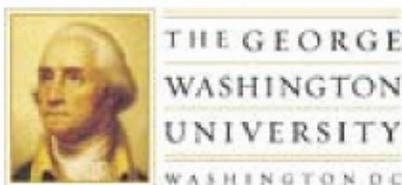


The Burger Court Opinion Writing Database

*Underwriters National Assurance Co. v.
North Carolina Life & Accident & Health
Insurance Guaranty Association*
455 U.S. 691 (1982)

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



(5)

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

CHAMBERS OF
THE CHIEF JUSTICE

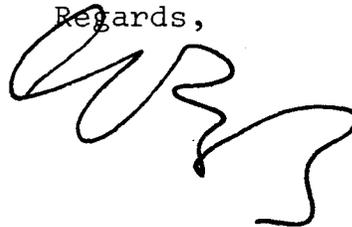
March 3, 1982

Re: No. 80-1496 - Underwriters National Assurance Co.
v. North Carolina Life and Accident, etc.

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

①

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 16, 1982

RE: No. 80-1496 Underwriters National Assurance v.
North Carolina Life and Accident, etc.

Dear Thurgood:

I agree.

Sincerely,

Bill

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 17, 1982

Re: 80-1496 - Underwriters National Assurance Co.
v. North Carolina Life and Accident

Dear Thurgood,

The major issue in this case is whether the North Carolina courts were required to give full faith and credit to the Indiana judgment that the Guaranty Association no longer had any interest in the \$100,000 deposit located in North Carolina. I have no doubt that it must do so, and to that extent I agree with the result reached by your opinion. To have jurisdiction to arrive at this conclusion, the Indiana court needed only to have the Association properly before it and to arrive at its result in accordance with minimal procedures required by the Constitution. No one suggests that these requirements were not satisfied: the Association appeared and was a party and judgment on the crucial issue of its interest in the North Carolina fund went against it at least once, if not twice.

This should be enough to foreclose the Association's claim to the fund in the case now before us. Jurisdiction over the Association was enough to permit adjudicating, rightly or wrongly, its interest in the fund. Hence, I would stay away from talking about jurisdiction over the fund, particularly because despite your conclusion that the Indiana court had such jurisdiction, you reserve the question of the trustees' possible interest in the fund. You do this even though the Indiana court asserted that all claims to the company's assets that had not been recognized were terminated.

I should emphasize that in my view the Indiana court could not have adjudicated the Association's rights in the North Carolina fund had the Association not appeared in Indiana. Whatever may be true of a federal receivership or a federal bankruptcy or reorganization proceeding, I doubt that a state court can adjudicate the validity of an out-of-state creditor's lien on out-of-state property owned by the debtor without having personal jurisdiction over the creditor. Perhaps I am wrong, but if I am, there is no reason in the case to preserve whatever rights the fund trustees might have had in the fund; nor do I see any reason to resolve this issue in this case.

This leads to a further matter. At some points in your draft opinion, you indicate that the Indiana courts had personal jurisdiction over the policyholders and could adjudicate their interest in the fund, if they had any. But the policyholders did not appear in Indiana, and I doubt that the class action device would suffice to give the Indiana court the authority to adjudicate the policyholder's lien on the North Carolina fund if such lien existed under North Carolina law. Contrary to your suggestion on page 19 of your draft that the policyholders had no interest in the fund, the North Carolina Court of Appeals (despite its earlier recitation that the fund is held by trustees for the Association and the state as their interest may appear) stated that it had "determined that the North Carolina policyholders are protected by the special deposit made by UNAC and also by the statutory liability of the guaranty association." Petn. App. 15A. That deposit, the court held, was first to be applied to the losses of the policyholders before the Association was called upon to come forward with its own funds. I do not object to saying that the policyholders have no current interest in the fund, but this is not because the Indiana court had the authority to terminate their security interest despite their failure to appear. Rather, it is because, as the North Carolina Court of Appeals itself recognized, the Association's assumption of liability with regard to UNAC defaults, which the service contract evidenced, subrogated the Association to the rights of the policyholders. At least that is the way I understand the North Carolina law as reflected in the Court of Appeals' opinion at Petn. App. 16A.

