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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

September 24, 1987

Elaine B. Goldsmith
Clerk
United States Court of Appeals
for the Second Circuit
1702 United States Courthouse
40 Foley Square
New York, New York 10007

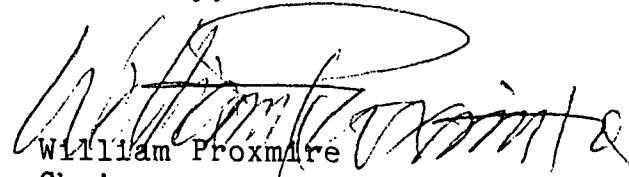
Re: Independent Insurance Agents of America, Inc., v.
Board of Governors of the Federal Reserve System,
Docket No. 87-4118

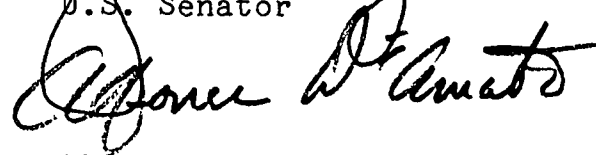
Dear Ms. Goldsmith:

We have authorized the filing of the attached amicus brief
in this case on our behalf.


Sincerely,

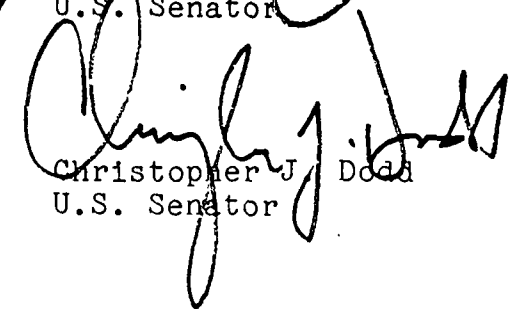

John Heinz
U.S. Senator


William Proxmire
Chairman


Alfonse M. D'Amato
U.S. Senator


Donald W. Riegle, Jr.
U.S. Senator


Richard Shelby
U.S. Senator


Christopher J. Dodd
U.S. Senator

United States Court of Appeals FOR THE SECOND CIRCUIT

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse of Page 2 Note requirement that supporting affidavits be attached

INDEPENDENT INSURANCE AGENTS OF AMERICA, INC.

Petitioner,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Use short title

Respondent.

87-4118

Docket Number

NOTICE OF MOTION

Permission of Amici Curiae to File ^{state type of motion} Memorandum Supporting Petitioner for Independent Insurance Agents of America, Inc.'s Motion for Stay Pending Judicial Review

OPPOSING COUNSEL: (Name, address and tel. no. of law firm and of attorney in charge of case)

Richard M. Ashton
Board of Governors of the Federal Reserve System
20th & C Streets, N.W.
Washington, D.C. 20551
(202) 452-3750

MOTION BY: (Name, address and tel. no. of law firm and of attorney in charge of case)

Peter Kinzler
United States Senate
SD-534 Dirksen Senate Office Bldg.
Washington, D.C. 20510
(202) 224-9213

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has consent of opposing counsel:

A. been sought? Yes No

B. been obtained? Yes No

Has service been effected? Yes No

Is oral argument desired? Yes No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? Yes No

B. by firm date of argument notice? Yes No

C. If Yes, enter date: October 6, 1987

Has request for relief been made below? Yes No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? Yes No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? Yes No

Judge or agency whose order is being appealed:

Board of Governors of the Federal Reserve System

Brief statement of the relief requested:

Senators Proxmire, Riegle, Heinz, Dodd, D'Amato and Shelby request permission to file a memorandum in support of the petitioner's motion for a stay pending judicial review of the Board of Governors of the Federal Reserve System ("Board") Order in Merchants National Corporation, 73 Fed. Res. Bull. ___ (Sept. 10, 1987).

By: (Signature of attorney)

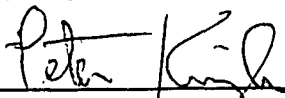
Appearing for: (Name of party)

Appellant or Petitioner:

Plaintiff Defendant

Appellee or Respondent:

Plaintiff Defendant



Amici Curiae

Signed name must be printed beneath

Peter Kinzler

Date

9/25/87

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is granted denied

Date

Circuit Judge

Previous requests for similar relief and disposition:

The movants have not previously sought to participate in this action.

