

**OPINION
48-146**

March 25, 1948 (OPINION)

INSURANCE

RE: Fraternal Societies - Assessment of Members

This will acknowledge your letter of March 19, 1948, with reference to the attempt of the newly created insurance company known as the "Pioneer Mutual Life Insurance Company" of Fargo, North Dakota, to qualify for admission to do business in the state of California. Attached to your letter is a recent wire from Mr. B. C. Marks, president of the Pioneer Mutual Life Insurance Company. Also attached to your letter is a copy of the transfer and reinsurance agreement between the Grand Lodge of the Ancient Order of United Workmen and the Pioneer Mutual Life Insurance Company, a copy of the constitution, general laws, rules of order, and articles of incorporation of the General Lodge of the Ancient Order of United Workmen, and a copy of the assumption certificate of the Pioneer Mutual Life Insurance Company, as well as a copy of three types of policies issued by the AOUIW, ordinary life endowment at age 85, juvenile convertible term to age 16, and noncancellable temporary total disability contract.

Mr. Mark's wire to your department raises two questions:

1. Does the Pioneer Mutual Life Insurance Company have the right to assess members thereof holding AOUIW policies?
2. Is the free surplus of the Pioneer Mutual Life Insurance Company of Fargo available for protection of policies issued by both the AOUIW and the Pioneer Mutual Life Insurance Company?

I will endeavor to answer these two questions in the order in which they are stated.

The ordinary life policy of the AOUIW states:

"This Contract of Insurance is issued and accepted upon the express condition that the said Insured Member shall in every particular comply herewith and with the Articles of Incorporation, Constitution, and General Laws of the Order as they now exist or may be hereafter modified or enacted; and upon the representations made in the application therefor, and the statements certified therein to the Medical Examiner; all of which are made a part of this Contract and shall together constitute the Contract between the Order and the Insured Member, and shall bind the Beneficiary or Beneficiaries."

The non-cancellable temporary total disability contract contains a similar provision.

In its purport, it is exactly the same as is quoted from the ordinary life policy.

The juvenile convertible term policy contains this provision, under agreements:

"This Contract of Insurance together with any Riders of Endorsements, hereto attached; the Articles of Incorporation; Constitution and By-Laws of this Order; the application for membership and medical examination or declaration of insurability signed by the applicant, with all amendments to each thereof shall constitute the entire contract between the Order and the Insured, his or her beneficiary or beneficiaries, and govern and control this Contract in all respects. No modification of this Contract shall be made by any person, unless by endorsement hereon by the President and the Secretary of the Order."

From the above quoted portions of the three types of policies formerly issued by the AOUW, it appears that each one of them is subject to conditions of the general laws and rules of the Order as amended from time to time. The provisions quoted are in conformity with section 26-1223 of the 1943 Revised Code, in which it is required that every certificate issued by a fraternal benefit society shall provide that the certificate, the charter or articles of incorporation, and the by-laws of the society, and all amendments to any of them, and the application for membership and medical examination signed by the applicant, shall constitute the agreement between the society and the member.

Section 3 of article 9 of the latest general laws, rules of order and articles of incorporation of the Grand Lodge Ancient Order of United Workmen, dated June 5 and 6, 1946, and filed with the insurance department March 19, 1948, says:

"It is specifically provided that the rates and benefits set forth in the contracts of insurance shall not be subject to change.

"Should, however, the required reserves at any time become impaired, there shall be paid by the member to the Grand Lodge the amount of the member's equitable proportion of such deficiency, as ascertained by the Board of Directors and approved by the Insurance Commissioner of the State of North Dakota. If such payment be not made within thirty days after notice thereof, the same shall stand as an indebtedness and lien against the contract of insurance and draw interest at a rate not exceeding four per cent per annum, and shall be charged against the reserve of the contract of insurance and deducted from the same, together with the interest as the same accrues in any settlement made."

In other words, if the reserve of the AOUW becomes impaired, the Grand Lodge has the right to assess the member's equitable proportion of such deficiency against his policy and the same becomes a lien against his contract and draws interest not to exceed four per cent, and shall be charged against the reserve of the contract and deducted therefrom. Such was the statement of the contract by the AOUW at the time of the execution of the transfer and reinsurance agreement between the AOUW and the Pioneer Mutual Life Insurance Company, a

corporation, of Fargo, North Dakota. In that agreement it is stated:

"WHEREAS, all liabilities of the first party are assumed by the second party; and, * * * *

"WHEREAS, the second party agrees to reinsure and assume all existing insurance contracts, subject to their terms and conditions and the by-laws and regulations of the Grand Lodge applicable thereto. * * * *"

The quoted provisions of the transfer and reinsurance agreement are in accordance with the contracts entered into with the members by the AOUI and are further in accord with the provisions of section 26-1213 of the 1943 Revised Code, and the by-laws hereinbefore quoted and set forth.

