

FILED

MAY 31 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

313

STATE OF IOWA ex rel. WILLIAM B. HAGER, Commissioner of Insurance
of the State of Iowa,

Plaintiff-Appellee,

vs.

IOWA NATIONAL MUTUAL INSURANCE COMPANY,

Defendant,

MARGARET L. ADAMS et al.,

Objectors-Appellants.

Filed May 31, 1988

8-104
87-1099

Appeal from the Iowa District Court for Polk County (No. CE23-13565),
Glenn E. Pille, Judge.

Claimants-objectors appeal from the district court decision upholding the insurance commissioner's action which assigned claimants' retirement benefit claims the same distribution priority as the claims of general creditors when defendant became insolvent. **REVERSED.**

David A. Elderkin and Jolene J. Sobotka of Elderkin, Pirnie, Von Lackum & Elderkin, Cedar Rapids; T. Scott Bannister and Mark S. Lagomarcino of Hanson, Bjork & Russell, Des Moines; and Craig Berenstein of Berenstein, Vriezelaar, Moore, Moser & Tigges, Sioux City, for objectors-appellants.

Philip Ostien of Davis, Grace, Harvey, Horvath, Gonnerman & Rouwenhorst, Des Moines, for plaintiff-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

Claimants-objectors, retired officers of defendant Iowa National Mutual Insurance Company, appeal from the district court decision upholding the insurance commissioner's action which assigned claimants' retirement benefit claims the same distribution priority as the claims of general creditors upon Iowa National becoming insolvent. We reverse.

In 1966 Iowa National adopted a retirement plan and death benefit plan for its officers and executives. Under this plan, Iowa National contracted to pay each participating officer a monthly sum following retirement for the length of the officer's life or for a minimum of fifteen years. If a participating officer died after retirement and while receiving benefits, the rest of the contracted benefits remained payable to the decedent's estate or designated beneficiary. The amount of the payments was determined at the time the contract was signed, subject only to reduction if the employee retired before age sixty-five or died before retirement and before reaching the age of sixty-five.

In October 1985, the Iowa Insurance Commissioner asked the district court to declare Iowa National insolvent and to place the company in liquidation pursuant to Iowa Code Chapter 507C. The district court granted the commissioner's request and placed the company in liquidation.

The insurance commissioner, acting as liquidator, had the responsibility of classifying each claim against Iowa National into one of eight "priority of distribution" categories established by Iowa Code section 507C.42. The claims against Iowa National included a number of claims for retirement benefits under the plan noted above. The commissioner initially assigned these retirement benefit claims to priority category 4, which includes "claims of general creditors." The claimants challenged the commissioner's decision by filing objections with the district court, which retained supervisory authority over the liquidation.

After a hearing, the district court upheld the commissioner's action and concluded that the retirement benefit claims had a class 4 distribution priority. The district court rejected the claimants' arguments that their claims should be raised to a class 3 distribution priority. Class 3 claims include, basically, claims for losses under insurance policies, including "annuity policies." The district court held that the retirement benefit claims were not class 3 claims because they did not arise under insurance policies the insolvent insurer was in the business of selling. The district court noted that Iowa National's business had been limited to property and casualty insurance and had not included any life insurance or annuity policies.

The retirement benefit claimants have appealed from the district court's order. They contend their retirement benefit claims are entitled to class 3 distribution priority because the claims arise from "annuity policies." They contend the district court erred by holding otherwise.

Our scope of review is de novo. Iowa R. App. P. 4.

The issue before us is whether the claims of the retirement benefit claimants are entitled to a class 3 or a class 4 distribution priority under Iowa Code section 507C.42. We find the claims should be afforded a class 3 priority based on the following discussion:

1) Iowa Code section 507C.42(3) provides that claims under "life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims" and thus are afforded a class 3 distribution priority. "Annuity" is defined in In re Johnson's Estate, 238 Iowa 1221, 1226, 30 N.W.2d 164, 167 (1947), as a "fixed sum payable at intervals, usually annually or at some other stated period, but, frequently is commonly spoken of as referring to the contract creating an income." A review of the deferred compensation plan in the case at hand leads us to conclude such plan

falls within the definition of "annuity." We do not agree with the district court that section 507C.42(3) "clearly is referring to an annuity policy which is sold as part of the insurer's business." There is no such clarifying language in the statute.

2) We decline to place emphasis on the fact the deferred compensation plan was contingent, as the commissioner urges us to do. An annuitant is considered a creditor under the priority classification system set out in section 507C.42. Section 507C.2(3) defines "creditor" as "a person having a claim against an insurer, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent" (emphasis added).

3) The insurance commissioner belabors the distinction between an "annuity" and an "annuity policy," as that term is used in section 507C.42(3). The commissioner urges us to interpret the word "policy" as requiring the annuity to be sold by Iowa National, and since Iowa National was not in the business of selling annuity policies, the commissioner contends the claimants' theory must fail. We reject this argument and have previously addressed the merits of this issue in section (1) herein.

4) The priority system of section 507C.42 is based on the social and economic importance of the various claims. To give priority to third-party claims under casualty insurance policies over those claims of the retirement benefit claimants herein would cause substantial harm to those persons who relied on the deferred compensation plan for their retirement years.

5) The deferred payment plan at issue was unfunded. However, Iowa National did buy insurance on the lives of the senior executives covered by the plan, naming itself as beneficiary. When the company went into liquidation, the policies were surrendered and the amounts realized, \$1.37 million, became part of Iowa National's estate.

For the foregoing reasons, we reverse the decision of the district court and find that the claims of the retirement benefit claimants-objectors should be handled as class 3 distribution priority claims.

REVERSED.