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THE UNIFORM INSURERS LIQUIDATION ACT
AND WISCONSIN LAW

The United States District Court in New York recently handed down a decision which was based entirely on the Uniform Insurers Liquidation Act.¹ Many persons, upon finding this law cited in the report, thought that the Commissioners on Uniform State Laws must have drawn up the law very recently, because most of them had never heard of it before. Surprisingly enough, however, the history of the U.I.L.A. dates back to the great depression of the 1930's.

Along with the financial crash of 1929 and the subsequent depression years, came forced liquidations² of a great number of businesses, many insurance companies among them. Because of their peculiar nature, most states had special liquidation laws for insurance companies unlike their ordinary corporation liquidation laws.³ However, these laws varied widely in different states and, since many insurers had assets and liabilities distributed throughout the country, serious problems arose because of conflicting state laws. Because at this time insurance was not considered subject to federal control,⁴ the only solution seemed to be a uniform state law. Consequently, the Commissioners began work on such a law, and by 1939 the U.I.L.A. had been approved and recommended for adoption by state legislatures.⁵

Since its approval by the Commissioners, the U.I.L.A. has been adopted by thirteen states.⁶ Although this is not too poor an adoption record for a uniform law, judicial decision based on the act has been conspicuously lacking. The Ace Grain Co. case⁷ is the first judicial construction of the U.I.L.A. However, the lack of cases relying on the act should not be taken as an indication that it is an unimportant or unnecessary law. Circumstances completely extraneous to the act have been responsible for its infrequent employment. It was not until 1939 that the act was completed. Naturally the act could only apply in liquidations commenced after its adoption, and since the U.I.L.A. is strictly a reciprocal act, it would apply only in cases involving two or more states which had adopted it. By the time the act had been widely used, the financial conditions of the country had improved considerably.

² The word “liquidation” as used throughout this article includes rehabilitation, reorganization, and conservation as well as liquidation.
³ For example, the corporation liquidation laws in Wisconsin are contained in Wis. Stats. (1951), sec. 180.751 to 180.787, but the laws governing the liquidation of insurance companies are Wis. Stats. (1951), sec. 200.08 and 200.09. The procedure in each differs considerably from the other.
⁴ Paul v. Virginia, 8 Wall. 168 (U. S. 1868) [overruled in 1944. Infra, note 55].
⁶ Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, New York, North Carolina, Oregon, Rhode Island, South Dakota, Washington.
⁷ Supra, note I.
enough adopted that it could be used, the depression was over and boom years had arrived. Liquidations of insurance companies have been comparatively few since that time, and consequently, there has been little occasion to call on the U.I.L.A.

The purposes for which the U.I.L.A. was drafted may be stated briefly as follows: 1) to secure efficient liquidation; 2) to assure collection of assets in states other than the insurer's domicile; 3) to clearly define where title to the defunct company's assets lies; 4) to ease the hardship of proving claims for nonresidents of the domiciliary state; 5) to provide a uniform system to determine preference of claim; 6) to prevent informed creditors from obtaining preferences, and 7) to insure equal distribution to all creditors. 8

EFFICIENT LIQUIDATION

Under ordinary corporation dissolution laws, the qualifications required of a receiver are all but non-existent. 9 Consequently, in many cases the receiver appointed by the court for a liquidating insurer was inefficient or dishonest. 10 Because an insurance company occupies more of a fiduciary position than an ordinary corporation, especially a mutual insurance company, 11 it is important that liquidation be as efficient as possible.

The U.I.L.A. avoids the inefficiency and corruption of some private receiverships by providing that whenever an insurer must liquidate, the state insurance commissioner or other designated state official shall be appointed the exclusive receiver in the state. 12 With liquidation directly under control of the state, through an agent with more qualifications and experience than most private receivers, the results have been far superior to the former practice. However, present Wisconsin law also provides for appointment of the insurance commissioner as receiver for liquidating insurance companies. 13

COLLECTION OF ASSETS OUTSIDE OF DOMICILE

After the state of the insurer's domicile has appointed a receiver, there arises the problem of his collecting assets of the insurer which are located in other states. These assets are usually in the form of special reserves required by statute for insurance companies doing business in the state. 14 The domiciliary receiver would naturally claim these

