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## Business Associations—Rehabilitation of Domestic Insurer

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## THE COURT OF APPEALS, 1952-53 TERM

The Court of Appeals, citing *Matter of Western Union Tel. Co.*<sup>29</sup> and *Friedman v. Handelman*,<sup>30</sup> unanimously declared it to be New York policy that where the intention of the parties was clearly and unambiguously expressed in a written agreement, effect should be given to the intent as indicated by the language thereof without adding to or subtracting from the stated rights and obligations.

This meant the above mentioned actions became proper after five years, and, therefore, all territorial restrictions imposed by the lower courts were abolished. The only limits which could be sustained were those set out in the agreement as not limited in time.<sup>31</sup>

### *Rehabilitation of Domestic Insurer*

Section 511 (e) of the Insurance Law allows the superintendent of insurance to apply for rehabilitation if a domestic insurer is found "to be in such condition that its further transaction of business will be *hazardous* to its policy holders, or to its creditors, or to the public." [italics added.] In *Application of Bohlinger*<sup>32</sup> the Supreme Court implied that "hazardous" meant any situation which would render further transactions of business injurious to policy holders, creditors or the public.<sup>33</sup> Although the disposition of the case remained the same, the Court of Appeals, facing such problem for the first time, made it clear that "hazardous" encompasses only dangers financial in nature.<sup>34</sup>

## III. CIVIL PRACTICE

### *Pre-trial Deposition*

Section 288 of the Civil Practice Act authorizes the taking of a deposition of a party to an action, an original owner of a claim not a party, and of *any other person*, as a witness, not a party thereto, where it is material and necessary. The issue before the Court of Appeals in a recent case<sup>1</sup> was whether the scope of the words "any other person" includes officers or agents of the State.

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29. 299 N. Y. 177, 86 N. E. 2d 162 (1949).

30. 300 N. Y. 188, 90 N. E. 2d 31 (1949).

31. *Delancey Kosher Restaurant & Caterers Corp. v. Gluckstern*, 305 N. Y. 250, 112 N. E. 2d 276 (1953).

32. 199 Misc. 941, 106 N. Y. S. 2d 953 (Sup. Ct. 1951).

33. *Id.* at 968, 106 N. Y. S. 2d at 977-78, *aff'd* unanimously 280 App. Div. 517, 113 N. Y. S. 2d 755 (1st Dep't 1952).

34. 305 N. Y. 258, 112 N. E. 2d 280 (1953).

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1. *Buffalo v. Hanna Furnace Corp.*, 305 N. Y. 369, 113 N. E. 2d 520 (1953).