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INSURANCE

POLICEMEN HELD "EMPLOYEES" UNDER INSURANCE POLICY

Policeman Robinson was fatally injured in an auto collision while he was riding as a passenger in a police car which was being driven by another policeman. The car was covered by an automobile liability policy which had been issued to the City of Albany. The policy contained the following provision:

> "This policy does not apply: . . .
> '(d) under coverage A, *to bodily injury to* or sickness, disease, *or death of any employee of the insured arising out of and in the course of* (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) *other employment by the insured . . .*'"[1]

The City of Albany brought a declaratory judgment action to determine that the insurance company should defend the City in an action against the City for the wrongful death of Robinson. In *City of Albany v. Standard Accident Insurance Company*,[2] because of the above provision in the insurance policy, coverage was denied the City of Albany for any liability incurred for the wrongful death of policeman Robinson.

The City of Albany had two strong arguments. Its first argument was founded on the common-law rule that ". . . a policeman is not considered a municipal agent or servant but a public officer performing a governmental function."[3] Such common-law rule, the City argued, is fortified by section 50-a of the General Municipal Law.[4] The Court first stated that the Court of Claims Act, Section 8,[5] is the controlling legislative enactment in regard to the status of police officers and under such enactment a policeman may be a municipal employee. The Court then stated, however, that the contest between Section 50-a of the General Municipal Law and Section 8 of the Court of Claims Act was irrelevant. The Court's statement as to the superiority of Section 8 of the Court of Claims Act became mere *dictum*. The true answer to the City's first argument lies in the following words of the Court: ". . . Section 50-a does

1. City of Albany v. Standard Accident Insurance Co., 7 N.Y.2d 422, 426, 198 N.Y.S.2d 303, 305 (1960).
2. Id.
3. Evans v. Berry, 262 N.Y. 61, 68, 186 N.E. 203, 205 (1933).
4. Every city . . . shall be liable for the negligence of a person duly appointed by the governing board . . . of the municipality . . . to operate a municipally owned vehicle . . . in the discharge of a statutory duty imposed upon the municipality. . . . Every such appointee shall, for the purpose of this section, be deemed an employee of the municipality notwithstanding the vehicle was being operated in the discharge of a public duty for the benefit of all citizens of the community. . . .
The city unsuccessfully argued that the statute made only the driver and not passenger Robinson an employee.
5. The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the Supreme Court against individuals or corporations. . . .

not purport to affect or have any bearing on the definition of the word 'employee' as used in an insurance policy. We are concerned, in the instant case, not with the liability of a *municipality* under a *statute* . . . , but with the liability of an *insurer* under a *contract of insurance.*"[6] The definition of the word "employee" as used in the insurance contract is to be determined in the same way that the definition of any word in any contract is determined—by looking to the intention of the parties as indicated by the language of the contract and the surrounding circumstances. This rule of interpretation applies in all cases where a statute does not provide a definition for the word "employee" to be used in insurance contracts. Since the statutory content was irrelevant, the only question remaining was the intention of the parties as to the meaning of the word "employee." The Court held that the ordinary meanning of the word would make a policeman of the City of Albany an "employee" of that city.

The City's second argument was that the above quoted provision of the policy excluded coverage only for liability to employees of an employer who carried or was required to carry workmen's compensation insurance. The City did not carry such insurance. Nor did the death of Robinson arise in the course of "domestic employment." The following language by the Appellate Division in a case involving a similar policy, *Greaves v. Public Service Mutual Ins. Co.*,[7] was the foundation of the City's unsuccessful argument:

"As we read the exclusion clause, the basic and underlying purpose was to exclude coverage only as to an assured who either carried or was required to carry workmen's compensation insurance for the protection of an injured employee."[8]

The above quoted language from the *Greaves* case, as this Court points out, "was not necessary to the decision, and was not adopted or indorsed by our Court's affirming opinion (at 5 N.Y.2d 120, 181 N.Y.S.2d 489)."[9] Thus collapsed the City's second principal argument. The Court went on to reinforce what had already been decided in *Jewtraw v. Hartford Acc. & Ind. Co.*,[10] namely, that clause (2)(d) of this policy, as above quoted, contains no mention of workmen's compensation, that any consideration of workmen's compensation must be limited to "domestic employment" as contained in clause (1)(d), and that therefore, because "other employment" and not "domestic employment" was involved in this case, the City was excluded from coverage despite any consideration of workmen's compensation.

This case points up one significant fact: an insurance policy is a contract. As such, the principles of contract law will generally apply in the interpretation of a policy. It should be noted, however, that contract law many times does

6. Supra note 1 at 430, 198 N.Y.S.2d 309 (1960).
7. 4 A.D.2d 609, 168 N.Y.S.2d 107 (1st Dep't 1957).
8. Id. at 612, 168 N.Y.S.2d 109.
9. Supra note 1 at 432, 198 N.Y.S.2d 310 (1960).
10. 280 App. Div. 150, 112 N.Y.S.2d 727 (3d Dep't 1952).

not determine the meaning of a word or phrase in an insurance policy. Insurance law is largely statutory. More often than not, a case involving an insurance policy will be determined not by reference to the principles of contract law but by reference to applicable provisions of the New York insurance statutes. The instant case is a reminder however that insurance law is not governed entirely by statute—that, when there is not an applicable provision of the insurance statute that solves a given case, resort must be had to common-law contract law because an insurance policy is fundamentally a contract. Such resort was held in the instant case in order to determine the meaning of the word "employee."

LABOR LAW

FEDERAL PREEMPTION OF STATE JURISDICTION IN LABOR CASES

The New York courts have in the past applied the doctrine that in an alleged labor dispute they will resolve all doubts about jurisdiction in favor of state courts and against NLRB jurisdiction.[1] The ostensible reason for this policy was that if relief was denied by the state court, and it was later decided that the state in fact had jurisdiction, then irreparable harm may have been done to the plaintiff, or possibly a just grievance may have been foreclosed from judicial or administrative correction altogether. If the United States Supreme Court decided that in a particular case the state had over-stepped its jurisdictional limits, it could set the case aright, and in the process illumine that area of the law for future state guidance.

Without going into the merits of the above policy or its rationale, the Court of Appeals dramatically and unequivocally reversed itself in *Dooly v. Anton*.[2] The facts of the Dooly case are relatively simple. Two minority unions were engaged in peaceful picketing (found by the lower court to be recognitional) of plaintiff's meat purveying establishment at the same time that plaintiff recognized and had a contract with an independent union which represented a majority of the employees. The employer sought and obtained an injunction in the Supreme Court, Special Term, permanently restraining such picketing by the defendant minority unions, which injunction was affirmed by the Appellate Division.[2a]

The lower courts relied upon *Pleasant Valley Packing Co. v. Talarico*,[3] a case with a similar factual situation except that there the majority union was certified by the National Labor Relations Board. The Court of Appeals in the *Pleasant Valley* case held that such activity was neither an unfair labor practice under Section 8(B)(4)(C), nor protected under Section 7, of the

1. Pleasant Valley Packing Co. v. Talarico, 5 N.Y.2d 40, 177 N.Y.S.2d 473 (1958).
2. 8 N.Y.2d 91, 202 N.Y.S.2d 273 (1960).
2a. 7 A.D.2d 880, 182 N.Y.S.2d 314 (4th Dep't 1959).
3. Supra note 1.