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Commercial Law: Bankruptcy

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Commercial Law

BANKRUPTCY

*Melvin G. Dakin**

A bankruptcy case on the docket of the Louisiana Supreme Court has been a comparative rarity in recent years. However, during the past term, in the case of *Emery & Kaufman, Ltd. v. Heyl*,¹ the issue was raised before the court as to whether a discharge in bankruptcy included a claim by a general insurance agent for unremitted premium balances against a bankrupt local agent. The claimant argued that the relationship was one of trust and hence specifically excepted from discharge by the Bankruptcy Act.²

While the court wavered a bit before doing so, on rehearing, it rejected the argument, based on a line of cases mainly in state courts, that the circumstances here created an express or technical trust.³ If there is to be an exception for this type of claim from the operation of a discharge in bankruptcy it will require action on the part of the Legislature specifically characterizing the relationship of general insurance agent and local agent as to premium remissions as one of trust.⁴ In the meantime the general agent remains subject to the same degree of risk as any other creditor with an ordinary dischargeable contract claim against the local agent. The court noted with approval that: "The mere reposing of confidence in a person with whom one has a commercial transaction does not create the fiduciary relation intended by the Bankruptcy Act."⁵

CONTROL OF PRICE

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In *McKinnis v. Scandalianto*⁶ an alternative federal cause of action under the Defense Production Act of 1950⁷ permitted

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1. 227 La. 616, 80 So.2d 95 (1955).

2. 52 STAT. 851 (1938), 11 U.S.C. § 17 (1952).

3. 227 La. 616, 633, 80 So.2d 95, 101 (1955).

4. *Ibid.*

5. *Id.* at 635, 80 So.2d at 102.

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6. 226 La. 881, 77 So.2d 522 (1955).

7. 64 STAT. 811 (1950), 50 U.S.C. App. § 2109(c) (1952).