

15

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

DEPARTMENT OF INSURANCE and)
BILL GUNTER, in his official)
capacity as Insurance)
Commissioner,)

Appellants,)

vs.)

DADE COUNTY CONSUMER)
ADVOCATE'S OFFICE, et al.)

Appellees.)

Case No. 66,178

FILED

SID J. W.

JAN 11 1985 ✓

CLERK, SUPREME COURT

Chief Deputy Clerk *sh*

AMICUS CURIAE BRIEF

NATIONAL FRATERNAL CONGRESS OF AMERICA

George E. Owen
2811 Waverly Road
Tallahassee, Florida 32312

William R. Heerman
National Fraternal Congress
America
c/o Aid Association for Luth
4321 N. Ballard Road
Appleton, Wisconsin 54919
(414) 734-5721

Attorneys for Amicus Curiae

TABLE OF CONTENTS

	<u>Page</u>
CITATION OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND STATEMENT OF THE FACTS	2
ARGUMENT	
CITIZENS OF THE STATE OF FLORIDA WHO ARE MEMBERS OF FRATERNAL BENEFIT SOCIETIES WILL BE HARMED	3
MULTI-LINE INSURERS WILL GAIN AN UNFAIR COMPETITIVE ADVANTAGE OVER FRATERNAL BENEFIT SOCIETIES	6
CONCLUSION	8

CITATION OF AUTHORITIES

STATUTES

	<u>Page</u>
<u>Fla. Stat.</u> , Section 626.611(11) (1983)	2,4,8
<u>Fla. Stat.</u> , Section 626.9541(1)(h) (1983)	2,4,8
<u>Fla. Stat.</u> , Section 632.011 (1983)	3
<u>Fla. Stat.</u> , Section 632.021 (1983)	5
<u>Fla. Stat.</u> , Section 632.231 (1983)	6

MISCELLANEOUS

1983 <u>Statistics of Fraternal Benefit Societies</u> , 1984 Edition; The National Fraternal Congress of America	2
---	---

PRELIMINARY STATEMENT

Amicus Curiae files this Brief in support of Appellants, pursuant to Order of this Court dated January 3, 1985.

By way of introduction, the following preliminary matters are pertinent:

Amicus Curiae, the NATIONAL FRATERNAL CONGRESS OF AMERICA (hereinafter "NFCA") is a not-for-profit corporation with its principal office located at 230 West Monroe Street, Chicago, Illinois. It is a trade association representing 97 member organizations known as "fraternal benefit societies" or "fraternals" doing business throughout the United States. Basically, each fraternal benefit society is a membership organization whose operations are conducted solely for the benefit of its members and their beneficiaries, is operated on a lodge system, has a representative form of government, exists for specified purposes, conducts programs and activities in furtherance of its specified purposes, and provides life, health and annuity benefits for its members. The NFCA is the only trade association in the United States representing fraternal benefit societies.

According to 1983 statistics maintained at NFCA headquarters, there are 55 fraternal benefit societies doing business in the State of Florida. These fraternal benefit societies have over 160,000 certificates (policies) of life insurance and annuities in force and over 10,700 certificates (policies) of accident and

health insurance in force in Florida. The total face amount of life insurance in force in Florida, according to 1983 statistics, is approximately \$1.6 billion. In 1983 fraternal benefit societies reported over \$30 million dollars of premium income from its members in the State of Florida. See 1983 Statistics of Fraternal Benefit Societies, 1984 Edition, The National Fraternal Congress of America.

Fraternal benefit societies doing business in Florida are regulated under Chapter 632, Laws of Florida, and thereunder are expressly deemed "insurers" within the intent and meaning of Chapter 626, Laws of Florida. In addition, fraternal benefit societies provide individual life, health and annuity insurance benefits to their members through agents who are licensed and regulated in accordance with Chapter 626, Laws of Florida.

Throughout this Brief the term "Anti-Rebate Statutes" means Sections 626.9541(1)(h) and Section 626.611(11), Florida Statutes (1983).

STATEMENT OF THE CASE AND OF THE FACTS

Amicus Curiae, the NATIONAL FRATERNAL CONGRESS OF AMERICA, adopts the statement of the Case and the Facts set forth in Appellant's Brief.

