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No Abatement of Action Against Foreign Insurer Domiciled in State Which Has Not Adopted Uniform Insurers Liquidation Act

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then, the provisions of the CPLR pertaining to substitution are not exclusive and a court may grant substitution in its discretion in the interest of justice. Moreover, the case now affords express judicial precedent for substitution in what might be a fairly common situation.

It is to be noted that in the instant case there was no attempt at collusion between the substituted plaintiff and the real-party defendant. The court warned, however, that in the future, a motion for substitution will not ordinarily be granted unless notice is given to the shareholders as an added precaution against collusion.

No abatement of action allowed against foreign insurer domiciled in state which has not adopted Uniform Insurers Liquidation Act.

At common law, a dissolved corporation was treated as if it did not exist. The result of its dissolution was analogized to the effect of death upon a natural person, viz., the abatement of all pending litigation to which such a person was a party.[116] With the adoption of the Uniform Insurers Liquidation Act into the Insurance Law,[117] New York has sought to eliminate the problems peculiar to the liquidation or reorganization of insurance companies having assets and/or liabilities in two or more states.[118] The New York act retains the common-law rule of abatement, but is confined to those states which have adopted the UILA.[119]

Dean Constr. Co. v. Agricultural Ins. Co.,[120] was an action against a Pennsylvania insurance company to recover for damage to property situated in New York. Defendant, a non-resident not licensed to do business in New York, was required to post a bond as a condition to answering the complaint.[121] During the trial, defendant was dissolved pursuant to a Pennsylvania court order, and thereafter moved for dismissal and judgment in its favor on the theory that the action abated after the dissolution.

The appellate division, in affirming the denial of the motion, held that by adoption of the UILA, New York had confined the operation of the abatement rule to reciprocating states. It reasoned that to apply the common-law rule to a non-reciprocating state (such as Pennsylvania) would "emasculate the key reciprocity feature of the Uniform Act." [122] In so holding, the court not

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[116] Matter of National Surety Co., 286 N.Y. 216, 36 N.E.2d 119 (1941).
[117] N.Y. INS. LAW §§ 517-24.
[118] For an excellent discussion of these problems see Commissioners' Prefatory Note to Uniform Insurers Liquidation Act, 9B U.L.A. 195 (1939).
[119] N.Y. INS. LAW § 517(7).
[120] 22 App. Div. 2d 82, 254 N.Y.S.2d 196 (2d Dep't 1964). This appears to be the first New York case construing Sections 517-24 of the New York Insurance Law.
[121] N.Y. INS. LAW § 59-a(3).
[122] Dean Constr. Co. v. Agricultural Ins. Co., 22 App. Div. 2d 82, 85, 254 N.Y.S.2d 196, 199 (2d Dep't 1964).

only prevented the abatement of the action, but also precluded the Pennsylvania Insurance Commissioner (receiver) from suing to recover the assets of the defendant in New York (the bond). Thus, the decision appears to be in accord with the underlying philosophy of the UILA.

ARTICLE 12 — INFANTS AND INCOMPETENTS

Preference given to nominee of the relatives of incompetent when appointing a committee.

In a recent case, the appellate division, first department,[123] modified the decision of the lower court which had granted a petition for the appointment of a committee for an incompetent. The appellate court removed the court-designated committee and replaced her with the committee which had been recommended to the lower court by the relatives of the incompetent. The modification was based upon the fact that the two nominees (the one proposed by the relatives and the one appointed by the court) appeared to be equally acceptable, and, therefore, the one nominated by the relatives should have prevailed.

The court's ruling is in accord with prior law. The fourth department stated the rule well when it held that "consanguinity is considered . . . in the selection of a committee . . . and will not be disregarded except upon valid grounds."[124]

This rule appears to be in the best interests of the incompetent. Since it thus helps to fulfill the primary purpose for which committees are appointed, courts should not be loath to remove the court-appointed committee if there appears to be no substantial objection to the committee preferred by the incompetent's next of kin.[125]

ARTICLE 14 — ACTIONS BETWEEN JOINT TORT-FEASORS

CPLR does not specify when motion for contribution may be made.

Contribution among joint tort-feasors is dealt with in Sections 1401 and 1402 of the CPLR. These sections provide the "how" and "why" of bringing an action for contribution, but do not specify "when" the action may be commenced.

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[123] *In re* Beatty, 21 App. Div. 2d 969, 252 N.Y.S.2d 953 (1st Dep't 1964).

[124] *In re* West, 13 App. Div. 2d 599, 600, 212 N.Y.S.2d 832, 833 (3d Dep't 1961). For additional cases in support of this point, see those cited in *West* at 600, 212 N.Y.S.2d at 834.

[125] The appointment of a committee, formally governed by CPA §§ 1356-84, is now governed by N.Y. MENTAL HYGIENE LAW §§ 100-13.