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Insurance—Effective Time of Cancellation

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Effective Time of Cancellation

The insured, in *Nobile v. Travelers Ind. Co.*,[11] brought action to have it determined whether a policy of liability insurance covered a loss sustained by the insured as a result of an automobile accident. The policy contained a cancellation clause giving the insured the right to cancel by mailing a written notice stating when thereafter the cancellation should be effective. Prior to the accident the insured had sent the policy to his broker, instructing him to have it cancelled. In accordance with the directions of the insured, the broker wrote "Cancel 10/14/55" across the face of the policy and mailed it, along with a request to cancel, to the defendant. The accident involving the insured occured after the date written on the policy for cancellation, but a few hours prior to actual receipt by the insurer. The Court was thus faced with the question whether cancellation of the policy was effected by mailing the notice, or whether actual receipt by the insurer was necessary.

The Court held that the insurer was not liable to the plaintiff, because the insured, through his agent, had complied with the terms of the policy for cencellation, and therefore the policy was cancelled as of the date specified on the notice; actual receipt of the notice by the insurer was not necessary to effect a cancellation.

The policy was entered into by the parties in New Jersey, and, as the issue concerned the effect of the policy, under the general rules of the conflict of laws the contract law of New Jersey was applied by the Court.[12] The present case is in line with the New Jersey cases which hold that where the parties have contracted as to the method of effecting cancellation, the method specified by the policy shall govern.[13] In a leading case, the New Jersey court held that where the policy specified mailing as the method of cancellation, the insurer's mailing of the notice of cancellation to the address shown on the policy, was sufficient to effect cancellation, whether or not the insured actually received the notice.[14]

Under New York law, faced with a case similar to the present case, the Court would reach the same result.[15] The parties may determine the method of cancel-

11. 4 N.Y. 536, 176 N.Y.S.2d 585 (1958).
12. See New Amsterdam Cas. Co. v. Stecker, 3 N.Y.2d 1, 143 N.E.2d 357 (1957), and Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954) as to the New York view on the conflict of laws as applicable to contractual relations.
13. Werner v. Commonwealth, 109 N.J.L. 119, 160 A. 547 (1932).
14. Raiken v. Commonwealth Cas. Ins. Co., ——N.J.L.——, 135 A. 479 (1926); see State Farm Mut. Auto Ins. Co. v. Pederson, 185 Va. 941, 41 S.E.2d 64 (1947). (In coming to the same result as the New York Court, the Virginia court was faced with similar facts, and a cancellation clause identical with the one in the instant case).
15. Byard v. Royal Indemnity Co., ——Misc.——, 49 N.Y.S.2d 60 (1944); N. Y. INSURANCE LAW, §153.

lation by specifying such method in the policy. However, in absence of such method, actual receipt would be required to effect cancellation.[16]

Jurisdiction of Supreme Court in Liquidation of Insolvent Insurance Companies

Article XVI of the New York Insurance Law relating, among other things, to the liquidation of insolvent insurance companies, specifically confers exclusive jurisdiction upon the Supreme Court for all claims against an insurance company in liquidation, with the Superintendent of Insurance representing the defunct company. However, the statute is silent concerning claims brought by the Superintendent of Insurance as liquidator of the defunct insurance company against alleged debtors.[17]

In *In re Knickerbocker,*[18] petitioners sought to enforce an arbitration clause contained in their contract with the now defunct Preferred Accident Insurance Company, when the Superintendent brought suit against petitioners as an alleged debtor of the company. Petitioners argued that the Superintendent, by bringing the action, recognized the contract and was bound by its terms, including the provision for arbitration. The Court of Appeals held that Article XVI embraced claims both for and against the insurance company in liquidation, reasoning that to hold otherwise might allow arbitration to reduce the fund available to all creditors and thus jeopardize parity of participation in the fund, as arbiters are but private citizens selected by the parties and thus not charged with the public interest as are the courts.

The dissenting opinion questions the construction of Article XVI by the majority, expressing the view that such construction is discriminatory as to New York State residents. If the Supreme Court is to have exclusive jurisdiction of claims not only against the defunct insurance company but also in favor of the company, action against non-resident debtors would be virtually impossible. Even if action against non-residents was possible, it would necessarily have to take place in the state court of the state wherein the alleged debtor resides or in a federal district court. As arbitration agreements relate to the remedy, the enforceability of the arbitration agreement would normally depend on the law of the forum and it is conceivable that other state courts or the federal district courts may enforce the agreement to arbitrate.[19]

16. Crown Point Co. v. Aetna Ins. Co., 127 N.Y. 608, 28 N.E. 653 (1891).
17. N. Y. INSURANCE LAW, Article XVI.
18. 4 N.Y.2d 245, 173 N.Y.S.2d 602 (1958).
19. U. S. Asphalt Refining Co. v. Trinidad Lake Petroleum Co. 222 Fed. 1006 (D.C.N.Y. 1915).