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Insurance—"All Risks" Coverage Distinguished from Standard Fire Coverage

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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).

and therefore, even though the claim was for loss by fire, the provisions of Section 168 are not applicable and the defense of breach of warranty is available.

The Second Department held that the "all risks" coverage is merely a combination of separate risks. The court reasoned that to hold otherwise would lead to a progressive weakening of the legislative protection afforded to the insured when fire insurance is written simultaneously with other coverages, because additional warranties or harsh provisions might be inserted which are not allowed in the standard fire insurance policy application.[12]

In reversing the Appellate Division, the Court of Appeals did not hold that when fire insurance is written in combination with other coverages that Section 168 is not applicable. Rather, it held that the jewelers' block policy is a type of insurance distinct from fire insurance, as evidenced by a separate enactment of the New York Insurance Law.[13]

There are basic differences between an "all risks" policy and a combination policy. Under the former a loss is compensable unless it falls into one of the rigidly defined exclusions, while under the latter a loss must fit into the definition of at least one of the stated perils. Moreover, coverage under the all risk policy is not limited to a specified location, but covers goods at unnamed and unascertained locations anywhere in the continental United States, Alaska, Canada, Hawaii, and Puerto Rico. The very failure of the standard fire insurance policy to cover losses at unnamed places prompted the Superintendent of Insurance to request that the jewelers' block policy be authorized.[14]

Other types of marine policies which do not incorporate Section 168 are personal property floaters, personal jewelry, fur, camera and equipment dealer policies.[15] Since the New York Insurance Law specifically excludes fire losses in particular types of marine policies, the failure to do so in the jewelers' block policy is another indication of a legislative intent not to incorporate Section 168 into that policy.[16]

This decision need not give rise to a fear of lessening legislative control over an "all risks" policy plan because the fire coverage in an "all risks" policy is optional, and the insured may protect his goods by obtaining the standard fire insurance coverage, in addition to the jewelers block policy, and get a corresponding premium reduction.

12. 5 A.D.2d 577, 173 N.Y.S.2d 859 (2d Dep't 1958).
13. N.Y. SESS. LAWS 1945, c. 488.
14. 65th Annual Report of Superintendent of Insurance, N.Y. LEGIS. DOC. 1924, No. 21, p. 15.
15. Examination of Insurance Companies, vol. 5, p. 183.
16. N.Y. INS. LAW § 46(20)(d).