ARGUMENT

CITIZENS OF THE STATE OF FLORIDA WHO ARE MEMBERS OF FRATERNAL BENEFIT SOCIETIES WILL BE HARMED

Fraternal benefit societies are self-help membership organizations operated on a lodge system to carry out programs and activities at the local level for the benefit of their members, and to provide such insurance benefits to their members as are authorized by Florida law. Section 632.011, Florida Statutes (1983) defines a fraternal benefit society.

Being membership societies, each fraternal has specific membership requirements. Some are religious fraternals such as Aid Association for Lutherans, Lutheran Brotherhood and Knights of Columbus. Some are ethnic, such as Polish National Alliance, Sons of Norway and Croation Fraternal Union of America. Some are organized to benefit specific vocations, such as American Postal Workers Accident Benefit Association, Travelers Protective Association of America, and Police and Firemans Insurance Association. Still others are formed for general moral, patriotic, or educational purposes, such as Independent Order of Foresters, Modern Woodman of America, Woodmen of the World Life Insurance Society, and Royal Neighbors of America. Whatever the purposes a fraternal benefit society is organized for, each fraternal develops and administers programs and activities for the benefit of its members to carry out these purposes. Programs and activities

vary significantly from one fraternal to another, but all are designed to help fulfill the financial and social needs of the members of each fraternal, to benefit the institutions in Florida that reflect the purposes and philosophies of each fraternal, and to benefit the communities in which the members live.

Fraternal benefit societies also provide insurance benefits to their members through field representatives or insurance agents. These agents are subject to the same licensing and regulatory requirements as are all insurance agents in Florida. Thus if Sections 626.9541(1)(h) and 626.611(11) of the 1983 Florida Statutes are declared unconstitutional, the effect of such a declaration will be the same for fraternal agents as it would be for agents of stock or mutual insurers, as to the insurance operations of a fraternal. However, there will be an additional effect on the ability of fraternal to carry out their programs and activities in the state of Florida that will adversely impact on Florida citizens who are members of fraternal.

The programs and activities created and administered by fraternal for the benefit of their members are carried out at the local level in lodges, branches, camps, or whatever term each fraternal uses to identify local gatherings of members. In order for these programs and activities to occur at the local level, each fraternal's field representatives, or agents, act as administrators and facilitators between local lodges and the home office. The role of each fraternal's field representatives as administrators and facilitators is vital for the success of

the programs and activities at the local level. Without the field representatives operating in this capacity, the programs and activities would be jeopardized to the point where the citizens of Florida who are members of fraternal societies would not be able to receive the full benefits of membership in their fraternal.

Although the field representative is a critical link in bringing the various programs and activities to the local level, they are not paid extra compensation for this service. Rather, fraternal societies set their commission scales on the sale of insurance benefits to cover the added time and effort field representatives are expected to devote to fraternal activities. Field representatives of many fraternal benefit societies are required to devote this extra time and effort to fraternal activities by the terms of the contract they signed with their organization, and the commission scales are fixed according to the contract. This extra time and effort includes attending lodge meetings (lodges are required by Florida law to meet at least once each month--Section 632.021, 1983 Florida Statutes), attending and participating in fund raising activities, seeking out applicants for the various scholarship programs many fraternal societies have, and organizing specific charitable activities.

If agents of fraternal benefit societies are forced to rebate part or all of their commissions in order to be competitive with agents from commercial insurance companies, there will be less, if any, monetary incentive for fraternal agents to devote the extra time for fraternal programs and activities, thus jeopardizing the delivery of these benefits to members of

fraternals who are Florida citizens. These other benefits include such things as scholarships and student loan programs; care of the sick; local anti-drug campaigns; blood donor programs; help for retarded children, the deaf and the blind; homes for the homeless and for troubled young people; summer camps; youth contests; junior lodge projects; financial help and personal service to children in orphanages; visitation, recreational and hobby programs for older citizens at home and in retirement or nursing homes; recognizing the need for and establishing food baskets and disaster relief; patriotic and cultural programs and celebrations; and helping to establish, train, and foster volunteerism among members. These are but a few things that fraternal agents are expected, often required, to become involved in, with their only source of compensation being their commission income--commissions that are calculated by each fraternal to cover these activities. If this method of compensation is altered, such as it would be by allowing insurance agents to rebate commissions generated from the sale of insurance, the delivery of these fraternal benefits would be jeopardized and the citizens of Florida who are presently members of fraternals, or those citizens contemplating membership, would be irreversibly harmed.