Finally, if the parties who are beneficiaries of the trust fund under North Carolina law (the Association and the policyholders) no longer have an interest that survives the Indiana judgment and the execution of the service contract, I wonder what possible beneficial interest the trustees can have. I agree, however, that your reservation of the issue is proper.

Since you are having no trouble getting votes for your draft, it is likely that I am swimming against the tide. But failing self-re-education, I shall likely write something in concurrence.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

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To: The Chief Justice
 Justice Brennan
~~Justice Marshall~~
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White

Circulated: 2/26/82

Recirculated: _____

No. 80-1496, Underwriters Assur. v. North Carolina Life

Justice White, concurring in the judgment.

I agree with much of the discussion in the majority opinion on the scope and function of the principles of res judicata. I also agree with the majority that "it is clear that the Rehabilitation Court had personal jurisdiction over all parties necessary to its determination that the North Carolina Association could not satisfy prerehabilitation claims out of the North Carolina deposit." Ante, at 18.

The only parties over which the Indiana court needed jurisdiction in order to prohibit the Association from moving against the North Carolina deposit were the Association and Underwriters National Assurance Corporation (UNAC). It had jurisdiction over the latter in a rehabilitation proceeding, because Indiana was the state of incorporation; it had jurisdiction over the Association because, as the majority opinion amply demonstrates in part I, the Association appeared

To: The Chief Justice
 Justice Brennan
~~Justice Marshall~~
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: 1 MAR 1982

1st Printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1496

UNDERWRITERS NATIONAL ASSURANCE
 COMPANY, PETITIONER *v.* NORTH CAROLINA
 LIFE AND ACCIDENT AND HEALTH INSURANCE
 GUARANTY ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
 NORTH CAROLINA

[March —, 1982]

JUSTICE WHITE, concurring in the judgment.

I agree with much of the discussion in the majority opinion on the scope and function of the principles of *res judicata*. I also agree with the majority that "it is clear that the Rehabilitation Court had personal jurisdiction over all parties necessary to its determination that the North Carolina Association could not satisfy prerehabilitation claims out of the North Carolina deposit." *Ante*, at 18.

The only parties over which the Indiana court needed jurisdiction in order to prohibit the Association from moving against the North Carolina deposit were the Association and Underwriters National Assurance Corporation (UNAC). It had jurisdiction over the latter in a rehabilitation proceeding, because Indiana was the state of incorporation; it had jurisdiction over the Association because, as the majority opinion amply demonstrates in part I, the Association appeared before the court as a party and participated in the rehabilitation plan. With jurisdiction over UNAC and the Association, the Indiana Court clearly had the authority to adjudicate the amount and character of the claim that the Association had against Underwriters, including its claim against the North Carolina deposit.

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES: |

From: Justice White

Circulated: _____

Recirculated: 4 MAR 1982

2nd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1496

UNDERWRITERS NATIONAL ASSURANCE COMPANY, PETITIONER *v.* NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NORTH CAROLINA

[March —, 1982]

JUSTICE WHITE, with whom JUSTICES POWELL and STEVENS join, concurring in the judgment.

I agree with much of the discussion in the majority opinion on the scope and function of the principles of *res judicata*. I also agree with the majority that "it is clear that the Rehabilitation Court had personal jurisdiction over all parties necessary to its determination that the North Carolina Association could not satisfy prerehabilitation claims out of the North Carolina deposit." *Ante*, at 18.

