsel for Plaintiff and being fully advised in the premises does find:

(1) That it has jurisdiction over the parties hereto and the subject matter hereof; and

(2) That the Defendant herein is insolvent and sufficient cause exists for the liquidation of the Defendant;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

(1) That Defendant HIGHWAY INSURANCE COMPANY, an Illinois Stock Insurance Corporation, be liquidated;

(2) (a) That the Articles of Incorporation of Defendant be and the same is hereby cancelled, held for naught and declared to be null and void and of no force and effect whatsoever;

(b) That Defendant HIGHWAY INSURANCE COMPANY be and the same is hereby dissolved;

(3) That the Director of the Department of Insurance of the State of Illinois take possession of the property, books, records, business and affairs of the Defendant HIGHWAY INSURANCE COMPANY for the purpose of liquidating same and he is hereby authorized to deal with the property and business of the Company in his name as Director or in the name of the Company;

(4) That the Director of Insurance may negotiate, secure and execute reinsurance for any existing policies and contracts of insurance issued by the Defendant herein to its policyholders;

(5) That for good cause shown and notice having been given, a Permanent Injunction issue without bond pursuant to the statute in such case made and provided, restraining the Defendant HIGHWAY INSURANCE COMPANY, an Illinois Stock Insurance Corporation, its officers, directors, employees, agents and all other persons from transacting any company business or disposing of its property or assets in any manner whatsoever, or from attempting to do so, until the further order of this Honorable Court, or from interfering with the conduct of the business by the Director of Insurance, or from attempting to do so, and further restraining all persons from obtaining judgments, attachments, or other like liens and from making any levy against the Defendant HIGHWAY INSURANCE COMPANY or its property and assets while the same are in possession and control of said Director, or until the further order of this Honorable Court;

(6) This Honorable Court shall retain jurisdiction of this cause for the purpose of granting such other and further relief as the policyholders, creditors and public may require.

This order is to be entered nunc pro tunc as of July 6, 1967

ENTER:

JUDGE HARRINGTON
JUL 28 1967
CIRCUIT COURT

JUDGE

FORM 80

STATE OF ILLINOIS,
County of Cook, } ss.

I, Matthew J. Danaher, Clerk of the Circuit Court of Cook County, in and for the State of Illinois, and the keeper of records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Decree made and entered of record in said court in a certain cause lately pending in said Court on the Chancery side thereof,

wherein .....PEOPLE ex rel JOHN F. BOLTON Jr. etc.....**was**..... **plaintiff**

and .....HIGHWAY INSURANCE CO. etc.....**was**..... **defendant**

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago,.....

.....MARCH 23..... 197..2..

Matthew J. Danaher .....**Clerk.**

MATTHEW J. DANAHER, Clerk of the Circuit Court of Cook County

FORM 317

PLACITA—CIRCUIT COURT OF COOK COUNTY (ORDER)

United States of America

STATE OF ILLINOIS, County of Cook } ss.

PLEAS, before the Honorable DONALD J. O'BRIEN one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at the Court House, in the City of Chicago, in said County, and State 20th DAY OF MARCH in the year of our Lord, one thousand nine hundred and sixty NINE and of the Independence of the United States of America, the one hundred and ninety THIRD

PRESENT:—The Honorable DONALD J. O'BRIEN Judge of the Circuit Court of Cook County.

EDWARD V. HANRAHAN, State's Attorney.

RICHARD J. DALEY

Attest: MATTHEW J. DANAHER JOSEPH J. McDONOUGH, Clerk.

JOSEPH I. WOODS, Sheriff of Cook County.

Be it remembered, that heretofore, to wit: on the 20th DAY OF MARCH 1969

the following among other proceedings were had in the Circuit Court of Cook County and entered of record, to wit:

Exhibit #C

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, ex rel, JAMES BAYLOR, Director of the Department of Insurance of the State of Illinois,	)	
Plaintiff,	)	
-vs-	)	No. 67 CH 3390
HIGHWAY INSURANCE COMPANY, an Illinois Stock Insurance Company,	)	
Defendant.	)	

INJUNCTION ORDER

This matter coming on to be heard on the Petition of JAMES BAYLOR, Director of Insurance of the State of Illinois Successor in office to JOHN F. BOLTON, Jr., as Liquidator of the HIGHWAY INSURANCE COMAPNY requesting that this Court issue a permanent injunction under Section 189 of the Illinois Insurance Code restraining all persons including policyholders of HIGHWAY INSURANCE COMPANY and all persons asserting claims against such policyholders from instituting or pursuing actions or proceedings which seek to contest or interfere with the Petitioner's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance entered into by HIGHWAY INSURANCE COMPANY as ceding insurer.