9 Wis. Stats. (1951), sec. 180.755 requires the receiver to be a United States citizen and to post a bond, nothing more.
10 Boyd v. Mutual Fire Ass'n. of Eau Claire, 116 Wis. 155, 90 N.W. 171 (1903).
11 For a general discussion of liquidation of mutual insurance companies under present Wisconsin law see Boesel and Fieldman, Liquidation of Mutual Insurance Companies in Wisconsin, 1951 Wis. L. Rev. 493.
12 U. I. L. A., sec. 2 (1).
13 Wis. Stats. (1951), sec. 200.08. This provision was adopted in 1911 and applies to domestic insurers only. Infra, note 26 for foreign insurers.
14 Wis. Stats. (1951), sec. 201.18.
assets, but courts in the other state often refused to recognize his claim.\textsuperscript{15} The first of the famous \textit{Clark v. Williard} cases,\textsuperscript{16} however, declared that if the domiciliary receiver is vested with title to the insurer's assets he must be given legal recognition in all states. The Insurance Commissioner is vested with legal title to the insurer's assets under both the U.I.L.A.\textsuperscript{17} and Wisconsin law.\textsuperscript{18} This does not settle the problem, however. Even when the receiver is recognized in other states, this does not assure collection of assets by him in those states. Although the receiver has legal title to the assets, they are still subject to the claims of the insurer's creditors.\textsuperscript{19} Some states will voluntarily turn over assets to the receiver in the interests of equal distribution,\textsuperscript{20} but others will pay all local creditors from the assets first\textsuperscript{21} and there is rarely anything left for the receiver.\textsuperscript{22}

The U.I.L.A. attempts to remedy this by providing that whenever a foreign insurer with assets in the state is liquidated, that state will appoint its insurance commissioner as ancillary receiver of assets there.\textsuperscript{23} The ancillary receiver has power to collect all the insurer's assets in the state, but he must turn them over to the domiciliary receiver without first paying local creditors.\textsuperscript{24}

When Wisconsin is the state of the insurer's domicile, although the Insurance Commissioner must be recognized in other states because he has legal title to the assets, he has no means of getting these assets out of states whose policy favors payment of local creditors because of the ruling in the second \textit{Clark v. Williard} case.\textsuperscript{25} When Wisconsin is not the domiciliary state but has assets of a foreign corporation, the court may appoint a receiver in the state to conserve those assets for the payment of creditors.\textsuperscript{26} However, the Wisconsin Supreme Court has

\textsuperscript{15} Schloss v. Metropolitan Surety Co., 149 Ia. 382, 128 N.W. 384 (1910).
\textsuperscript{16} 292 U. S. 112 (1934).
\textsuperscript{17} U. I. L. A., sec. 2 (2).
\textsuperscript{18} Wis. Stats. (1951), sec. 200.08.
\textsuperscript{19} "The controversy is the outcome of conflicting claims to the Montana assets of an Iowa corporation. On the one side is the petitioner, the Insurance Commissioner of Iowa, claiming as official liquidator. On the other side are the respondents, judgment creditors of the corporation, armed with an execution which they insist upon the right to levy. If the petitioner prevails, there is equal distribution; if the respondent prevails, the race is to the swift." (Respondent prevails.) Clark v. Williard, 294 U. S. 211 (1935).
\textsuperscript{20} McDonald v. Pacific States Life Ins. Co., 354 Mo. 1, 124 S.W. 2d 1157 (1939).
\textsuperscript{21} \textit{Supra}, note 19.
\textsuperscript{22} For a general discussion of conflict between the statutory receiver appointed in the domiciliary state and creditors claiming in the state where the disputed assets are located, see Note, 48 Harv. L. Rev. 835 (1935).
\textsuperscript{23} U. I. L. A., sec. 3 (2).
\textsuperscript{24} Except for secured claims and special deposit claims. \textit{Ibid.}
\textsuperscript{25} \textit{Supra}, note 19.
\textsuperscript{26} Lehr v. Murphy, 136 Wis. 92, 116 N.W. 893 (1908). Since the receiver is appointed under the common law rather than by statute, he would be a private receiver and not the Insurance Commissioner as under the U.I.L.A. Consequently, the risk of inefficient receiverships still exists in Wisconsin in the case of insurer's liquidations.
demonstrated that it favors equitable distribution of a foreign insurer's assets rather than preference of local claims.\(^{27}\)