MULTI-LINE INSURERS WILL GAIN AN UNFAIR COMPETITIVE
ADVANTAGE OVER FRATERNAL BENEFIT SOCIETIES

Section 632.231, Florida Statutes (1983) sets out the types of insurance benefits fraternals are authorized to provide to

Florida. Other types of insurers would have the ability to obtain new lines of insurance as the marketplace would dictate. Fraternal would not have this flexibility of adding new lines of insurance because of the statutory prohibition previously cited. Without the protection of the anti-rebate statutes, fraternal benefit societies would fall prey to multi-line insurers such that it would be reasonable to foresee the decline or possibly the demise of fraternal in Florida. It would not be sufficient to grant statutory authority to fraternal in Florida to carry these other lines of insurance because most, if not all, of the states of domicile of fraternal have the same statutory restrictions as does Florida on the types of insurance benefits fraternal are authorized to provide.

Of the 55 fraternal doing business in Florida, 34 offer only life insurance and two offer only health and accident insurance. Significantly, the two that offer only health and accident insurance are organized to benefit workers in a specific trade (American Postal Workers Accident Benefit Association and Travellers Protective Association of America). The remaining fraternal offer life, health and accident insurance. None can offer property, casualty, surety or any other line of insurance under Florida laws.

CONCLUSION

If Sections 626.9541(1)(h) and 626.611(11) of the Florida statutes (1983) are declared unconstitutional, such declaration

would have two unintended results as to fraternal benefit societies, which results demonstrate that the State of Florida property exercised its police power by adopting the Anti-Rebate Statutes:

1. The programs and activities carried out by fraternal at the local level by field representatives of fraternal would be seriously threatened by causing fraternal representatives to "give back" to prospective members some or all of the compensation they receive for administering and facilitating fraternal programs and activities at the local level.

2. The insurance activities of fraternal would be seriously threatened by multi-line insurers whose agents would leverage the kickback of commissions on other lines of insurance to attract business away from fraternal, who cannot by Florida law add new lines of insurance to neutralize any possibility of leveraging from multi-line insurers.

Accordingly, this court should uphold the constitutionality of the anti-rebate statutes and reverse the decision of the District Court below.

Respectfully submitted,

NATIONAL FRATERNAL CONGRESS OF AMERICA

By: William R. Heerman

William R. Heerman
National Fraternal Congress of America
c/o Aid Association for Lutherans
4321 North Ballard Road
Appleton, WI 54919
(414) 734-5721

George E. Owen

George E. Owen
2811 Waverly Road
Tallahassee, FL 32312; (904) 385-4107

Attorneys for National Fraternal
Congress of America, as Amicus
Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 11th day of January, 1984, to:

Donald A. Dowdell
General Counsel
Florida Insurance Dept.
The Capitol
Tallahassee, FL 32301

and

Curtis A. Billingsley
Hospital Cost Containment Board
Suite 539, Larson Building
Tallahassee, FL 32301

and

Kent A. Zaiser
Dept. of Legal Affairs
Civil Division
The Capitol, Suite 1501
Tallahassee, FL 32301
Attorneys for Appellants

Mary Charlotte McCall
P. O. Box 11215
Tallahassee, FL 32301

and

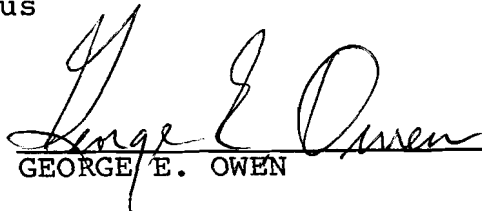
William B. Schultz
Public Citizens Litigation Group
2000 P Street N.W.
Suite 700
Washington, D.C. 20036
Attorneys for Appellees

William O. Birchfield
Dennis E. Hayes
P. O. Box 59
Jacksonville, FL 32201
Attorneys for American Council
of Life Insurance, Inc., as
Amicus Curiae

James N. McConnaughay
P. O. Drawer 229
Tallahassee, FL 32302
Attorney for Florida
Association of Insurance
Agents, as Amicus Curiae

Sandra L. Gilfillan
National Association of
Insurance Commissioners
1125 Grand Avenue
Kansas City, MO 64106
Attorney for NAIC, as
Amicus Curiae

J. Robert McClure, Jr.
Carlton, Fields, Ward, Emmanuel,
Smith & Cutler, P.A.
P. O. Drawer 190
Tallahassee, FL 32302
Attorney for Florida Association
of Life Underwriters, as Amicus



GEORGE E. OWEN