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Allied Mutual: Iowa Supreme Court Reverses Lower Court

Lawsuit Against Evans and his Cronies to Proceed

In an important decision that clarifies the rights of mutual policyholders, the Supreme Court of Iowa today reversed a lower court's dismissal of Mary M. Rieff vs. John E. Evans et al. The Rieff vs. Evans lawsuit is a class-action and derivative-action suit against many of the directors of Allied Mutual and Allied Group. The gist of the case is that Allied Mutual's directors breached their fiduciary duties, wrongfully transferred corporate assets to Allied Group, and wrongfully transferred control of Allied Mutual to Allied Group by engaging in a complex series of transactions, swaps, sales, and transfers in which the directors and Allied Group made approximately \$1 billion at Allied Mutual's expense. (Between 1985 and 1993 Evans masterminded the myriad transactions in which Allied Mutual was gutted and Allied Group enriched. Evans was chairman and CEO of both companies, and oversaw an interlocking board of directors. In addition, he and other Allied Mutual officers and direc-

tors were significant shareholders of Allied Group.)

On February 9, 1999, in a decision that *Schiff's* labeled "junk jurisprudence," Iowa District Court judge Larry Eisenhauer had dismissed Rieff vs. Evans, ruling, in essence, that mutual policyholders have no right to sue directors of Iowa mutual insurance companies, even if those directors have defrauded the mutual insurance company in every manner imaginable.

The Iowa Supreme Court's ruling reinstates the case against John Evans and his cohorts, and "firmly establishes that mutual policyholders, as a class, have a right to hold directors accountable for breaches of fiduciary duties, as well as breaches of loyalty and duty of care," said Jason Adkins, of Adkins, Kelston & Zavez, the lead attorney for the plaintiff.

The reinstated claims against Evans et al include Breach of Fiduciary Duty, Waste of Corporate Assets, Improper Transfer of Control, Intentional Interference with Business Advantage and Contracts, Equitable Relief, and De Facto Conversion.

In its decision, Iowa's Supreme Court

noted that the lower court's ruling had "caused quite a stir among those in the insurance and legal communities." The lawsuit against Evans et al was brought in December 1997. Many of its allegations and claims were derived from a 13,000-word article, "The Dark Side of Demutualization," that appeared in the October 1997 issue of *Schiff's Insurance Observer*.

The full Iowa Supreme Court opinion can be found at the following site: <http://www.judicial.state.ia.us/decisions/supreme/opinions/20010531/>

The case is listed as:

No. 99-313. [28], Filed May 31, 2001
MARY M. RIEFF, Individually and on Behalf of a Class of Policyholders of Allied Mutual Insurance Company, Appellant, vs. JOHN E. EVANS, DOUGLAS L. ANDERSON, HAROLD S. EVANS, JAMIE H. SHAFFER, JAMES W. CALLISON, JAMES M. HOAK, JR., MARK W. PUTNEY, GEORGE E. MOORE, WILLIAM J. HANCOCK, JAMES D. KIRKPATRICK, CHARLES I. COLBY, HERSCHEL G. LANGDON, CHARLES F. MORGAN, HARDY G. KUYKENDALL, WALTER J. FAYLE, and ALLIED GROUP, INC., Appellees, ALLIED MUTUAL INSURANCE COMPANY, Nominal Defendant-Appellee, NATIONWIDE MUTUAL INSURANCE COMPANY, Intervenor Defendant-Appellee. ■



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