### Title to Insurer's Assets

Statutes of the state of the insurer's domicile almost invariably give the domiciliary receiver legal title to the assets of the company, especially since the Supreme Court decided that this entitles the receiver to recognition in all sister states.\(^{28}\) Some states having statutory ancillary receivers, however, also vest him with title to the foreign insurer's assets in that state. As the Commissioners say:

"There is much confusion in the law concerning the title and right to possession of the property of a defunct nonresident insurance company. In some states the title and right to possession are recognized as reposing in the domiciliary receiver; in others, they are in the ancillary receiver. The absence of a clear definition of the law as to these matters hampers effective administration."\(^{29}\)

The desirable clear definition is obtained by the U.I.L.A. by a provision that title to the insurer's assets, "wherever located," vests by operation of law in the domiciliary receiver.\(^{30}\) The ancillary receivers of reciprocal states are empowered to collect the insurer's assets in their respective states, but are required to turn them over to the domiciliary receiver.\(^{31}\)

Like most states, Wisconsin vests legal title to a domestic insurer's assets in the Insurance Commissioner by statute.\(^{32}\) Since the ancillary receiver appointed for a foreign corporation's assets in Wisconsin is not statutory,\(^{33}\) however, he has no title to the insurer's assets even in this state.\(^{34}\) Consequently, Wisconsin law is substantially the same as the U.I.L.A. as to the matter of which receiver is vested with legal title to a liquidating insurer's assets.

### Nonresidents' Claims Against Insurer

Since the assets of a liquidating insurer are usually located principally in the state of its domicile, claims of creditors in other states will

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\(^{27}\) "The deposit in Wisconsin is a part of the assets of the Association and while Wisconsin certificate holders have a right to receive the net surrender value of their certificates as of the date of insolvency, if there remains a surplus it belongs to the Association. There is only one insolvent. Creditors of the Association are creditors whether they reside in Wisconsin or in sister states." In re Fidelity Assurance Ass'n., 248 Wis. 373, 21 N.W. 2d 730 (1946).

\(^{28}\) Supra, note 16.


\(^{30}\) U.I.L.A., sec. 2 (2).

\(^{31}\) Supra, note 24.

\(^{32}\) Supra, note 18.

\(^{33}\) Lehr v. Murphy, supra, note 26.

\(^{34}\) In the absence of a statute, a receiver does not have legal title to the property of the insolvent. 75 C.J.S. Receivers sec. 105.
very seldom be fully covered by assets in those states.\textsuperscript{35} As a result, if these nonresident creditors want to recover a larger amount of their claims than could be had in their own state, they were forced to file their claims in the state of the insurer's domicile. Because of the great inconvenience and expense such procedure entails, many such creditors, especially the smaller ones, had to drop any claims for greater recovery and, consequently settle for a smaller proportion of their claim than was received by creditors in the domiciliary state.

The necessity of this involved and expensive procedure for nonresidents is done away with in the U.I.L.A. by provisions for the appointment of the insurance commissioners of other states as receivers where the liquidating insurer has assets in those states. Even when there are no assets in a state, if there are ten or more creditors of the insurer there, the ancillary receiver may be appointed.\textsuperscript{36} All claims against the insurer may then be filed with the ancillary receiver in the state where the creditor resides. No suit or filing of claims outside the claimants' own state is necessary. All claims accepted in the ancillary proceedings are binding on the domiciliary receiver as to both amount and priority.\textsuperscript{37} The domiciliary receiver still has the right to challenge any claims filed with an ancillary receiver, but he must challenge it in the ancillary proceedings where the creditor filed the claim, not in the domiciliary state.\textsuperscript{38} Thus, under the U.I.L.A., creditors of a nonresident insurer may collect from the general assets of the insurer without any proceedings outside their own state. However, it should be noted that only creditors in other states having the U.I.L.A. receive this benefit. The U.I.L.A. is a reciprocal act and residents of states not having the act are not entitled to its benefits.\textsuperscript{39}

A Wisconsin claimant against a nonresident insurance company must present his claim in the state of the insurer's domicile if he wants to recover more than he can from assets located in Wisconsin. This involves a certain amount of inconvenience even if the claim is accepted without challenge by the domiciliary receiver. When the receiver challenges the claim, however, the creditor is really in a difficult situation. If he chooses, he may reduce the claim to a judgment in the court of the insurer's domicile. The receiver will invariably accept the judgment.