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FEB 11 1982

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1496

UNDERWRITERS NATIONAL ASSURANCE COMPANY, PETITIONER *v.* NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT FOR NORTH CAROLINA

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, the North Carolina Court of Appeals held that an Indiana court was without jurisdiction to adjudicate the rights of various parties in a \$100,000 deposit held in trust by certain North Carolina officials. Because it found that the Indiana court did not have jurisdiction, the North Carolina court refused to recognize the Indiana court's prior ruling that all claims to the deposit were compromised, settled and dismissed by the final order entered by that court during a rehabilitation proceeding. We granted certiorari to decide whether, by refusing to treat the prior Indiana court judgment as *res judicata*, the North Carolina court has violated the Full Faith and Credit Clause of the Constitution and its implementing federal statute. — U. S. — (1981). For the reasons stated below, we reverse the decision of the North Carolina Court of Appeals.

I

Petitioner Underwriters National Assurance Company (Underwriters) is an Indiana stock insurance corporation specializing in life and disability insurance for certain high-income professional groups. In 1973 Underwriters was li-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1982

Re: No. 80-1496 - Underwriters National Assurance
Co. v. North Carolina Life and Accident and
Health Guaranty Association

Dear Byron:

Thank you for your comments in this complicated case. I must confess, however, to being a little puzzled as to what are the exact areas of our disagreement. The draft specifically offers "no opinion" on the question of whether the Indiana Court properly decided that it had jurisdiction to compromise the claims of the parties before it to the North Carolina deposit, see Draft at 21, nor does it suggest that the Indiana Court ever purported to exercise "in rem" jurisdiction over the deposit so as to have the power to settle all rights in the trust. I agree with you that it is not necessary or appropriate to address either of these questions. All that I think is necessary for the resolution of this case is that the Indiana Court asserted "it had subject matter jurisdiction to settle the pre-rehabilitation claims of the parties before it to the North Carolina deposit." Draft at 15. I do not think that the draft indicates that this assertion was correct, it only states that the North Carolina Association had an opportunity to fully and fairly litigate this question in the Indiana Court. As a result, under Durfee v. Duke, they are now barred from raising this issue on collateral attack without regard to whether the decision was right or wrong.

In my opinion, it is necessary to discuss whether the Indiana Court "purported" to exercise jurisdiction over the

- 2 -

claims of the parties before it to the deposit. The North Carolina Association's claim is not just that the Indiana Court wrongly decided that the deposit was a general asset of Underwriters, but that it was without jurisdiction to extinguish rights in the deposit, including those of the parties before it. The Association relies on Hanson v. Denckla to argue that, even if the Indiana Court had personal jurisdiction over the parties and purported to exercise jurisdiction over the deposit, the North Carolina Court was entitled to disregard its decision if it found that the Indiana Court did not in fact have jurisdiction over either the trust or the statutory trustee. Similarly, Durfee v. Duke holds that if the Indiana Court did not have subject matter jurisdiction to decide rights in the deposit, the North Carolina Court was not required to give full faith and credit even if the Indiana Court had personal jurisdiction over the North Carolina Association, unless the question of jurisdiction was fully and fairly litigated in Indiana. Therefore, the draft discusses the fact that the Indiana Court included the deposit as a general asset of Underwriters, and consequently "purported" to exercise its jurisdiction over it to settle the prerehabilitation claims of the parties before it; this discussion is only intended to indicate that the Association had notice that the Indiana Court was attempting to extinguish its prerehabilitation claims to the deposit.

Had the Indiana Court never included the deposit as a general asset or otherwise put the Association on notice that its rights in the deposit might be compromised by the Plan, the mere fact that the Indiana Court had personal jurisdiction over the Association would not bar them from litigating their right to proceed against the North Carolina deposit that they believe was never within the jurisdiction of the Indiana Court. In my opinion, holding that the Association was barred both because it was present in the Rehabilitation proceeding, and because it was put on notice that its prerehabilitation rights in the \$100,000 would be extinguished by the Plan, is a narrower and more appropriate basis of decision than holding that they are barred simply because they were present in the proceeding and could have raised questions concerning the deposit without regard to whether they had notice that their rights in what they view as a segregated, statutory trust, might be extinguished. The 1978 judgment does not alter my view, since that judgment only purported to interpret what was decided in 1976. See Draft at 16 n.15.

