ACC 10000/142/952

10000/142/952

LEGAL OPINIONS
DEC. 1943 - JAN. 1944

CLO 5
212 -1

SUBJECT: Proclamation 5, Art.II.

HQ. AMG.
8 Army.
23.Jan.44.

TO: Col. Graffty Smith,
G.F.O.
H.Q. AMG., A.C.M.F.

Reference your AMG/308/36 of 8.Jan.44.

1. The articles in question, Sect.1, state "A moratorium is hereby proclaimed in respect of all debts, claims, deposits and all other obligations for payment of money". By its very terms no obligation to pay money exists as a legally enforceable obligation until a maturity date is reached either by the terms of the obligation, or by demand in case of a demand obligation. Unless, therefore, by maturity before or during the moratorium or by a demand before the moratorium, an obligation for payment of money would not exist and would not come under the terms of obligations affected by the moratorium.

2. The sentence in Sect. 2 suspending accrual of interest "during the period of the moratorium " can have reference to only such obligations as are affected thereby because such sentence appears in Art.II dealing exclusively with such obligations.

3. It is submitted, therefore, that the following results must follow from the Proclamation Article II as now worded:

(a) Interest bearing demand obligations including deposits where no proper demand for payment had been made before the moratorium continue to bear and receive interest during the moratorium.

(b) Int. bearing obligations and deposits with a maturity date prior to the moratorium and which do not by their terms provide for automatic renewal in absence of demand, do not bear nor receive interest during the moratorium.

(c) Int. bearing obligations and deposits maturing during the moratorium bear and receive interest to maturity only and thereafter not during the moratorium.

4. The wording of the Art. with respect to interest could be clarified with benefit to all, but I do not see how all interest can cease to be paid even under the present wording of the moratorium period.

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Capt. A.U.S.
Acting S.F.O.

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[signature]

Capt. A.U.S.
Acting S.F.O.
AMG 8 Army.

4

SUBJECT: Insurance Transactions

AMG
[illegible]
[illegible]

Act/212/4
22 Jan 44

[illegible] (2)

1. The [illegible] of [illegible] Province, under date of 2 Jan 44, has asked whether life insurance companies are presently free to resume operations in the Province of [illegible], and you have referred the inquiry to this HQ. This reply is based upon the assumption that General Order No. 3 has not yet been posted in the Province. In any areas where it has been published all restrictions, of course, have ceased to have effect.

2. All private insurance companies are considered to be transacting a form of "financial business" within the meaning of Article I of Proclamation No. 5. They cannot, therefore, claim any of the advantages conferred by paragraph (2) of Article I of General Order No. 1. Because of receipt of premiums is part of their financial operations that activity is as completely barred as is their payment of losses.

3. The fact that insurance companies are conducting financial business would, strictly speaking, mean that their premises must remain closed for the transaction of all types of business, even non-financial. If, however, a local SCAO is persuaded it is desirable for such companies to re-open their premises for the exclusive purpose of carrying on the non-financial portions of their activities, such as the investigation of claims, he is free to give them that limited permission. 4

4. It will be understood, of course, that the preceding paragraphs are inapplicable to Social Insurance and Social Welfare schemes. The present position of such enterprises is specifically dealt with in General Order No. 1.

Major, AUS,
Chief Legal Officer.

3

AMG. H.Q.
Campobasso

Subject: OPERATION INSURANCE COMPANIES.

2 Jan. 44.

To: AMG H.Q. Eighth Army Main.

Attention Legal Officer.

Question has been presented as to present right of Life Insurance companies to resume operations in this Province.

Attached is report of Legal Officer- Campobasso Province.

Your ruling on the question is requested.

3

H. K. Parsons

H.K.Parsons. Lt.Col.
SCAO. C. Province.

C.L.O

COPY.

2

Ref. C.P. (Legal)5

23/ I2/ 43.

Subject: Life Insurance Companies.

To: S.C.A.O. Campobasso Province.

From: Legal Officer.

I. In answer to your inquiry as to the reopening of life insurance business and the collection of premiums, payouts on policies, and the effect of the moratorium, may I say that I do not believe that private life insurance business is strictly within the terms of Article I of Proclamation 5 . Strictly speaking, an insurance company is not "engaged in the business of receiving and paying out deposits, making loans; selling or purchasing securities, exchanging money, dealing in foreign exchange, maintaining safe deposit facilities or transacting any other form of financial business." Normally insurance companies are considered in a separate category from financial institutions.

2

2. Private insurance companies might come within the contemplation of Article 2 as the language "A moratorium is hereby proclaimed in respect of all debts, claims, deposits and all other obligations for the payment of money.".

3. If we take the position that the companies do come within the terms of the moratorium, then Sec.2 of Art.2, Proc.5 applies and all obligations on both the company and the insured are suspend=

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2. Private insurance companies might come within the contemplation of Article 2 as the language "A moratorium is hereby proclaimed in respect of all debts, claims, deposits and all other obligations for the payment of money.".

3. If we take the position that the companies do come within the terms of the moratorium, then Sec.2 of Art.2, Proc.5 applies and all obligations on both the company and the insured are suspended during the term of the moratorium , but no loss of right would occur to either party because of the moratorium. Rights would simply be suspended during the period; but would not lapse. Upon the suspension of the terms of the moratorium, or by specific order as to this

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type of business, activity might be renewed in normal manner. The nature of the business might necessitate the adjusting of equities by way of deductions, set-offs, etc. Upon renewal of business, either by A.M.G. order, or by Italian initiative should it be determined that this business is not barred, I see no reason why funds on hand should not be used and collections immediately be attempted.

4. The insurance business, being, largely, a domestic one, it is within the complete jurisdiction of the Italian Courts and the Italian Law, and recourse should be there had in cases of dispute.

5. This question involves more than this Province, and is national in interest and in effect, and I therefore respectfully suggest that it be made a subject of inquiry at Regional or Army level.

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(signed) Shirley R. Marsh

Legal Officer
Campobasso Province.