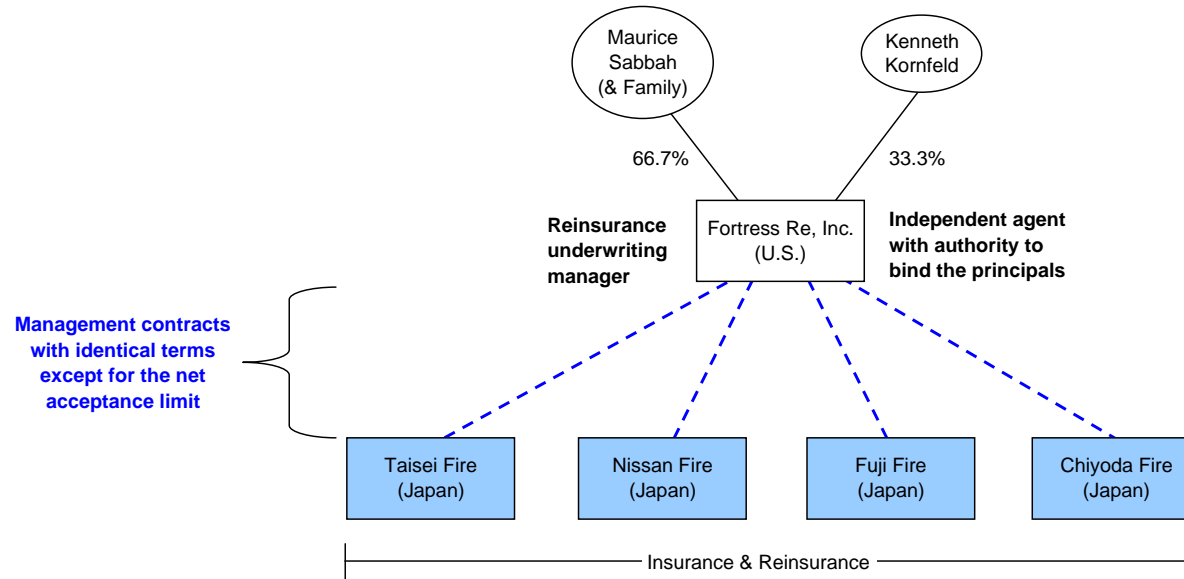


**Taisei Fire v. Commissioner**  
**104 T.C. 535 (1995)**

**U.S. Agent of Japanese  
Insurance Companies  
was an Independent Agent**

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The issue was whether the Japanese insurance companies (the "Companies") had U.S. permanent establishments by virtue of the activities of Fortress, a U.S. agent in accepting reinsurance on their behalf. Each of the Companies is a Japanese property and casualty insurance company with its principal place of business in Japan. The primary business of each Company is writing direct insurance in Japan. Each Company also assumes reinsurance ceded to it by insurers and reinsurers, including U.S. insurers and reinsurers, through a reinsurance department located in Tokyo. Each Company grants authority to two or three different U.S. agents, including Fortress, to underwrite reinsurance on its behalf and to perform certain activities in connection therewith.

Fortress is a reinsurance underwriting manager, which involves acting as an agent for insurance companies in underwriting and managing reinsurance on behalf of such companies. Fortress enters into a separate management agreement with each insurance company it represents. The agreements with the Companies are identical except for the net acceptance limit. Pursuant to each agreement, Fortress regularly exercises the authority to conclude original reinsurance contracts and to cede reinsurance on behalf of each Company.

Under the U.S.-Japan Income Tax Treaty, the commercial profits of a Japanese resident are exempt from U.S. Federal income tax, unless such profits are attributable to a U.S. permanent establishment. A Japanese resident will not be deemed to have a U.S. permanent establishment due to the activities of an agent merely because such resident engages in industrial or commercial activity in that other country through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

Fortress was legally independent. It was owned by Mr. Sabbah (& his family) and Mr. Kornfeld. In addition, Fortress had complete discretion over the details of its work. As an entity, Fortress was subject to no external control. Fortress was economically independent. Fortress' access to profitable reinsurance contracts, as well as its experience and ability to choose profitable reinsurance contracts, attracted the Companies to Fortress, and would attract other insurance companies if Fortress needed another client to take a share of the contracts. The impressive profits recognized by Fortress was another factor that the court found significant in demonstrating its economic independence. Fortress was both legally and economically independent of the Companies, thus satisfying the definition of an agent of an independent status under the treaty.