And the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petitioner as Liquidator of HIGHWAY INSURANCE COMPANY has exclusive

right, title and interest in all funds recoverable under treaties and agreements of reinsurance heretofore entered into by HIGHWAY INSURANCE COMPANY as the ceding insurer.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a permanent injunction issue without bond pursuant to the statutes in such case made and provided restraining all persons, including policyholders of HIGHWAY INSURANCE COMPANY and all persons asserting claims against such policyholders, from instituting or pursuing any action or proceeding in any Court or before any Administrative Agency, including Boards and Commissions administering Workmen's Compensation or Occupational Disease or similar laws, of the State of Illinois or of any other State or of the United States which seeks in any way, directly or indirectly, to contest or interfere with the Liquidator's exclusive right, title and interest to funds recoverable under treaties and agreements of reinsurance heretofore entered into by HIGHWAY INSURANCE COMPANY as the ceding insurer.

ENTER: _____
JUDGE

DATED: MARCH 20 1969

JUDGE O'BRIEN
MAR 20 1969
CIRCUIT COURT

STATE OF ILLINOIS, }
County of Cook } ss.

MATTHEW J. DANAHER

I, Joseph J. McDonough, Clerk of the Circuit Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain INJUNCTION ORDER made and entered of record in said court in a certain cause LATELY pending in said Court on the CHANCERY side thereof,

wherein PEOPLE OF THE STATE OF ILLINOIS etc. plaintiff

and HIGHWAY INSURANCE CO. etc. defendant

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, MARCH 22 19 72

Matthew J. Danaher Clerk.

MATTHEW J. DANAHER

JOSEPH J. McDONOUGH, Clerk of the Circuit Court of Cook County

No's 53197
53198
53199

FILED DEC 21 19..

STATE OF MICHIGAN

SUPREME COURT

JACK FEDEROFF,

Plaintiff-Appellee,

v.

WILLIAM J. EWING, d/b/a EWING ROOFING AND SHEET METAL COMPANY,

Defendant-Appellee,

and

JOHN F. BOLTON, JR., (Liquidator of the Highway Insurance Company, et al, and PEERLESS INSURANCE COMPANY,

Defendants-Appellants.

- -

JOHN H. SHANNON,

Plaintiff-Appellee,

v.

STAR WRECKING COMPANY, INC., a Michigan corporation,

Defendant and Third-Party Plaintiff-Appellee,

v.

JOHN F. BOLTON, JR., Director of the Department of Insurance of the State of Illinois and Liquidator of Highway Insurance Company, an Illinois corporation, et al., and PEERLESS INSURANCE COMPANY, a New Hampshire corporation, and JACK NORMAN CRESSWELL and EXCESS INSURANCE COMPANY, LTD.,

Third-Party Defendants-Appellants.

BEFORE THE ENTIRE BENCH

PER CURIAM

[redacted]

Exhibit D

By these separately reviewed and appellate-consolidated proceedings each plaintiff seeks to obtain continued payment of his adjudicated right to workmen's compensation. Each is totally, permanently and tragically disabled as a result of work-connected accidental injuries occurring in 1959 and 1960. Different employers are liable respectively for payment of such benefits. We surmise both are now uncollectible. Each carried direct coverage under Part IV of the workmen's compensation act with Highway Insurance Company. There is no question of the right of either plaintiff to benefits overdue and to become due. The question is who if at all is to pay, and if so, starting when.

Payment of benefits to each plaintiff duly commenced. Highway became insolvent and was so adjudged by an Illinois judgment. By that judgment, entered in 1967, the Director of Illinois' Department of Insurance was appointed as Highway's statutory liquidator. Later, proceeding ex parte, the Illinois court entered an order enjoining actions "to contest or interfere with the liquidator's exclusive right, title and interest to funds recoverable under treaties and agreements of insurance heretofore entered into by Highway Insurance Company as the ceding insurer."