\textsuperscript{35} For example, in Wisconsin the statutory deposit required of insurance companies doing business in the state is only equal to half the unearned premiums paid in. \textit{Wis. Stats.} (1951), sec. 201.18. A higher proportion would be too impractical to require.
\textsuperscript{36} U.I.L.A., sec. 3 (1).
\textsuperscript{37} U.I.L.A., sec. 4 (2).
\textsuperscript{38} U.I.L.A., sec. 5 (2).
\textsuperscript{39} For example, \textit{Ill. Rev. Stats.} c. 73 sec. 833.10 (1951) (sec. 221.10) states that the act shall be in effect only with respect to other states having in substance and in effect the same provisions. Such states are referred to as reciprocal states.
of the court of his own state, at least when he is joined, but this requires
a suit by the creditor out of the state of his residence. More probably
the Wisconsin creditor, to avoid the expense and inconvenience of an
out of state suit, would sue the insurer in Wisconsin to reduce the
claim to a judgment. Then, armed with the Wisconsin judgment, the
creditor would proceed to the domiciliary state and file a claim. How-
ever, such judgments have often been refused recognition by the domi-
ciliary receiver and a second suit was necessary to prove the claim in
the domiciliary state. Even this second suit often proved unsuccessful.
A recent Supreme Court decision has held that the receiver is bound by
the determination of the claim in the court of a sister state under the
full faith and credit clause.

PREFERENCE OF CLAIMS

The laws of the various states are conflicting on the question of
which claims are to receive preference. When claims are presented to
ancillary receivers, there was conflict as to whether the preference
recognized in the domiciliary state or those in the state where the claim
was presented would prevail. Creditors with the same type of claim
against the insurer would be general creditors in some states and pre-
ferred creditors in others.

Under the U.I.L.A. the law of the domiciliary state controls as to
the matter of priority of all claims against the insurer, regardless of
where the assets are located. The present Wisconsin statutes do not
provide for the priority of claims against the liquidating insurer. Be-
cause creditors have always been paid in full in Wisconsin (through
assessments against mutual policy holders), the Wisconsin Supreme
Court has never had occasion as to whether the laws of the ancillary or
domiciliary state shall prevail where the question does arise here. It is
doubtful that the law of another state would be applied merely because
the matter had not previously been decided here.

TREATMENT OF CREDITORS' LIENS

When creditors of an insurance company become aware of weak-
nesses in its financial condition or are informed that receivership pro-
ceedings are contemplated, they often levy against the insurer's assets

40 Boesel and Fieldman, Liquidation of Mutual Insurance Companies in Wiscon-
sin, 1951 Wis. L. Rev. 493 at 505 indicates that the Wisconsin Insurance Com-
misssioner sometimes disallows judgments against a liquidating domestic
insurer which were obtained in other states.
41 People v. Chicago Lloyds, 391 Ill. 492, 63 N.E. 2d 479 (1945).
42 Morris v. Jones, 329 U.S. 545 (1947). This case overruled People v. Chicago
Lloyds, supra, note 41. Also see Note, 168 A.L.R. 671 (1947).
45 Boesel and Fieldman, Liquidation of Mutual Insurance Companies in Wiscon-
sin, 1951 Wis. L. Rev. 493 at 508.
immediately in order to get a preferred claim by reason of the lien thereby obtained. Since a receiver takes property subject to all valid liens that existed against it in the hands of the liquidating company, he could not use the encumbered property to pay the general debts of the insurer but has to allow the lien creditor to satisfy his claim in full from that property while other creditors received only a fraction of their claims.

To prevent such inequities, the U.I.L.A. provides that any lien obtained by attachment, garnishment, or execution within four months prior to the commencement of the liquidation proceeding shall be void as against any rights arising in those proceedings. At present, Wisconsin has no statute voiding the lien of a creditor levying on the insurer's property before liquidation is commenced. In the absence of such a statute, the lien thus acquired is not destroyed by the subsequent appointment of a receiver. Consequently, a lien creditor in Wisconsin would still be paid in preference to other creditors to the extent of the property subject to the lien.

**EQUAL DISTRIBUTION TO CREDITORS**

Creditors of a liquidating insurer are often paid vastly different proportions of their claims merely because they are located in different states. When various courts insist on paying local creditors with the assets of the insurer in their state instead of turning them over to the domiciliary receiver, the percentage of the claim the creditors will recover depends entirely on the ratio of assets to liabilities in that particular jurisdiction. This ratio often varies considerably in different states. Creditors in one state might be paid their claims in full while creditors of the domiciliary state receive only 30 per cent of theirs.

