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Due Process

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DUE PROCESS

N.Y. CONST. art. I, § 6:

No person shall be deprived of life, liberty or property without due process of law.

U.S. CONST. amend. V:

No person . . . shall be deprived of life, liberty, or property, without due process of law

U.S. CONST. amend. XIV, § 1:

No state shall . . . deprive any person of life, liberty, or property, without due process of law

COURT OF APPEALS

Alliance of American Insurers v. Chu⁷⁵
(decided April 2, 1991)

Plaintiffs, insurance companies who write property and casualty policies, trade associations who represent these companies, and individual policy holders, claimed that Chapter 503 of the Laws of 1979⁷⁶ and Chapter 55 of the Laws of 1982⁷⁷ impermissibly diverted funds from a Property and Liability Insurance Security Fund to the state's general fund. Plaintiffs asserted that this violated the insurance companies' property right guaranteed under article I, section 7 of the New York State Constitution,⁷⁸ due process rights guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution⁷⁹ and

75. 77 N.Y.2d 573, 571 N.E.2d 672, 569 N.Y.S.2d 364 (1991), *cert. denied*, 474 U.S. 803 (1985).

76. Act of July 10, 1979, ch. 503, 1979 N.Y. Laws 1042 (McKinney).

77. Act of Apr. 12, 1982, ch. 55, 1982 N.Y. Laws 85 (McKinney).

78. N.Y. CONST. art. I, § 7.

79. U.S. CONST. amends. V, XIV.

contract rights also guaranteed under the United States Constitution.⁸⁰ The defendants are the Commissioner of Taxation and Finance, the Superintendent of Insurance and the Commissioners of the State Insurance Fund. The New York Court of Appeals, in a five to two decision, reached only the issue of plaintiffs' property interest and held that the insurance companies did have a property interest in the fund. The court then held that Chapters 503 and 55 are invalid to the extent that they deprived the fund of earnings attributable to the insurance companies.

In 1947, the New York State Legislature created the Motor Vehicle Liability Security fund, which promised payment on motor vehicle liability claims if the insurance company became insolvent. Under section 333 of New York's Insurance Law,⁸¹ the fund called for insurance companies, who granted motor vehicle liability policies in New York State, "to file quarterly returns stating the amount of net direct written premiums charged on such policies and to make contributions to the fund based on a percentage of such premiums."⁸² Section 333 further provided that "[c]ontributions were to cease when the net value of the fund equaled 15% of the outstanding claim reserves incurred under policies protected by the fund, and would resume only if the net value of the fund dropped below that level due to the payment of claims."⁸³ Lastly, section 333 promised that the fund "shall be separate and apart from any other fund and from all other state moneys, and the faith and credit of the state of New York is pledged for their safekeeping."⁸⁴ In 1969, the state legislature decided to expand the use of the fund to other areas of insurance

80. U.S. CONST. art. I, § 10, cl. 1 ("No state shall . . . pass any . . . Law impairing the Obligation of Contracts . . .").

81. Act effective Apr. 11, 1947, ch. 801, 1947 N.Y. Laws 1477 (McKinney).

82. *American Insurers*, 77 N.Y.2d at 579, 571 N.E.2d at 674, 569 N.Y.S.2d at 366 (citing Act effective Apr. 11, 1947, ch. 801, 1947 N.Y. Laws 1477, 1478-79 (McKinney)).

83. *Id.* (citing Act effective Apr. 11, 1947, ch. 801, 1947 N.Y. Laws 1477, 1479 (McKinney)).

84. Act effective Apr. 11, 1947, ch. 801, 1947 N.Y. Laws 1477, 1480 (McKinney).

by enacting section 334 of the Insurance Law.⁸⁵ Section 334 called for new insurance companies to contribute to the fund, now entitled “Property and Liability Insurance Security Fund,” until it reached \$200 million. Section 334(4) also provided that once the target amount of \$200 million was met, contributions would not have to resume until the fund went below \$150 million.⁸⁶ Similarly this provision “includ[ed] the State’s pledge of faith and credit for the fund’s safekeeping and the requirement that the fund be kept separate and apart from other funds and other State moneys.”⁸⁷

Expanding the fund to other areas of insurance created two distinct categories of fund moneys. The first is the so-called “section 333” fund money, which was derived from the motor vehicle insurance contributors. The second is the so-called “section 334” fund money, which was funded by the non-motor vehicle insurance contributors. With regard to “section 334” fund money, the 1969 legislation called for any income derived from “section 334” moneys to be “returned to the contributors or credited against future contributions.”⁸⁸

By 1973, the fund had reached \$200 million. The state legislature then decided to amend section 333⁸⁹ to allow income accrued from the “section 333” fund to be diverted to the state’s general fund as opposed to being returned back into the fund. “Section 334” fund money while also amended⁹⁰ did not call for any diverting of funds to the state’s general fund.

