Buffalo Law Review

Volume 8 | Number 1 Article 92

10-1-1958

Insurance—Jurisdiction of Supreme Court in Liquidation of Insolvent Insurance Companies

Buffalo Law Review

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).