Statement of the issue(s) presented by this motion:

Whether Senators Proxmire, Riegle, Heinz, Dodd, D'Amato and Shelby may file a memorandum as amici curiae in support of the Petitioner's motion.

Brief statement of the facts (with page references to the moving papers):

Senators Proxmire, Riegle, Heinz, Dodd, D'Amato and Shelby are members of the Senate Committee on Banking, Housing and Urban Affairs. That Committee had primary responsibility in the Senate for enactment of the Competitive Equality Banking Act of 1987. Title II of that Act establishes a moratorium until March 1, 1988, on certain federal agency actions, including Board orders that would have the effect of increasing the insurance powers of any bank or bank holding company. That moratorium was intended, inter alia, to provide Congress, and particularly the Senate and House Banking Committees, with time to consider the issues raised by the insurance activities of banking subsidiaries of bank holding companies, without having those issues pre-empted by federal administrative action.

Summary of the argument (with page references to the moving papers):

Rule 29 of the Federal Rules of Appellate Procedure permits amici curiae to file a brief upon motion or consent. Senators Proxmire, Riegle, Heinz, Dodd, D'Amato and Shelby have received the consent of both the Independent Insurance Agents of America, Inc. and the Board to file a memorandum supporting the Petitioner's request for a stay pending judicial review. Further, Senators Proxmire, Riegle, Heinz, Dodd, D'Amato and Shelby have a significant interest in this court's resolution of that motion. Each is a member of the Senate Committee that is considering the need for financial restructuring of legislation, including the appropriate role for banking subsidiaries of bank holding companies. The Petitioner's motion, if granted, will enable that Committee to continue its consideration of legislation in accordance with Title II, as intended by the full Congress, without being pre-empted by federal administrative action.

[RE TOKEN McLEAN]

THE INSURANCE AGENTS ARE RESPONSIBLE FOR PRECIPITATING THE FED DECISION OF WHICH THEY NOW COMPLAIN.

Last week Peter Kinzler told me that Fed chose to decide the issue this month even though the mandamus proceeding had been pending without result for years.

But a different picture emerges from the brief filed by the insurance agents on July 23, when the enactment of the moratorium was already imminent.

The brief (pp. 34, 36, 40, 48-49) called on the court of appeals either (1) to compel the Board to decide the issue, or (2) to decide the issue itself.

The agents did not suggest that the court's consideration of the case (including the briefing schedule) should be delayed if the moratorium became law.

One could infer that the agents deliberately sought to force a decision from the Board while the moratorium was in effect, so that they could cry foul if they decision did not favor them in all respects.

THE PROPOSED AMICUS BRIEF APPEARS TO TAKE A POSITION ON THE MERITS OF THE UNDERLYING DISPUTE.

The Committee's report on S. 790 and the conference report on H.R. 27 carefully avoid taking a position on the contentious issue of whether current law restricts the insurance activities of banks owned by bank holding companies.

But the proposed brief implies (see top of page 3) that current law is in accord with the agents' position.

At the very least, that statement should be clarified and the brief should expressly state that it does not take a position on that question.

THE BRIEF FLATLY STATES THAT THE FED'S DECISION VIOLATES THE MORATORIUM. YET A STRONG CASE CAN BE MADE FOR THE BOARD'S POSITION.

IF PROXMIRE SIGNS THE BRIEF, IT MAY WELL COME BACK AND HAUNT HIM IF HE OPPOSES THE INSURANCE AGENTS' EFFORTS TO EXTEND THE MORATORIUM OR MAKE IT PERMANENT.

INSERT A

This memorandum is concerned solely with whether the Board has complied with the moratorium imposed by the Competitive Equality Banking Act of 1987. We take no position here on whether the restrictions on insurance activities contained in Section 4(c)(8) of the Bank Holding Company Act of 1956 apply to banks that are subsidiaries of bank holding companies.

INSERT B

Section 4(a) of the Bank Holding Company Act limits the activities and investments of bank holding companies. It establishes the general rule that a bank holding company cannot acquire or retain voting shares of a company that is not a bank or bank holding company, and cannot engage in activities other than banking, managing or controlling banks or other subsidiaries authorized under the Act, furnishing services to or performing services for its subsidiaries, and engaging in activities permissible under Section 4(c)(8) of the Act.