In 1979, the state legislature again amended section 334.⁹¹ The legislature, as articulated in chapter 503, provided that “section 334” income earned from the fund would no longer be returned

85. Act of Apr. 21, 1969, ch. 189, 1969 N.Y. Laws 233 (McKinney).

86. *American Insurers*, 77 N.Y.2d at 580, 571 N.E.2d at 675, 569 N.Y.S.2d at 367 (citing Act. of Apr. 21, 1969, ch. 189, 1969 N.Y. Laws 233, 235-36 (McKinney)).

87. *Id.*

88. *Id.* at 581, 571 N.E.2d at 675, 569 N.Y.S.2d at 367.

89. Act of June 22, 1973, ch. 861, § 10, 1973 N.Y. Laws 1625, 1632 (McKinney).

90. *Id.* § 11, at 1633.

91. Act of Aug. 1, 1979, ch. 503, § 4, 1979 N.Y. Laws 1042, 1043 (McKinney).

or credited to the non-motor vehicle contributors. Also, pursuant to chapter 503 of the Laws of 1979, the legislature stated that when the combined moneys of "section 333" and "section 334" fund money exceeded \$240 million, after payment of claims and administrative expenses, the excess of money would be credited to the state's general fund.

In 1982, the legislature, pursuant to chapter 55 of the Laws of 1982,⁹² transferred \$87 million from the corpus of the fund to the state's general fund.⁹³ Chapter 55 did provide, however, that if the fund needed money to reimburse insolvent insurer claims, then money from the original transfer would be returned to the fund.

In 1985, the same plaintiffs in the case at bar, challenged the constitutionality of section 92 of chapter 55 of the Laws of 1982.⁹⁴ In *American Insurers Ass'n v. Chu*,⁹⁵ the plaintiffs asserted that the transfer of funds created the possibility that additional funds might be required in the future to maintain the statutory surplus of \$150 million. The court of appeals dismissed the plaintiffs' complaint as being premature because "the issue presented for adjudication involve[d] a future event beyond control of the parties which may never occur."⁹⁶

The justiciability issue was eliminated in 1988 when the net value of the Property and Liability Insurance Security Fund fell below the \$150 million requirement, thus prompting the insurance companies' obligation to resume contributions. This result led to the present challenge by the plaintiffs. In the present case, however, the plaintiffs not only challenged the constitutionality of chapter 55, but also similarly challenged the consti-

92. Act of Apr. 12, 1982, ch. 55, 1982 N.Y. Laws 85 (McKinney).

93. The state's general fund, pursuant to Chapter 55, also received \$50 million from the Aggregate Trust Fund, \$190 million from the State Insurance Fund and \$67 million from Stock Workmen's Compensation Security Fund. *American Insurer*, 77 N.Y.2d at 583, 571 N.E.2d at 677, 569 N.Y.S.2d at 369 (citing Act of Apr. 12, 1982, ch. 55 § 92, 1982 N.Y. Laws 85, 125 (McKinney)).

94. See *American Ins. Ass'n v. Chu*, 64 N.Y.2d 379, 476 N.E.2d 637, 487 N.Y.S.2d 311, *appeal dismissed and cert. denied*, 474 U.S. 803 (1985).

95. *Id.*

96. *Id.* at 385, 476 N.E.2d at 639, 487 N.Y.S.2d at 313.

tutionality of chapter 503.⁹⁷

While the plaintiffs raised several federal and state constitutional claims, the court addressed only whether sections 333 and 334 of the state's Insurance Law created a property right in the Property and Liability Insurance Security Fund such that it would prohibit the state from diverting money from that fund. The court concluded that the contributors did have a property right in the fund which prohibited the legislature from diverting money from the Property/Casualty Insurance Security Fund to the state fund.⁹⁸ The court did not specify under what state constitutional provision their holding was based, but explained that their "decision rests on the constitutionally based protection against legislative interference with vested rights"⁹⁹

The court's holding was based on several factors derived from the statutory scheme of sections 333 and 334 of the state's Insurance Law. First, the court found that section 334 explicitly gave the contributors a right to the income earned from their contributions.¹⁰⁰ Second, the statute also assured the contributors that the contributed money would only be used for the benefit of the fund and not for other purposes.¹⁰¹ Third, the court noted that section 333 permitted expenditures only for insolvent insurance company claims and administrative expenses related to the management of the fund.¹⁰² Lastly, the court believed that it

97. *American Insurers*, 77 N.Y.2d at 578, 571 N.E.2d at 674, 569 N.Y.S.2d at 366.

