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Hicks Vs. Poe

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Court : US Supreme Court

Decided On : Nov-16-1925

Appeal No. : 269 U.S. 118

Appellant : Hicks

Respondent : Poe

Judgement :

Hicks v. Poe - 269 U.S. 118 (1925)
U.S. Supreme Court Hicks v. Poe, 269 U.S. 118 (1925)

Hicks v. Poe

No. 34

Argued October 12, 13, 1925

Decided November 16, 1925

269 U.S. 118

APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

SYLLABUS

1. A reinsurance company made a participation contract with a company engaged in the business of surety, fidelity, and burglary insurance whereby the former assumed one-third of the liability on risks written by the latter during a period of five years, and upon annual accountings was to receive one-third of any profits, or pay one-third of any losses, leaving, however, the management of the business to the other without restriction. The second company being unsuccessful, its receivers, after the five-year period, in winding up its business cancelled its outstanding risks by returning unearned premiums to policyholders. *Held* that this was not a breach of the contract, and did not relieve the reinsurer of its liability to pay the insured company one-third of the losses occurring after the five-year period on business written within it. P. 269 U. S. 119 .

2. The rule that the liability of a reinsurer is not affected by the insolvency of the reinsured company, or the inability of the latter to fulfill its own contracts with the original insured, is applicable to a participation contract differing from customary reinsurance in that the reinsurer, instead of receiving premiums and paying its share of the losses, is to participate in profits and losses. P. 269 U. S. 121 .

293 F. 766 affirmed.

Appeal from a decree of the circuit court of appeals which affirmed a decree of the district court (276 F. 949; 293 *id.* 764) in favor of the receivers of a Maryland insurance company in a suit brought by them under the Trading with the Enemy Act to reach impounded funds belonging to a foreign insurance company, and for an accounting, etc.

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MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This suit for an accounting was begun in the Federal District Court for Maryland on June 12, 1920, by the receivers of the United Surety Company, a corporation of

that state, against the Munich Reinsurance Company, a Bavarian corporation. The controversy arose out of a written agreement entered into by the companies in 1906. There had been active litigation in the Maryland courts, where much became *res judicata. See Munich Reinsurance Co. v. United Surety Co.,* 113 Md. 200; *id.,* 121 Md. 479; *Poe v. Munich Reinsurance Co.,* 126 Md. 520. This suit was then begun under 9 of the Trading with the Enemy Act, October 6, 1917, c. 106, 40 Stat. 411, 419, as amended, because the receivers sought to reach funds of the Munich Company in the possession of the Alien Property Custodian. The district court, after careful opinions, entered a decree for the receivers for $189,517.16 with interest. 276 F. 949; 293 F. 764. The court of appeals affirmed it without opinion. 293 F. 766. The appeal to this Court, allowed January 7, 1924, was taken as of right under 241 of the Judicial Code. We find no reversible error. Two matters only require mention. Neither presents a question federal in its nature.

The United engaged in the business known as surety, fidelity, and burglary insurance. The Munich, by what is called a participation contract, agreed with it to assume one-third of the liability on every such risk written during a period of five years. The management of the business was to be left to the United without restriction. Upon an annual accounting, the Munich was to receive one-third of any profits or pay one-third of any losses. A

decree entered against the Munich in the state court for losses incurred during the five-year period had been satisfied. This suit is for losses incurred after its expiration on insurance of the United then still outstanding. The company had been unsuccessful. The state court, after the expiration of the five-year period, appointed receivers who proceeded to wind up the business. They sought in vain to reinsure all outstanding risks. Then, with the approval of the court, they secured, so far as possible, cancellation of the outstanding insurance by returning unearned premiums. The losses on account of which this suit was brought were on risks entered into during the existence of the participation contract and remaining unexpired upon its termination and which the receivers did not succeed in getting

cancelled.

The Munich argues that, by the course pursued, the assets were wasted through returning the unearned premiums on good risks, and that thus the poor risks were left unprotected; insists that it was entitled to have all the insurance carried to its expiry, and contends that the receivers, by securing the cancellation of much of it for the purpose of winding up the business, committed a breach of the participation contract which released it from further liability. The contention is unfounded. The participation contract did not restrict the discretion to be exercised by the United and its receivers in the conduct of the business or in winding it up after the termination of the agreement. The case of *Central Trust Co. v. Chicago Auditorium Assn.,* 240 U. S. 581 , upon which appellants rely, is without application.

There is a further contention that, because the United has not paid to its creditors any part of the amounts due on its contracts, and is likely to pay only 25 cents on the dollar, the Munich is under no liability to pay to it anything on account of losses incurred thereunder or, in any event, more than a *pro rata* share of the payments actually made by the United. The Munich became a reinsurer.

The liability of a reinsurer is not affected by the insolvency of the reinsured company or the inability of the latter to fulfill its own contracts with the original insured. *Allemannia Fire Insurance Co. v. Firemen's Insurance Co.,* 209 U. S. 326 . The participation contract differs from customary reinsurance in this: the Munich, instead of receiving premiums and paying its share of losses, was to participate in profits and losses. The difference is not one which affected the scope or character of the Munich's obligation.

Affirmed.

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