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Insurance—Agent's Liability on Promise to Continue Policy

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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).