98. *Id.*

99. *Id.* at 586, 571 N.E.2d at 679, 569 N.Y.S.2d at 371. Judge Hancock, in a dissenting opinion, claimed that the majority decision is a return to the "Lochner era" of the judiciary imposing its own view of substantive due process when invalidating regulatory legislation. *Id.* at 604, 571 N.E.2d at 690, 569 N.Y.S.2d at 382 (Hancock, J., dissenting) (citing, *inter alia*, *Lochner v. New York*, 198 U.S. 45 (1905)).

The majority opinion denied this claim, stating that "[w]e are not substituting our judgment for that of the Legislature as to the wisdom of its actions. We are simply giving meaning to the words used by the Legislature." *Id.* at 586, 571 N.E.2d at 679, 569 N.Y.S.2d at 371.

100. *Id.* at 587, 571 N.E.2d at 679, 569 N.Y.S.2d at 371.

101. *Id.*

102. *Id.* at 588, 571 N.E.2d at 680, 569 N.Y.S.2d at 372.

would be unfair for the contributors to pay again into the fund due to the state's diverting of money from that fund.¹⁰³ According to the court:

All of these limitations established by the Legislature dictate that the contributions made by plaintiffs were not to become State moneys to do with as it wished. Instead, the statutory scheme, viewed as a whole, created in the State obligations to preserve the fund and to use its assets and earnings only for the narrow purposes set forth.¹⁰⁴

The court emphasized that its holding was limited to invalidating only sections 333 and 334 of the state's Insurance Law affecting the Property and Liability Insurance Security Fund. Therefore, this decision does not affect other similarly constructed statutory schemes.¹⁰⁵ Moreover, the court determined that the contributors only have a property right as to past contributions and income earned from such money. Therefore, the court stated that the legislature may extinguish that property right with respect to future contributions.¹⁰⁶

The dissent, authored by Judge Hancock and joined by Judge Titone, disagreed with the majority's premise.¹⁰⁷ The dissent argued that "none of the several statutes pertaining to the fund, taken separately or in combination contains a basis for a finding of any promissory 'property right.'"¹⁰⁸ The dissent also contended that a prior court of appeals decision, *Methodist Hospital v. State Insurance Fund*,¹⁰⁹ presented a "virtually identical constitutional attack on one of two statutes at issue

103. *Id.*

104. *Id.*

105. See Mr. Carey's Bad Example Made Worse, *N.Y. Times*, April 20, 1991, at 22 (since Mario Cuomo became governor, the state has borrowed a total of more than \$1.6 billion of funds contributed by insurers, policyholders and bond buyers).

106. *American Insurers*, 77 N.Y.2d at 589, 571 N.E.2d at 680, 569 N.Y.S.2d at 372.

107. *Id.* at 593, 571 N.E.2d at 683, 569 N.Y.S.2d at 375 (Hancock, J., dissenting).

108. *Id.* (Hancock, J., dissenting).

109. 64 N.Y.2d 365, 476 N.E.2d 304, 486 N.Y.S.2d 905 (1985), *appeal dismissed*, 474 U.S. 801 (1985).

here.”¹¹⁰

In *Methodist Hospital*, the court of appeals upheld the transfer of \$190 million from the state’s insurance fund to the state’s general fund¹¹¹ because section 76 of New York’s Worker’s Compensation Law did not grant the contributors a property interest in the fund’s surplus.¹¹² The majority, in *American Insurers*, distinguished *Methodist Hospital* because the former had a property interest and the latter did not.¹¹³ The majority explained that the state transfer of funds in *Methodist Hospital* did not disturb any rights or obligations of the contributors. The majority further noted that in *Methodist Hospital*, the state’s diverting of funds did not require the contributors to resume contributions.

Judge Hancock asserted, however, that *Methodist Hospital* is indistinguishable and thus the plaintiffs do not have a property right to the fund. The judge maintained that each fund is established and regulated by the state and thus subject to the state’s discretion on how those funds will be managed.

