



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

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RON TODD
Commissioner

Bulletin 1993-21

TO: All Companies Authorized to Transact the Business of
Insurance in Kansas

FROM: Ron Todd
Commissioner of Insurance

SUBJECT: Changes in The Approval Of Assumption Certificates

DATE: August 19, 1993

As the result of a recent Federal Court decision in the Tenth Circuit, the Kansas Insurance Department has reviewed its procedures relative to the review and approval of assumption certificates pursuant to K.A.R. 40-1-22.

Please be advised that the United States District Court for the District of Kansas in Security Benefit Life Insurance Company v. Federal Deposit Insurance Corporation, 804, F. Supp. 217 (D. Kan. 1992), held that when an insurance company, through an assumption reinsurance agreement, assumes another insurers' contractual liability, the original or ceding insurer is not relieved of its contractual liability to its insureds without the consent of the insureds to the substitution. The court stated that, "the insured may elect to repudiate or accept the assumption agreement." This ruling is consistent with general contract law in Kansas.

In its Memorandum and Order, written by Senior District Court Judge Dale Saffels, the Court held that an assumption reinsurance agreement is not effective to relieve the ceding insurer of liability absent evidence that the insured assented to the substitution, creating a novation.

Further, the court stated that, "a novation is never presumed and the party asserting it has the burden of providing its essential elements." Judge Saffels also stated that, "the controlling element with respect to the existence of a novation is the intention of the parties, and unless there is a clear and definite intention on the part of all concerned to extinguish the old obligation by substituting the new one therefore, a novation is not effected."

Additionally, the Court held that the novation must be proved by clear and competent legal evidence.

Further, the court held that the mere acceptance by an insured of a notice of the substitution, or the failure to take affirmative action to reject the same, would not create or effect a novation that would release the original or ceding insurer from its contractual liability.

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In light of the above, in the future, any assumption certificate received by this Department which requires the insured to take affirmative action to reject the substitution or states that the retention of the certificate and/or payment of premium constitutes acceptance of the substitution will not be approved by this Department.

A handwritten signature in cursive script, appearing to read "Ron Todd", written over a horizontal line.

Ron Todd
Commissioner of Insurance

RTA:lw
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