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INSURANCE

LIABILITY INSURANCE—POLICY INTERPRETATION—SEPARABILITY OF NAMED AND ADDITIONAL INSURED

The plaintiff in *Greaves v. Public Service Mutual Insurance Company*,¹ brought an action for declaratory judgment to determine whether coverage under an automobile liability policy was available to him as an additional insured. The policy was issued to Davis Trucking Company as named insured. An exclusionary clause denied liability where "any employee of the insured" was entitled to workmen's compensation for death or injury. Named insured's employee, Watson, injured by Greaves during a loading operation, collected workmen's compensation and then sought additional damages in an action against Greaves. Using the insured truck for loading purposes made Greaves an "additional" insured. Defendant insurance company contended that the policy did not apply because the word "insured" in the exclusionary clause referred to the named insured alone or, alternatively, if also to the additional insured, then to both jointly or as if the two were one. In either case, since injured Watson was an employee of *one* of the insured, additional insured Greaves was excluded from coverage. The Court of Appeals, affirming an Appellate Division decision reversing the Supreme Court, Special Term,² held that the Insurance Company must defend plaintiff since each additional insured, though not named as insured, is to be treated as if separately covered by the policy.

The Court relied upon the doctrine of separability as stated in *Morgan v. Greater N.Y. Taxpayers Mut. Ins. Assn.* as controlling here.³ It was held there that an additional insured, whether named or unnamed, had to be treated as if he had a separate policy. In the present case, the Special Term below, in finding that the workmen's compensation exception applied to additional insured Greaves, placed its whole reliance upon *Standard Surety and Casualty Co. of N. Y. v. Maryland Casualty Co.*,⁴ an Appellate Division case decided one month prior to the *Morgan* decision. The Court in the *Standard* case considered at length the intention of the insurer.⁵ That decision was effectively overruled by the *Morgan* case and appeal was never prosecuted. The latter decision is in line with recent cases that proceed on the theory that the controversy is to be resolved as if the policy had been issued to the unnamed insured alone.⁶ This would appear to be the ordinary meaning to a

1. 5 N.Y.2d 120, 181 N.Y.S.2d 489 (1959).

2. — Misc 2d —, 156 N.Y.S.2d 754 (1956).

3. 305 N.Y. 243, 112 N.E.2d 275 (1953); noted 3 BUFFALO L. REV. 95 (1954).

4. 281 App. Div. 446, 119 N.Y.S.2d 795 (4th Dep't 1953).

5. *Id.* at 450, 119 N.Y.S.2d at 799:

It is certainly not reasonable that the insurer even remotely contemplated that its liability for the very risk excluded would depend upon the choice by the injured employee of the party to be made defendant.

6. *American Surety Co. of New York v. Diamond*, 1 N.Y.2d 594, 599, 154 N.Y.S.2d 918, 922 (1956); *Wenig v. Glen Falls Indemnity Co.*, 295 N.Y. 195, 201, 61 N.E.2d 442, 444 (1945); *Sandstrom v. Clausen's Estate*, 258 Wis. 534, 535, 46 N.W.2d 831, 832 (1951).

buyer of insurance attracted to an offer giving coverage to additional persons without added premiums.

The Court of Appeals has clearly stated its position regarding attempts by insurance companies to limit their liability. The language of exclusionary clauses will be strictly construed regardless of the apparent intent of the insurer. Moreover, where the policy was written by the insurer, any resultant ambiguity will be resolved against the draftsman.

AGENT'S LIABILITY ON PROMISE TO CONTINUE POLICY

The New York courts have held that an insurance agent is personally liable for not procuring a policy as he had promised;⁷ for assuring that a binder had been issued when, in fact, it was not;⁸ and for procuring a policy which was ineffective, which fact he should have known.⁹

In *Spiegel v. Metropolitan Life Insurance Co.*,¹⁰ the Court held an insurance agent liable to the beneficiary of a policy upon a promise to her to prevent cancellation of the policy.

On appeal from a directed verdict, plaintiff contended that a promise to keep the policy in effect, after she had failed to make a premium payment, could be spelled out from these facts: 1) defendant said he would "take care of it like the time with the other policy" and, 2) after receiving notice by the company that the policy was about to lapse, defendant reassured her, "everything is taken care of and don't worry."

In reversing and ordering a new trial, the Court of Appeals reasoned that a jury could find a promise to continue the policy, and that such a promise was not substantially different from a promise to procure a policy.

This decision implicitly indicates that the recognizably superior knowledge of insurance agents necessitates enlarging the bounds of reasonable reliance to which unsophisticated policyholders are limited.

"ALL RISKS" COVERAGE DISTINGUISHED FROM STANDARD FIRE COVERAGE

Section 168 of the New York Insurance Law determines the provisions of a standard fire insurance policy. By this section, certain warranties may not be used in the policy. If such a warranty does appear and the policy holder breaches it, the insurer may not set up the breach as a defense to the claim. In *Woods Patchogue Corp. v. Franklin National Insurance Co.*,¹¹ the policy holder made a claim for loss by fire under an "all risks" policy, specifically, a jewelers' block policy. He asserted that since his claim was based upon loss by fire, the provisions of Section 168 were applicable to this "all risks" policy. The insurer claimed that there is a clear distinction between the two types of policies,

7. *Siegel v. Spear & Co.*, 234 N.Y. 479, 138 N.E. 414 (1923).

8. *Joseph Inc. v. Alberti, Carleton & Co.*, 225 App. Div. 115, 232 N.Y. Supp. 168, *aff'd* 251 N.Y. 580, 168 N.E. 434 (1928).

9. *Israelson v. Williams*, 166 App. Div. 25, 151 N.Y. Supp. 679, *appeal dismissed* 215 N.Y. 684, 109 N.E. 1079 (1915).

10. 6 N.Y.2d 91, 188 N.Y.S.2d 486 (1959).

11. 5 N.Y.S.2d 479, 186 N.Y.S.2d 42 (1959).