To remedy this inequality to creditors, the U.I.L.A. provides for pooling of both assets and liabilities located in all reciprocal states. After special deposit claims and secured claims in his state are paid by each ancillary receiver, all the remaining assets of the insurer are turned over to the domiciliary receiver. The claims presented in each state are also turned over to the domiciliary receiver by the ancillary receivers. Since all the assets and all the claims are pooled in a common fund, all creditors get an equal proportion of their claims.

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46 75 C.J.S. Receivers sec. 105.
47 "It [Supreme Court of Montana] has held that the local policy of the state permits attachments and executions against insolvent corporations, foreign and domestic; that the writs will not be halted through the effect of the levy may be waste or inequality ..." Clark v. Williard, 294 U. S. 211, 213 (1935).
49 75 C.J.S. Receivers §135.
50 Supra, note 19.
51 U.I.L.A., sec. 3 (2).
Wisconsin has no statutory provision to promote equal distribution to creditors when assets of and claims against the insurer are spread in varying proportions over several states. However, the Wisconsin Supreme Court has demonstrated that it is more interested in having the creditors share equally in the assets than in favoring local creditors. "There is only one insolvent. Creditors of the Association are creditors whether they reside in Wisconsin or in sister states."\textsuperscript{53}

**CONCLUSION**

During the depression of the 1930's when state laws providing for the liquidation of insurance companies were not handling the situation very well because of inadequacy and conflict, the Federal Government was unable to do anything to remedy the difficulties because it had long been established that insurance was not interstate commerce and was a matter of purely local concern.\textsuperscript{54} Insurance was expressly excluded from the Bankruptcy Act.\textsuperscript{55} The Supreme Court has since decided that an insurance business which crosses state lines is subject to the regulation of Congress under the commerce clause.\textsuperscript{56} Nevertheless, this decision has had little practical effect on insurance, except from the anti-trust viewpoint, because Congress almost immediately showed its desire to maintain a "hands off" policy and leave insurance to state regulation by enacting the McCarran Act.\textsuperscript{57} The decision has had no effect on liquidation of insurance companies.

However, this should not be taken as a positive indication that the federal "hands off" policy shall be maintained permanently. If there should be another depression with the resulting wave of insurance liquidations as in the 1930's, federal intervention with such liquidations is not only a possibility but a probability unless the states can eliminate the major difficulties in the existing system.

The desirability of state control is obvious.\textsuperscript{58} The Federal Government has been notorious for its inefficiency, and in insurance liquidation the whole purpose of direct state control was to increase efficiency. More important, the states should not even be willing to risk the beginning of federal control of insurance. "Certainly the states lose very important controls and very considerable revenues."\textsuperscript{59} However, something must be done in the field of insurance liquidations to prevent a

\textsuperscript{53}Supra, note 27.
\textsuperscript{54}Paul v. Virginia, supra, note 4.
\textsuperscript{56}United States v. South-Eastern Underwriters Ass'n, 322 U. S. 533 (1944).
\textsuperscript{58}Ekern, *The Regulation of Insurance*, 341 Ins. Jour. 409 (1951), discusses the dangers of federal control.
\textsuperscript{59}Dissent by Justice Jackson in United States v. South-Eastern Underwriters Ass'n, supra, note 56 at 590.
recurrence of the difficulties encountered in the 1930's. If federal supervision is not to be the answer, there must be a change in state regulation. "If anything, state control must be strengthened and made more efficient."  

Five of the thirteen states in which the U.I.L.A. is now in effect have adopted the act since the South Eastern Underwriters Ass'n case.

"No matter what procedure is adopted in a liquidation proceeding such as this the utmost that can be attained is a result which approximates an equitable distribution of burdens and benefits."  

The U.I.L.A. does attain an equitable distribution. It is the best remedy yet proposed for the serious difficulties encountered in liquidating insurance companies in the past. Wisconsin has nothing to lose in adopting the U.I.L.A. and everything to gain. Since the U.I.L.A. is a reciprocal act, the present Wisconsin law with all its advantages would still apply except in the case of reciprocal states. The advantages would be even greater when a reciprocal state was involved.

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60 Note, 31 Va. L. Rev. 190 (1944).
61 In re Wisconsin Mutual Insurance Co., 241 Wis. 392, 6 N.W. 2d 330 (1942).