- 3 -

I am also unclear as to your objection to our treatment of the policyholders. The draft does not decide that the Indiana Court had personal jurisdiction over the policyholder vis a vis their interest in the deposit. I am willing to insert the word "current" when I discuss the policyholders interest in the fund, if that will alleviate your concerns.

I cannot tell from your correspondence whether you disagree with the approach taken in the opinion, as I have explained it above, or whether you believe that the opinion can be read to hold that the Indiana Court had jurisdiction over the deposit and could extinguish all claims to the \$100,000. If your disagreement is with the latter, I will be happy to consider any specific suggestions that you may have for eliminating that impression.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 4, 1982

Re: No. 80-1496 - UNAC v. NCGA

MEMORANDUM TO THE CONFERENCE

I propose to add the following footnotes to the opinion of the Court in this case. Footnote 17 will appear on page 18 at the end of Part A. Footnote 22 will appear on page 21 after the sentence stating "Although the Rehabilitation Court did not attempt to exercise jurisdiction over the North Carolina trustees, that court did purport to exercise jurisdiction over the trust corpus." The rest of the footnotes will be renumbered accordingly. If anyone has any objections to these changes, please let me know.

Sincerely,



T.M.

Enclosure

STYLISTIC CHANGES THROUGHOUT.

pp. 18, 19, 20, 22

MAR 5 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1496

UNDERWRITERS NATIONAL ASSURANCE COMPANY, PETITIONER *v.* NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, the North Carolina Court of Appeals held that an Indiana court was without jurisdiction to adjudicate the rights of various parties in a \$100,000 deposit held in trust by certain North Carolina officials. Because it found that the Indiana court did not have jurisdiction, the North Carolina court refused to recognize the Indiana court's prior ruling that all claims to the deposit were compromised, settled and dismissed by the final order entered by that court during a rehabilitation proceeding. We granted certiorari to decide whether, by refusing to treat the prior Indiana court judgment as *res judicata*, the North Carolina court has violated the Full Faith and Credit Clause of the Constitution and its implementing federal statute. — U. S. — (1981). For the reasons stated below, we reverse the decision of the North Carolina Court of Appeals.

I

Petitioner Underwriters National Assurance Company (Underwriters) is an Indiana stock insurance corporation specializing in life and disability insurance for certain high-income professional groups. In 1973 Underwriters was li-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 16, 1982

Re: No. 80-1496 - Underwriters National Assurance Co. v.
North Carolina Life and Accident, Etc.

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 17, 1982

80-1496 Underwriters National Assurance Co. v.
North Carolina Association

Dear Thurgood:

As I am inclined generally to agree with Byron, I will await his writing.

In brief, I do not think the Indiana court had jurisdiction over the fund held in trust in North Carolina. Although note 23 leaves open to some extent the status of the fund, the North Carolina courts will be limited on remand by your opinion. As I read it, you find a more expansive jurisdiction in the Indiana court than I can accept - at least as I am presently advised.

This is one of the more difficult cases we have had this Term.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 2, 1982

80-1496 Underwriters National v. North Carolina Life

Dear Byron:

Please join me in your opinion concurring in the judgment.

Sincerely,



Justice White

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 16, 1982

Re: No. 80-1496 Underwriters National Assurance Co. v.
North Carolina Life

Dear Thurgood:

Please join me in your opinion for the Court.

Sincerely,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 17, 1982

Re: 80-1496 - Underwriters National v.
North Carolina Life

Dear Thurgood:

Like Byron, I was troubled by your reliance on jurisdiction over the fund as opposed to jurisdiction over the association. I will therefore await further developments before coming to rest.

Respectfully,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 1, 1982

Re: 80-1496 - Underwriters v. North Carolina
Life & Accident

Dear Byron:

Please join me in your separate concurrence.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 18, 1982

No. 80-1496 Underwriters National Assurance
Co. v. North Carolina Life

Dear Thurgood,

Please join me in your opinion in the
referenced case.

Sincerely,



Justice Marshall

Copies to the Conference