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Insurance—State Regulation Of Credit Life Insurance

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yond the power of a couple to expressly provide for termination of a separation agreement because the husband's legal duty to support still subsists.¹⁵ Further, enforcing the agreement as is, would not deprive the wife of a remedy for the enforcement of her rights because "she may acquiesce in the termination of the agreement by bringing a matrimonial action and asking the court to fix support . . . [or] she may choose to rely on the agreement and bring an action for its enforcement, in which case she can simultaneously and without repudiating the agreement bring a support proceeding in the State Family Court."¹⁶

The practical effect of the instant decision is to virtually outlaw the dependancy of molestation clauses in New York State. While the sanctity of the parties agreement is a fundamental aspect of contractual relations, there are certain situations in which this principle must be sacrificed to overriding considerations of the public welfare. The molestation clause presents just such a situation. Although it is abhorrent to concepts of fundamental justice to allow a wife to make a valid support agreement with her husband and then flout the agreement by engaging in the forbidden conduct, it is more abhorrent to conceptions of the public good to allow a husband to escape a responsibility which continues to exist whether there is an agreement or not. There is no rational basis for calling an end to an agreement on grounds of molestation, because such conduct cannot be controlled by contractual provision. Bitter invectives and acrimonious interchanges have been an inherent characteristic of marital dissolution since time began. No matter what the contingency, no contract provision will ever eliminate them. Due to the husband's subsisting duty to support, a provision for the express dependency of the molestation and support clauses is equally futile because even if the agreement is terminated on such grounds, the wife is not deprived of her right to support; but may sue for maintenance in court and again engage in molestation. The only effective way the husband can control molestation is through a separate action. In cases of substantial molestation, he has a claim legally cognizable in tort for damages. Therefore, as a matter of public policy, these clauses should be construed as independent, even in the face of express provisions to the contrary, in order to preserve the support and maintenance provisions of the contract and prevent continual suits upon an issue which cannot be controlled by the agreement.

Thomas M. Agate

INSURANCE

STATE REGULATION OF CREDIT LIFE INSURANCE

Respondent Insurance Company issued thirteen policies of group credit life insurance after the effective date of new provisions of the Insurance Law

15. *Lipp v. Lipp*, 218 App. Div. 788, 218 N.Y. Supp. 802 (2d Dep't 1926); *Verdier v. Verdier*, 133 Cal. App. 2d 325, 284 P.2d 94 (1955); *Smith v. Smith*, 7 Cal. App. 2d 271, 46 P.2d 232 (1935); *Lindley*, *op. cit. supra* note 14.

16. Instant case at 831-32, 187 N.E.2d at 363, 236 N.Y.S.2d at 351 (1962).

sections 154(7) and 204(1)(c). These provisions required prior approval by the Superintendent of Insurance of forms and rates of credit life policies to be issued after that date. Respondent had failed to seek this required approval and accordingly the Superintendent instituted penalty proceedings under section 225 for wilful violation of the Insurance Law, assessing a fine of \$13,000. The Appellate Division annulled the Superintendent's determination.¹ The Court of Appeals *held*, reversed; penalty imposed by Superintendent reinstated. The new provisions created an entirely new procedure for approving credit life insurance rates, granting the Superintendent a new power over them. Also, the only requirement for a wilful violation within the meaning of section 225 Insurance Law was the performance of the violative act in an intentional and deliberate manner. *Old Repub. Life Ins. Co. v. Thacher*, 12 N.Y.2d 48, 186 N.E.2d 554, 234 N.Y.S.2d 702 (1962).

Rates of insurance have long been subject to regulation in New York under article 8 of the Insurance Law but since the decision of the United States Supreme Court in the *Southeastern Underwriters'* case² stating that insurance transactions cutting across state lines were subject to the regulatory power of Congress under the commerce clause, certain revisions in the New York Insurance Law were effected. These included the comprehensive and pointed statement of purpose of article 8 to "promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, unfairly discriminatory or otherwise unreasonable . . ."³ In general the procedure outlined in the statute for filing forms and suggested rates of insurance sought to fulfill this purpose. As to approval of life, accident, and health insurance policy forms section 154(1) generally controlled. Under this section, the Superintendent would notify the insurer within a reasonable time of his approval or disapproval of the submitted form based on certain criteria enumerated therein one of which was that the benefits must be reasonable in relation to the premium charged.⁴ As was stated by one court, "[O]bviously, regulation that would be effective and not merely perfunctory was contemplated. . ."⁵

Credit life insurance is defined by the statute as "insurance on a debtor, . . . in connection with a specific loan or other credit transaction to provide payment to the creditor in the event of death of the debtor . . ."⁶ This particular area of insurance has been subject to tremendous growth in recent years due to increased installment and credit purchasing.⁷ Prior to 1958, however, premium rates for policies of group credit life insurance were not subject to approval of

1. *Old Republic Life Ins. Co. v. Thacher*, 16 A.D.2d 77, 225 N.Y.S.2d 476 (3d Dep't 1962).

2. *United States v. South-Eastern Underwriters' Ass'n*, 322 U.S. 533, 553 (1944).

3. N.Y. Ins. Law § 180(1).

4. N.Y. Ins. Law § 154(7).

5. *Nat'l Bureau of Casualty Underwriters v. The Superintendent of Ins.*, 6 A.D.2d 73, 77, 174 N.Y.S.2d 836, 840 (3d Dep't 1958).

