

The Burger Court Opinion Writing Database

*Superintendent of Insurance of New York
v. Bankers Life & Casualty Co.*

404 U.S. 6 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 2, 1971

Re: No. 70-60 - Superintendent of Insurance of the State
of New York as Liquidator of Manhattan
Casualty Company, v. Bankers Life &
Casualty Co.

Dear Bill:

Please join me.

Regards,

WCB

Mr. Justice Douglas

cc: The Conference

Please forward

1st DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No 70-60

From: Douglas, J.

Circulated: 10/18/71

Superintendent of Insurance of the
State of New York, as Liquidator
of Manhattan Casualty Company,
Petitioner,

v.
Bankers Life and Casualty
Company et al.

On Writ of Certiorari to the United
States Court of Appeals for the
Second Circuit.

[October —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Manhattan Casualty Company, now represented by petitioner, New York's Superintendent of Insurance, was, it is alleged, defrauded in the sale of certain securities in violation of the Securities Act of 1933, 15 U. S. C. § 77q (a), and of the Securities Exchange Act of 1934, 15 U. S. C. § 78q (b). The District Court dismissed the complaint, 300 F. Supp. 1083, and the Court of Appeals affirmed, by a divided bench, 430 F. 2d 355. The case is here on a petition for a writ of certiorari which we granted, 402 U. S. —.

It seems that Bankers Life, one of the respondents, agreed to sell all of Manhattan's stock to one Bourne and one Begole for \$5,000,000 pursuant to a plan alleged to be conceived by Garvin, Bantel, a note brokerage firm. These men, however, did not pay for the stock out of their own funds but used Manhattan's assets for that purpose. They obtained a \$5,000,000 check from respondent Irving Trust, although they had no funds on deposit there at the time. On the same day they purchased all the stock of Manhattan from Bankers Life for \$5,000,000 and as stockholders and directors installed one Sweeny as president of Manhattan.

R
M
Chrys
throughout

2nd DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

Argued: Douglas, J.

Dated: 10/21/71

SUPREME COURT OF THE UNITED STATES

No 70-60

Superintendent of Insurance of the
State of New York, as Liquidator
of Manhattan Casualty Company,
Petitioner,
v.
Bankers Life and Casualty
Company et al.

On Writ of Certiorari to the United
States Court of
Appeals for the
Second Circuit.

[November —, 1971]

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The case is here on a petition for a writ of certiorari
which we granted, 401 U. S. 973.

It seems that Bankers Life, one of the respondents,
agreed to sell all of Manhattan's stock to one Bourne and
one Begole for \$5,000,000. These men, however, did not
pay for the stock out of their own funds but used Man-
hattan's assets for that purpose. They arranged, through
Garvin, Bantel—a note brokerage firm—to obtain a
\$5,000,000 check from respondent Irving Trust, although
they had no funds on deposit there at the time. On the
same day they purchased all the stock of Manhattan

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joined word

Mr. the Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice Clark
Mr. Justice White
Mr. Justice Marshall

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No 70-60

Mr. Justice Douglas, Jr.

Superintendent of Insurance of the
State of New York, as Liquidator
of Manhattan Casualty Company.
Petitioner.

v.
Bankers Life and Casualty
Company et al.

On Writ of Certiorari to the United
States Court of Appeals for the
Second Circuit.

11/4/71

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Manhattan Casualty Company, now represented by petitioner, New York's Superintendent of Insurance, was, it is alleged, defrauded in the sale of certain securities in violation of the Securities Act of 1933, 15 U. S. C. § 77q (a), and of the Securities Exchange Act of 1934, 15 U. S. C. § 78j (b). The District Court dismissed the complaint, 300 F. Supp. 1083, and the Court of Appeals affirmed, by a divided bench, 430 F. 2d 355. The case is here on a petition for a writ of certiorari which we granted, 401 U. S. 973.

It seems that Bankers Life, one of the respondents, agreed to sell all of Manhattan's stock to one Bourne and one Begole for \$5,000,000. These men, however, did not pay for the stock out of their own funds but used Manhattan's assets for that purpose. They arranged, through Garvin, Bantel—a note brokerage firm—to obtain a \$5,000,000 check from respondent Irving Trust, although they had no funds on deposit there at the time. On the same day they purchased all the stock of Manhattan

25
To : The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated:

No 70-60

Recirculated: 11-5

Superintendent of Insurance of the
State of New York, as Liquidator
of Manhattan Casualty Company, Petitioner,
v.
Bankers Life and Casualty
Company et al.

On Writ of Certiorari to the United
States Court of Appeals for the
Second Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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It seems that Bankers Life, one of the respondents, agreed to sell all of Manhattan's stock to one Begole for \$5,000,000. It is alleged that Begole conspired with one Bourne and others to pay for this stock, not out of their own funds, but with Manhattan's assets. They were alleged to have arranged, through Garvin, Bantel—a note brokerage firm—to obtain a \$5,000,000 check from respondent Irving Trust, although they had no funds on deposit there at the time. On the same day they purchased all the stock of Manhattan from Bankers Life for

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 29, 1971

RE: No. 70-60 - Supt. of Insurance of New
York, etc. v. Bankers Life & Casualty

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 28, 1971

70-60 - Superintendent of Insurance, New York
v. Bankers Life and Casualty Co.

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

RE
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 29, 1971

Re: No. 70-60 - Superintendent of
Insurance v. Bankers Life
and Casualty Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

Rebby

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 28, 1971

Re: No. 70-60 - Superintendent of Insurance of
the State of New York v. Bankers
Life and Casualty

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 28, 1971

Re: No. 70-60 - Superintendent, etc. v. Bankers
Life and Casualty Co., et al.

Dear Bill:

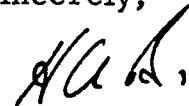
Please join me in your opinion proposed for this
case.

I shall defer to your good judgment in the matter,
but I mildly wonder if Bankers Life deserves at least a
passing comment. I had something in mind along the fol-
lowing line:

"Bankers Life strenuously urges before
us that the complaint did not allege, and dis-
covery failed to disclose, any connection
between it and the fraud and that, therefore,
the dismissal of the complaint as to it was
correct and should be affirmed. We refuse
so to rule at this point. Our refusal, how-
ever, is without prejudice to Bankers' re-
newing its motion for dismissal before the
District Court."

As I have said above, I defer to your wishes.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Wm. Brown
Oct 71