Highway was and is reinsured by defendant Peerless Insurance Company and Peerless in turn was and is reinsured by third-party defendant Excess Insurance Company. Highway is here represented by the appointed liquidator. He contends that the sole remedy of each plaintiff, for continued payment of benefits as ordered, lies with and in the Illinois court of liquidation; his claim being that "Michigan employers and

employees do not have a direct right of action under the workmen's compensation act upon a reinsurance agreement that indemnifies against loss and requires payment to the liquidator in the event of insolvency of the insurer." The liquidator, allied with and supporting Peerless and Excess, directs our attention to a long list of decisions which the Louisiana Supreme Court cited and followed, May 4 last, in Fontenot v. Marquette Casualty Co. (1971), 258 La 671; 247 S2d 572.*

The stated contention turns particularly upon the applicable validity of the whole of the first paragraph of Article III of the reinsurance contract which, as noted, was entered into between Highway as primary carrier and Peerless as reinsurer. The first paragraph:

"Liability Reinsured:

"The actual payment in cash by the [Highway Insurance] Company of any loss shall be a condition precedent to any recovery under this agreement, and subject to such condition, the liability of the Reinsurer shall follow that of the company and shall be subject within the applicable policy limits in all respects to all the general and special stipulations, clauses, waivers and modifications of the Company's [Highway Insurance] policy, binder or other undertaking, and any endorsements thereon."

When plaintiff Shannon sought, in the Wayne circuit, mandatory enforcement of his award, that court granted summary

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* In Fontenot the court took issue with the opposing and equitably couched view of the Supreme Court of Missouri (Homan v. Employers Reinsurance Corp., 1939, 345 Mo 650; 136 SW 2d 289; 127 ALR 163; First National Bank of Kansas City v. Higgins, 1962, ____ Mo ____, 357 SW 2d 139). Fontenot's holding appears in the first paragraph of the Court's opinion:

"The issue for determination is whether the rights of a third person damaged by a party who is insured may be exercised in a direct action for his damages against the reinsurer of the tort feasor's insolvent liability insurer. Contrary to the Court of Appeal, we hold that the treaty or contract of reinsurance here and the law do not permit a direct action by such third person against the reinsurer."

judgment for the defendant reinsurers. Shannon appealed to the Court of Appeals, which affirmed this way (29 Mich App 16):

> "The decision of the circuit court granting summary judgment to third-parties defendant is affirmed, but without prejudice to the right of plaintiff Shannon to proceed with an appropriate action before the workmen's compensation department for a determination, pursuant to findings made a part of the record, of the rights and obligations of Star Wrecking Company, Inc., together with those of the reinsurers."

Federoff's separate proceeding was simply that of presenting a statutory claim for compensation arising out of his compensable accident. The Workmen's Compensation Department granted him benefits as claimed. On review Division 1 affirmed, this way (29 Mich App 16):

> "The Federoff case is remanded to workmen's compensation department for proceedings consistent with this opinion; the Shannon case is affirmed, but without prejudice to plaintiff to pursue relief before the workmen's compensation department."

Leave to review was granted February 19, 1971 (384 Mich 808). The appeal was submitted November 2. The ensuing opinion for vacation of judgments and specific remand has been prepared by the assignee Justice. Recognizing both the clear rights and the pressing needs of the 2 plaintiffs, it is submitted to the other Justices this 19th day of November.

This Highway-Peerless reinsurance contract, unlike in distinctive respect the contracts of reinsurance which the respective courts considered in Fontenot's list, is governed by and subject to judicial enforcement in strict accord with the purpose, the declared public policy, and the express language of 3 original and long standing sections of the Michigan workmen's compensation act (§§ 1, 2 and 3 of Part IV,

MCLA §§ 414.1, 414.2, 414.3); in particular one precise sentence which pertinently appears — as it did from 1912 to 1969 — as a part of said section 3.* That sentence by operation of law is read into this Highway-Peerless contract and automatically nullifies those identifiable words of "exculpatory" non-liability (for instance as in Feldman v. Stein Bldg. & Lumber Co. [1967], 6 Mich App 180).

