DEPARTMENT OF FINANCIAL INSTITUTIONS: Liquidating agent appointed by Board of Directors of a Financial Institution in voluntary liquidation is an employer within the meaning of workmen’s compensation Act, whether rule applies to involuntary liquidation.

April 27, 1943.

Hon. A. J. Stevenson, Director,
Department of Financial Institutions,
State of Indiana.

Dear Sir:

This will acknowledge your letter of the 25th of March, in which you asked my opinion on the following questions:

"Is a liquidating agent, appointed by the board of directors of a financial institution in voluntary liquidation an employer within the meaning of the Workmen’s Compensation Act?

"In connection with this question, we also desire your opinion as to whether or not a special representative appointed by the Department of Financial Institutions to liquidate an insolvent financial institution in this State is an employer within the meaning of the Workmen’s Compensation Act."

Sec. 1, Chapter 243 of the Acts of 1933, amending Sec. 73 of Chapter 172 Acts of 1929 (40-1701 Burns’ 1933) defines employer under the Workmen’s Compensation Act as follows:

"‘Employer’ shall include the state and any political division, any municipal corporation within the state, any individual firm, association or corporation or the receiver or trustee of the same, or the legal representatives of a deceased person, using the services of another for pay."

The liquidating agent on voluntary dissolution of a banking corporation is primarily an agent or attorney in fact for the corporation in the accepted legal sense of the word. Sec. 146 of Chapter 40 of the Acts of 1933 (18-905 Burns’ 1933) provides:
“Upon the authorization of the dissolution by the shareholders, the board of directors, with the approval of the department, shall appoint one (1) or more liquidating agents, and their successors hereinafter in this article designated as ‘agent’, to act for and on behalf of the corporation, which agent shall have the power and authority to liquidate such corporation subject to such limitations as may be imposed by the board of directors not inconsistent with the provisions of this act.”

Thus the agent is appointed by the Board of Directors and has powers granted by them and by statute. It is probably true that in addition to his agency for the corporation he also exercises some powers akin to those of a receiver and trustee because he is subject to court supervision. But that does not deter from the fact that in the language of the statute he is appointed “To act for and on behalf of the corporation”. The agency device is here used to facilitate dissolution.

“An employer or principal is liable for compensation to one hired by his employee or agent if the agent or employee has authority, whether express or implied, * * *’” 71 C. J. 395.

On this point, see also In re Duncan, supra, where employment of shot firer by the miners was deemed employment by the mining company.

I am therefore of the opinion that the agent who within the scope of his agency employs aid in the voluntary dissolution of the corporation does so for and on behalf of the corporation and further, that the corporation and not the agent, is the employer within the meaning of the Act.

A somewhat different but analogous situation is presented on involuntary liquidation of the corporation. Under the 1933 Act for liquidation of financial institutions the Department of Financial Institutions actually takes possession of the business and property of the financial institution. See Chapter 40 Acts 1933 (Sections 18-301 to 18-331 Burns’ 1933). The liquidating agent is appointed by the Department of Financial Institutions (18-309 Burns’ 1933) and it is expressly provided that no receiver, assignee, trustee or liquidating agent shall
be appointed by a court or judge. (18-305 Burns' 1933). Although the special representative also acts in a fiduciary capacity he is not a trustee or receiver within the meaning of the Workmen's Compensation Act. It is actually the Department of Financial Institutions which is in possession of the bank. See Department of Financial Institutions v. Mercantile Commercial Bank and Trust Company, 92 Fed. 2d, 639, 1937. However, it will be noted that definition of employer includes the state. It will also be noted that by Section 18-309 Burns' 1933, the Department of Financial Institutions has authority to delegate to "such persons" such portion of its powers and authority as the department may deem necessary and proper.

Consequently I am of the opinion that any employment by the special representative is either directly by the state itself or by him as agent for the state and consequently the special representative himself is not the employer, either personally or in his official capacity.

DEPARTMENT OF INSURANCE: Whether insurance companies covering workmen's compensation and occupational disease liability may increase premiums in view of increased liability provided by Chapters 136 and 115 of the Acts of 1943.

April 27, 1943.

Mr. Frank J. Viehmann,  
Commissioner of Insurance,  
Department of Insurance,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of the 5th in which you note that House Bills Nos. 11 and 12 increase minimum and maximum total benefits and funeral benefits under both the Workmen's Compensation Law and the Occupational Disease Compensation Law. Those bills are Chapter 136 and 115, respectively, of the Acts of 1943. Your question is as follows: