

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

UNITED STATES FIDELITY &
GUARANTY COMPANY,
A Corporation,

Plaintiff,

v.

THE STATE OF NEBRASKA;
CHARLES THONE, Governor of the
State of Nebraska; WALTER D.
WEAVER, Director, Nebraska
State Department of Insurance;
NEBRASKA STATE DEPARTMENT OF
INSURANCE; DONALD S.
LEUENBERGER, Nebraska State
Tax Commissioner; NEBRASKA
STATE TAX COMMISSION; KAY ORR,
Nebraska State Treasurer,

Defendants.

Docket 309 Page 002

ORDER

GLENN'S OFFICE, DISTRICT COURT
LANCASTER COUNTY, NEBRASKA
FILED
JUN 25 1982
KANDRA HAHN
Clerk District Court

Now on this 24th day of June, 1982, this matter came on for oral argument, having previously been submitted on the pleadings, evidence and briefs of the parties. Plaintiff's attorney, Rod Confer, and defendant's attorney, Mel Kammerlohr, Assistant Attorney General of the State of Nebraska, are both present. Plaintiff's attorney moved to amend its petition by interlineation by inserting the words "special purpose obligations" to comply with the provisions of §44-150 R.R.S. (2) which provides in part as follows:

This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state in connection with particular kinds of insurance, other than property insurance; . . .

The defendant having no objection the amendment is allowed.

Argument is had to the court and both sides rest.

The court being fully advised in the premises finds the facts to be as submitted in the stipulation of the parties heretofore filed herein. The court further finds that the plaintiff has failed to establish his burden of proof that the automobile insurance written by Nebraska Insurers in Maryland, subject to the MAIF assessments do not constitute property insurance or what portion of the direct written insurance of said companies are for property insurance and what portion are

MICRO FILMED
DATE JUN 25 82

DISTRICT COURT
LANCASTER COUNTY, NE

ROLL NO. 1259

for liability insurance or personal injury coverage so as to bring the special purpose obligations or assessments under the MAIF within the terms of the exemption in the Nebraska retaliatory statute, §44-150 R.R.S. (2), quoted in part above.

The court further makes the following conclusions of law. That the purpose of the Nebraska retaliatory statute is for the protection and equalizing of Nebraska insurance companies doing business in other states with insurance companies from other states doing business in Nebraska. That it is not the intent of the exemption from the Nebraska retaliatory tax, contained in §44-150(2) set forth in part above, to relieve special purpose obligations imposed for the benefit of the general public, as the MAIF in Maryland does to provide relief for persons injured by motorists who do not carry insurance or who hit and run. The court further finds that there is no relation between the automobile insurance companies doing business in Maryland and the automobile drivers in Maryland who do not carry insurance or who hit and run, or the victims of such drivers. By taxing insurance companies to benefit the victims of such accidents, the State of Maryland is putting the burden on the insurance companies for a general social purpose; whereas in Nebraska, which requires purchasers of automobile insurance to purchase coverage to protect against uninsured motorists, the burden is placed upon the persons who will benefit from such insurance. Therefore the burden is not on the insurance companies in Nebraska, but upon the purchasing public.

The court further finds that the MAIF is social legislation in the State of Maryland, and that it was not the purpose of the exemption in the retaliatory statute of Nebraska to exempt taxes or assessments for such purposes which have no relation to regulating or benefiting the insurance companies doing business in Maryland. It is not the purpose of the Nebraska retaliatory statutes to enhance the public in another state which taxes Nebraska companies for the benefit of the general public in that state, by exempting

taxation on such companies from the other state which carry no comparable burden in Nebraska.

The court therefore finds that the assessment against plaintiff for retaliatory tax by the State of Nebraska, and Department of Insurance of the State of Nebraska under §44-150 R.R.S. for the years ending December 31, 1974, and December 31, 1975, on the basis of the Maryland Automobile Insurance Fund, was legal and proper and that the prayer of plaintiff for a credit or refund should be denied. The plaintiff should pay the cost of this action.

It is therefore ordered that the prayer of the plaintiff for a refund or credit for the retaliatory tax paid to the State of Nebraska under §44-150 R.R.S. for the years ending December 31, 1974, and December 31, 1975, based on the tax or assessment by the State of Maryland for the Maryland Automobile Insurance Fund is denied and the costs of this action are assessed to plaintiff.

Dated this 25th day of June, 1982
BY THE COURT

Paul E. Jolice
District Judge

MB