6. N.Y. Ins. Law § 154(7) (Supp. 1963).

7. *Old Repub. Life Ins. Co. v. Wikler*, 9 N.Y.2d 524, 175 N.E.2d 147, 215 N.Y.S.2d 481 (1961).

the Superintendent as were those for accident or health insurance.⁸ The procedure followed by insurers was to proceed under section 154(1) of the Insurance Law even though that section did not specifically state that it embraced credit life insurance policies. Although forms for credit life insurance were approved under this section by the Superintendent, "the department did not pass on the rates . . ."⁹ which were placed on the submitted forms according to departmental practice for "illustrative purposes only."¹⁰ Due to the fact that "premium rates were often excessive and there was a great variance in rates without apparent reason,"¹¹ sections 154(7) and 204(1)(c) were promulgated to correct these abuses. These provided that each insurer shall file with the Superintendent its forms of policies pertaining to credit insurance together with premium rates, and the same shall be subject to his approval if such premium rates are reasonable in relation to the benefits provided "a standard not theretofore applicable to credit life insurance."¹² The effective date of the new provisions was October 1, 1958 and each of the thirteen policies in question here was issued after that date by respondent without seeking the required prior approval "with full knowledge of the possible consequences"¹³ and with the "calculated risk of disobeying the plain mandate of the new statutes."¹⁴

The Court of Appeals dismissed respondent's contention that prior approval of the policy forms under section 154(1) of the Insurance Law should have been withdrawn by the Superintendent by the procedure in effect before the new provisions became effective (section 141). Under section 141, once approval had been given by the Superintendent, the forms would be effective and valid until the Superintendent, after notice and hearing, withdrew such approval. The Court held that "the section 141 procedure was wholly inapplicable to credit life policies issued after October 1, 1958."¹⁵ It reasoned that an entirely new procedure with reference to these policies was outlined in the statute, for the Superintendent was mandated to employ a standard not theretofore applicable to credit life policies. This standard, requiring him to disapprove forms or rates if the latter were unreasonable in relation to the benefits provided, gave the Superintendent a new power over credit life policies "without reference to existing policy forms."¹⁶ Also the very words of the statute itself, "policies of credit insurance to be issued,"¹⁷ were interpreted by the Court to mean that after the effective date of October 1, 1958, all credit life policies were subject to this new procedure and standard regardless of any prior provisions conflicting

8. - Report of Joint Legislative Committee on Commerce and Economic Development, N.Y. Legis. Doc. No. 84, at 73 (1958).

9. Instant case at 53, 186 N.E.2d at 556, 234 N.Y.S.2d at 704.

10. *Ibid.*

11. Old Repub. Life Ins. Co. v. Wikler, 9 N.Y.2d 524, 528, 175 N.E.2d 147, 151, 215 N.Y.S.2d 481, 485 (1961).

12. Instant case at 55, 186 N.E.2d at 557, 234 N.Y.S.2d at 706.

13. *Id.* at 51, 186 N.E.2d at 556, 234 N.Y.S.2d at 705.

14. *Ibid.*

15. Instant case at 53, 186 N.E.2d at 557, 234 N.Y.S.2d at 706.

16. *Ibid.*

17. N.Y. Ins. Law § 154(7) (Supp. 1963).

or coextensive therewith. As to respondent's contention that the issuance of the policies without prior approval was not "wilful" within the meaning of section 225, the Court referred to certain correspondence between the Superintendent and respondent wherein the Superintendent clearly stated his position that any issuance of policies without following the mandate of the new provisions as to prior approval was unlawful. Regardless of these warnings and the clear language of the statute, respondent had issued the policies. The Court held that a person does not have to do an act "motivated by feelings of spite, malice or hate"¹⁸ in order for the act to be wilful. Also it stated that the basic elements of wilfulness do not have to include "evil motive, lack of justification, bad purpose, or something done or not done with justifiable excuse."¹⁹ The Court took the position that only a minimum of conduct was required to have a wilful violation under section 225 Insurance Law (an act no more than intentional and deliberate).

The instant decision is a further development in a recognizable trend to effectively regulate the insurance field to the end that the purchasing public is safeguarded. More particularly, the small insurance purchaser must be protected from abuses that may so easily be imposed on one in so tenuous a bargaining position. It appears that the legislature has chosen the Superintendent as the means by which this end may be most effectively achieved. Where the legislature had failed to apply a completely effective carryover from the older procedure to the new, the position of the Superintendent that the new provisions created an entirely new procedure for approving credit life policies was upheld. The Court, by adopting such a construction, automatically invalidated all previous policy forms and the Superintendent was saved from the cumbersome task of withdrawing his former approval by notice and hearing. In deciding the question of wilfulness, the Court also adopted an interpretation which gave the Superintendent more power to effectively regulate by again making his task easier. By holding that an act no more than intentional and deliberate was all that was required in order for the Superintendent to impose a penalty, the Court unshackled the Superintendent from the onerous burden of considering in each instance the various shades of conduct which comprise wilfulness, wherein difficult judgments about the degrees of culpability of a particular offender's activity would have to be made. The decision of the Court in the instant case has the twofold effect of easing the Superintendent's burden in his administrative tasks as to the procedures involved, and also of increasing generally his power of regulation in this new area of credit life insurance. The Court, by judicial construction, is quite clearly enforcing the plain directive of the legislature that regulation of insurance may be most effectually achieved through the instrumentality of the Superintendent of Insurance.

Paul J. Di Giulio

18. *People v. Broady*, 5 N.Y.2d 500, 502, 158 N.E.2d 817, 819, 186 N.Y.S.2d 230, 234 (1959).

19. *Bloom v. United States*, 272 F.2d 215, 223-24, *cert. denied*, 363 U.S. 803 (1959).