Section 3 reads in full, with the sentence referred to set forth in italics:

> "Sec. 3. *Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void.* No company shall enter into any such contract for insurance, unless such company shall have been approved by the commissioner of insurance as provided by law."

For the purposes of present decision the quoted contractual provision will be read on remand with the policy-subversive words

> — "The actual payment in cash by the company of any loss shall be a condition precedent to any recovery under this agreement, and subject to such condition" —

fully stricken therefrom, leaving the remainder of the paragraph intact and applicable to the prompt enforcement of plaintiffs' rights. In sum, the direct liability of Peerless

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*By the workmen's compensation act of 1969 (No. 317), this section appears now as section 621.

No extant amendatory provision is required to bolster our view of sections 1, 2 and 3 as same stood when the rights of Federoff and Shannon to workmen's compensation accrued and became adjudicated. It is worthy of note, however, that the act of 1969 definitely defines "insurer" as meaning "an organization which transacts the business of workmen's compensation insurance within this State." Peerless and Excess both do, and did as pointed out by the appeal board on review of Mr. Federoff's claim. See quotation of the board's opinion, 29 Mich App at 6, 7 and 8.

and Excess to plaintiffs will be enforced as if the first paragraph of the reinsurance contract, under heading of "Liability Reinsured," had from the beginning delivered its text as follows:

> "Notwithstanding anything to the contrary appearing elsewhere in this Agreement, the liability of the reinsurer shall follow that of the company and shall be subject within the applicable policy limits in all respects to all the general and special stipulations, clauses, waivers and modifications of the company's policy, binder or other undertaking, and any endorsements thereon."

We in legal Michigan are committed to the so-called broad rule; that whether a contract or contractual provision is contrary to public policy depends upon its purpose and tendency and not upon an actual showing of public injury. In Mahoney v. Lincoln Brick Co. (1943), 304 Mich 694, 705, 706, 707 these rules were adopted and applied, with no ensuing hint that the Court might modify them or depart therefrom:

> "In 12 Am Jur. § 167, p 664, it is stated:
>
> 'The question whether a contract is against public policy depends upon its purpose and tendency, and not upon the fact that no harm results from it. In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void, whether in the particular case the purpose of the agreement is or is not effectuated. For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present.'" * * * *
>
> "In 17 C.J.S. § 211, pp 563-565, it is stated:
>
> 'Contracts contrary to public policy, that is those which tend to be injurious to the public or against the public good, are illegal and void, even though actual injury does not result therefrom. This rule is applied in both State and Federal courts, in cases arising in law and in equity, to contracts involving numerous and steadily increasing types of subject matter, regardless of the character of the contracting parties. * * *

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* For the current text, see 17 Am Jur 2d Contracts, § 179, pp 541, 542, 543.

'The test to be applied is not what is actually done, but that which may or might be done under the terms of the contract; it is the evil tendency of the contract and not its actual injury to the public in a particular instance. The law looks to the general tendency of such agreements, and it closes the door to temptation by refusing them recognition in any of its courts.' [italics by Court, in Mahoney]."

The judgments entered by the Court of Appeals are vacated. The record of each appeal to that court is remanded thereto for entry of such instructive orders as may be required for determination by the workmen's compensation department of the compensatory rights, brought up to date, of each plaintiff as against his employer, the respective reinsurers of Highway, and the statutory liquidator of Highway. The Court of Appeals will enter a separate order reversing grant by the circuit court of summary judgment as against plaintiff Shannon and directing continuance of the statutory proceeding now pending in circuit until the department has concluded its duties so far as same concern plaintiff Shannon.

When the directed awards are made by the department, each plaintiff may if necessary resort to enforcement in the circuit court. Should enforcement be required that court will utilize, independently as needed, all of the remedies and sanctions that are known to law and equity (See Mich. Mut. Liab. Co. v. Baker (1940), 295 Mich 237), including the power granted the commissioner of insurance by current section 631 of the aforesaid act of 1969.

The amount of plaintiffs' costs in each instance will abide the final result.

Eugene F. Black

Thomas E. Brennan

Thomas M. Kavanagh

Paul Adams