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impugned by the finding of an entirely new breed of waiver. Usually the courts are intent upon the protection of the beneficiary from the "maneuverings" of the insurance companies in their attempts to avoid a jury trial. Viewing the sequence of events, especially the difficulty of effecting service upon the beneficiaries as emphasized by the Court of Appeals, it is not difficult to conclude that an element of "maneuvering" may have guided the beneficiaries. Both courts on appeal groped for precedent, finding it in a 1937 New York Supreme Court decision[13] and a United States Supreme Court case, *American Life Insurance Co. v. Stewart*,[14] in which the parties had waived a jury by stipulation. A further federal case, *Beacon Theatres Inc. v. Westover*,[15] is mentioned by the Court of Appeals. This case is quite explicit in its view that, in federal courts, a jury trial, where one is required, should be preserved wherever possible by exercising the discretion of the court in deciding the sequence of trial of legal and equitable claims in a narrow and restricted manner. In fact, neither of the federal opinions cited by the Court of Appeals immediately following the discovery of a waiver in the instant case, involves a waiver but discusses sequence of trial of legal and equitable claims. But this is New York; the case is not in a federal court, there is no seventh amendment, and the right to a jury trial is not nearly as well protected if this case is to be a guide. The holding should find wide application in the numerous suits of this nature which arise, and must be viewed by insurance carriers as advantageous in avoiding the pitfalls of jury verdicts. To the beneficiary and his attorney, the rule places a higher premium upon prompt action in the face of impending litigation at the instance of an insurer.

R. S. M.

LABOR LAW

Dissolution of Federally Authorized Welfare Fund by State Superintendent of Insurance Upheld

A welfare fund for the benefit of union members was established pursuant to a collective bargaining agreement, entailing contributions by the employer to the fund, and which was to be administered by a committee. Subsequent to a labor dispute and a resultant work stoppage, the employer ceased business operations. One year later the trustees of the fund notified the State Insurance Department of their intention to continue to benefit the members of the union until the assets of the fund were expended. The Director of Insurance asserted that since the trustees were themselves commencing a voluntary liquidation, he had an obligation to take possession and proceed with the liquidation. He applied for an order authorizing this action which was granted by the Supreme

13. Prudential Ins. Co. of America v. Haney, supra note 6.
14. 300 U.S. 203 (1937).
15. 359 U.S. 500 (1959).

Court, Special Term,[1] and affirmed without opinion by the Appellate Division.[2] The trustees appealed alleging a substantial constitutional question. The Court of Appeals affirmed. *Held,* that the federal statutes authorizing welfare funds cannot be interpreted as pre-emptive of state regulation except as therein stated, and that no inconsistency exists between Article XVI of the State Insurance Law and the pertinent section of the Federal Labor Management Relations Act. *Thacher v. United Construction Workers,* 10 N.Y.2d 439, 180 N.E.2d 245, 224 N.Y.S.2d 657 (1962).

The United States Supreme Court decision in *Teamsters Union v. Oliver*[3] is a major case on the question of federal pre-emption of jurisdiction and control over the agreements of employers and unions arrived at through collective bargaining. The dispute in that case arose over a condition in the agreement setting minimum rentals and terms of leases of trucks and equipment made to trucking firms. It was contended that these clauses, as an attempt to fix prices, were in violation of the Ohio anti-trust statute.[4] The trial court held that the clause was in fact an attempt to fix wages by preventing the practice complained of by the unions. The fixing of wages was said to be well within the scope of collective bargaining, and, therefore, the Ohio statute could not be applied to restrict that agreement. The Court concluded that where there is a federally sanctioned agreement between unions and employers, and some restriction is to be made upon it, "it is for Congress, not the States, to provide it."

Federal pre-emption of disputes arising in the field of labor has similarly been echoed in the New York Court of Appeals, which only two years ago, in *Dooley v. Anton,*[5] held that where any jurisdictional question concerning a state or federal body over a labor dispute exists, the dispute should be resolved in favor of the federal body.

The pre-emption question in the instant case, which was of primary importance to the parties, was effectively handled by the Court with brief reference to the Welfare and Pension Plans Disclosure Act, section 10(a): "Nothing contained in this subsection shall be construed to prevent any state from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan."[6] Section 10(b) expands that statement and indicates that state laws regulating welfare or pension plans for the benefit of employees were still controlling (where not in conflict with the Disclosure Act). The intention of Congress and the direction and scope of the Act are made clear in section 10, and the Court's holding on that question is in accord with the Act. The secondary decision of the Court, finding no

1. 29 Misc. 2d 936, 216 N.Y.S.2d 299 (Sup. Ct. 1961).
2. 14 A.D.2d 736, 218 N.Y.S.2d 524 (1st Dep't 1961).
3. 358 U.S. 283 (1959).
4. Valentine Act, Baldwin's Ohio Rev. Code and Service, ch. 1331, § 1331.01 (1958).
5. 8 N.Y.2d 91, 168 N.E.2d 356, 202 N.Y.S.2d 273 (1960).
6. Welfare and Pension Plans Disclosure Act § 10(a), 72 Stat. 1002 (1958), 29 U.S.C. § 309(a) (1959).