While not mentioned or analyzed in *American Insurers*, the creation of a property right would arguably implicate article I, section 6 of the New York State Constitution¹¹⁴ whereas the state legislature would be prohibited from passing a statute that would retroactively deprive a contributor of his or her property without due process of law. In this case, a contributor’s due process rights may be couched in terms of contractual rights that emanate from a statute. In *Patterson v. Carey*,¹¹⁵ the court of appeals stated that “the State may not deprive a party to a contract of an essential contractual attribute without due process of the law.” The court added that “[d]epriving an owner of property of one

110. *American Insurers*, 77 N.Y.2d at 594, 571 N.E.2d at 683, 569 N.Y.S.2d at 375 (Hancock, J., dissenting).

111. *Methodist Hospital*, 64 N.Y.2d at 371-72, 476 N.E.2d at 306, 486 N.Y.S.2d at 907.

112. *Id.* at 377, 476 N.E.2d at 310, 486 N.Y.S.2d at 911.

113. *American Insurers*, 77 N.Y.2d at 578, 571 N.E.2d at 679, 569 N.Y.S.2d at 371.

114. N.Y. CONST. art. I, § 6.

115. 41 N.Y.2d 714, 363 N.E.2d 1146, 395 N.Y.S.2d 411 (1977).

of its essential attributes, is depriving him of his property within the constitutional provision' and, absent due process, works an impermissible 'forfeiture of the right given by the contract.'"116 This view of protecting a party's due process rights by compelling the state to adhere to original terms set forth by statute was echoed in the case at bar. In *American Insurers*, the court of appeals observed that "[t]he integrity of the State government, upon which the public is entitled to rely, requires, at the very least, that the State keep its lawfully enacted promises."¹¹⁷

Similarly, the United States Constitution prohibits states from taking a person's property without due process of law.¹¹⁸ In *Board of Regents of State Colleges v. Roth*,¹¹⁹ the United States Supreme Court noted that "[p]roperty interests . . . are not created by the Constitution."¹²⁰ In addition, the Court stated that "they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law"121 While a party may have a property right under state law, the state legislature may still constitutionally impair that right subject to the constraints of the Federal Constitution's Contract Clause.¹²² In *United States Trust Co. of New York v. New Jersey*,¹²³ the Supreme Court stated that "[i]n general, a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State."¹²⁴ The Court further noted that "the Contract Clause does not prohibit the States from repealing or amending statutes generally, or

116. *Id.* at 720, 363 N.E.2d at 1151, 395 N.Y.S.2d at 416 (quoting *People ex rel. Manhattan Sav. Inst. of City of New York v. Otis*, 90 N.Y. 48, 52 (1882)).

117. *American Insurers*, 77 N.Y.2d at 577, 571 N.E.2d at 673, 569 N.Y.S.2d at 365.

118. See U.S. CONST. amend. XIV.

119. 408 U.S. 564 (1972).

120. *Id.* at 577.

121. *Id.*

122. See U.S. CONST. art. I, § 10, cl. 1.

123. 431 U.S. 1 (1977).

124. *Id.* at 17 n.14.

from enacting legislation with retroactive effects.”¹²⁵ In order for an impairment to be held constitutional, the state must prove “that impairment was both reasonable and necessary to serve the admittedly important purposes claimed by the State.”¹²⁶ To determine whether the impairment is permissible, the Court stated that two conditions must be met: First, the parties must have failed, at the time of contracting, to foresee the possibility of changed circumstance; second, the state must have no other alternative but to impair the contract.

Turning to the facts in the present case, it is likely that the United States Supreme Court, as was concluded by the court of appeals, would protect the contributor’s property rights in the fund from contractual impairment by the state. This conclusion is based on the state’s failure to prove that they have no other alternative but to impair the contract. Here, the court of appeals noted that “[t]he only justification the State can offer for the breach of its commitment is the enhancement of the State’s general revenues.”¹²⁷ Without more, the Supreme Court could conclude that the state has other options to raise revenues such as increasing taxes or reducing allocations in other programs.

*Children of Bedford, Inc. v. Petromelis*¹²⁸
(decided May 7, 1991)

See the discussion of this case under FREEDOM OF SPEECH AND THE PRESS.¹²⁹ The court held that the petitioner was given proper notice and that the proceedings before the Crime Victims Board were regular.¹³⁰

125. *Id.* at 17.

126. *Id.* at 29.

127. *American Insurers*, 77 N.Y.2d at 588-89, 571 N.E.2d at 680, 569 N.Y.S.2d at 372.

128. 77 N.Y.2d 713, 573 N.E.2d 541, 570 N.Y.S.2d 453 (1991), *cert. granted and vacated*, 112 S. Ct. 859 (1992).

129. See *infra* notes 423-58 and accompanying text.

130. *Children of Bedford*, 77 N.Y.2d at 723-24, 573 N.E.2d at 546, 570 N.Y.S.2d at 458.