The transfer and reinsurance agreement between the AOUI and the Pioneer Mutual Life Insurance Company further contains this provision:

"That the parties agree to reinsure and assume all existing insurance contracts, subject to their terms and conditions and the by-laws and regulations of the Grand Lodge applicable thereto."

The Pioneer Mutual Life Insurance Company has, as in accordance with the portion of the transfer and reinsurance agreement, quoted above, agreed to reinsure and assume all existing insurance contracts of the AOUI, subject to their terms and conditions and the by-laws and regulations of the Grand Lodge. This clearly appears from the reinsurance agreement. One of the obligations of the AOUI to its members and policyholders, and a part of the contract of insurance, is the right and obligation to put into effect section 3 of article 9 of the constitution and by-laws of the Grand Lodge, dated June 5 and 6, 1946, and filed with the insurance department on March 19, 1948, and already quoted herein.

It appears to us that the Pioneer Mutual Life Insurance Company having assumed all the obligations and all of the contracts entered into by the AOUI and agreed to reinsure them subject to their terms and conditions and the by-laws and regulations of the Order, would have the right and is obligated under its agreement to assess such contracts, if such need arises, and impose upon the members of the AOUI the conditions that are set forth in section 3 of article 9, as herein set forth. This it has agreed to do in solemn terms and if the case would have arisen for the AOUI to put this portion of the by-laws into effect as far as the policyholders of the AOUI are concerned, then it becomes the obligation of the Pioneer Mutual Life Insurance Company to do the same as the AOUI was obligated to do under its by-laws. By the transfer and reinsurance agreement, the Pioneer Mutual Life Insurance Company has agreed to do anything that the AOUI would have been obligated to do for its policyholders. In other words, under that agreement, the Pioneer Mutual Life Insurance Company has stepped into the same position as the AOUI, and has the right, and in effect, is obligated to enforce the provisions of the policies issued by the AOUI, subject to the by-laws of the company as already set forth. So the answer to the first question is that the

Pioneer Mutual Life Insurance Company has the right and is obliged to assess the members of the AOUW under the policies issued by it.

The transfer and reinsurance agreement states:

"1. That the consideration for this agreement will be the mutual benefits to both the first and second parties;"

It further states:

"2. That the first party will transfer to the second party the following property, to-wit: * * * *

"e. All cash and checks on hand in the home office; * * * *

"g. All bonds, stocks, notes, mortgages, and land contracts and securities of whatever kind or nature and wherever located; * * * *

"i. All other property both real and personal of every name, nature and description now belonging to the first party; * * * *"

Since it appears clearly that the contract was entered into for the mutual benefit of both the first and second parties and all of the assets of the first party were transferred to the second party, it must be assumed that such assets should be used for the mutual benefit of both parties. Accordingly, it appears to this office that the free surplus of the AOUW transferred to the Pioneer Mutual Life Insurance Company belongs to both, and is not frozen for the benefit of the fraternal policyholders. However, it might be entirely possible that the surplus so transferred would become necessary for the protection of the policies issued by the AOUW and to the extent that, that is necessary, it is the obligation of the Pioneer Mutual Life Insurance Company to use it for the protection of such policies. However, if it is not necessary for the protection of such policyholders, it appears that it was transferred for the mutual benefit of both the first and second parties under the transfer and reinsurance agreement that it is not frozen for the protection of the policies issued by the AOUW. If that had been the intent of the parties at the time of execution of such agreement it is reasonable to assume that such surplus would have been designated specifically, set aside, and ear-marked for the use of protection of the policyholders of the AOUW only. But in view of the fact that the Pioneer Mutual Life Insurance Company has agreed to reinsure and assume all existing contracts subject to their terms and conditions and the by-laws of the Grand Lodge applicable thereto, it appears that the free surplus transferred to it by the agreement was transferred not only to enable it to fulfill its obligation to the fraternal policyholder, but for its own development as well, if such funds were not needed for the full protection of the AOUW policyholders.

The answer to the second question, therefore, is that the surplus is free for the benefit of both the Pioneer Mutual Life Insurance Company and the AOUW policyholders and is not frozen by the transfer and reinsurance agreement merely for the benefit of the fraternal

policyholders.

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