conflict between Article XVI of the New York Insurance Law[7] and 29 U.S.C. section 186(c)(5) is also clearly dictated by the provisions of that Federal statute.[8] That section excepts certain payments to employee organizations by employers from a general prohibition against such payments as provided in subdivisions (a) and (b) of the same sections, and from the criminal sanctions of subdivision (d) applicable to violations of those subdivisions. Payments into welfare funds fall within the exceptions of subdivision (c), and thus are not subject to federal jurisdiction established to prosecute the violations of (a) and (b). The purpose and construction of the whole of 29 U.S.C. section 186 is extensively discussed and interpreted in *Moses v. Ammond*: "I find, from the language of § 186(e), no Congressional mandate to the federal courts to fashion federal law for the administration of union welfare trusts. In my opinion, that subsection does no more than clear the way for permitting federal courts to enjoin violations of § 186(a) and (b)."[9] Essentially then, 29 U.S.C. section 186(a), (b), and (d) are designed to prevent bribery, extortion, and other forms of collusion between the employer and employee organizations,[10] and should have no relevance where no violations of those subdivisions are present.

The Court of Appeals chose to distinguish the *Oliver* holding, stating: "In our case the State Insurance Department is doing nothing to prevent the 'carrying out' of the Welfare Fund agreement but is exercising a power as to liquidation, a subject which no Federal act deals with."[11] This does not in fact distinguish that case sufficiently since the holding apparently was not based upon the existence of Congressional limitations in conflict with the Ohio Antitrust statute, but simply indicates that it is exclusively within the scope of Congressional authority to enact restrictions upon bargaining agreements should they be desired. The *Oliver* rule is irrelevant for another reason, in that the entire basis for that decision depends upon the existence of a collective bargaining agreement. This is no longer the case in *Thacher*, since the agreement was terminated by the business failure of the employer. Though the Court in a broad sense disposed of *Oliver* appearing to conclude that it has no relevance to any case involving the dissolution of a welfare fund, it would seem best to confine the instant decision to its particular facts. In view of the steadily expanding number of union welfare funds organized within this state, some further discussion of the scope of federal and state jurisdiction would have been useful. The instant case is the first New York decision to discuss the holding of *Moses v. Ammond* and to directly apply it. It is also the first to interpret the effect of the Disclosure Act upon State regulation of such funds. Although the *Thacher* decision

7. N.Y. Ins. Law, art. XVI, §§ 510-546 is addressed to the "rehabilitation, liquidation, conservation and dissolution of insurers."
8. Labor Management Relations Act (Taft-Hartley Act) § 302(c)(5), 61 Stat. 157 (1947), 29 U.S.C. § 186(c)(5) (1959).
9. 162 F. Supp. 866, 870 (S.D.N.Y. 1958).
10. United States v. Brennan, 134 F. Supp. 42, 47 (C.D. Minn. 1955).
11. 10 N.Y.2d at 443, 180 N.E.2d at 247, 224 N.Y.S.2d at 661.

implies broad state regulatory authority, it is to be expected that a majority of cases in which the state exerts authority over a fund will involve a fact situation quite similar to *Thacher*. Whether this case indicates an attempt by the Court to draw a line on any growing trend toward federal pre-emption of authority in all fields involving labor relations is still open to question.

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NEGOTIABLE INSTRUMENTS

Restricted Application of Doctrine of Forgotten Notice

Respondent signed a paper for an employee, which the employee represented as a statement of his earnings for the year 1957. Respondent, unable to read or write English, often had his wife read important papers before he signed them. Although she was present in their home when this transaction took place, she did not read the paper. Somehow suspecting that the statement might have been a promissory note, which indeed it was, respondent thereafter consulted his attorney, who advised him to notify all banks in the county not to accept any instrument made by him payable to that employee. During his performance of this task, he entered the First National Bank of Odessa and explained his problem, in broken English, to the cashier, stating the name of the employee and that he had been deceived into signing the paper. The teller assured him "not to worry." Three and one-half months later, a regular customer of Bank to whom the note had been endorsed by the employee, presented it to the same cashier for discount and it was accepted. At maturity Bank forwarded the note to respondent's bank, which refused to honor it. Bank brought suit against respondent for the value of the note. The lower court rendered judgment for Bank, and the intermediate court reversed. On appeal, held affirmed. "Under the peculiar facts of this case" Bank could not apply the doctrine of forgotten notice since it had assured the respondent that it would not discount the note, that Bank was not a holder in due course, and that the respondent, therefore, was not liable to Bank. *First National Bank v. Fazzari*, 10 N.Y.2d 394, 179 N.E.2d 493, 223 N.Y.S.2d 483 (1961).[1]

The pertinent New York statute in this situation is Negotiable Instruments Law sections 91, 95, and 97.[2] The provisions of these sections, which are similar

1. 13 A.D.2d 582, 212 N.Y.S.2d 380 (3d Dep't 1961), reversing 22 Misc. 2d 351, 193 N.Y.S.2d 367 (County Ct. 1959).
2. N.Y. Neg. Inst. Law §§ 91, 95, 97, which provide in part:

91. A holder in due course is a holder who has taken the instrument under the following conditions:
    1. That it is complete and regular upon its face;
    2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
    3. That he took it in good faith and for value;
    4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.