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Insurance—Liability for Injuries to Insured's Spouse

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assignee to that of primary beneficiary. Thus, in absence of the insured's intent to the contrary, the beneficiary's primary right to the proceeds remains unaffected.

It is apparent from this decision that it will take more than the mere fact that the new beneficiary was made subject to the rights of the assignee before the court will find that the assignee was made the primary beneficiary. This will be so if the insured clearly indicated his intention to alter the relationship¹⁵ or where insured designated the old beneficiary as the new beneficiary. The court further indicates that it is reluctant, in the absence of a legislative act, to have the law on insurance proceeds subject to an assignment conform to the law on estate property specifically bequeathed, where the legatee must satisfy any lien without recourse to the estate.¹⁶

Liability For Injuries To Insured's Spouse

Section 167(3) of the New York Insurance Law provides that no policy or contract shall be deemed to insure against any liability of an insured because of death or injuries to his or her spouse or because of injury to, or destruction of, property of his or her spouse unless express provision relating thereto is included in the policy.

In *New Amsterdam Casualty Company v. Stecker*¹⁷ an automobile insurance company sought a declaratory judgment as to whether it was obligated to defend one of its New York policy holders in an action instituted by the insured's husband in a Connecticut court as the result of an accident occurring in that state; or pay any judgment obtained by insured's husband as the result of such suit. The Court, unanimously affirming the Appellate Division,¹⁸ held that section 167 (3) of the New York Insurance Law relieved the insurance company of liability.

In the present instance the problem of performance of a contract was not involved so that there was no question as to whether the law of the state where the accident occurred applied. Rather, the crucial problem was in determining just what the respective obligations and duties were under the contract. In determining the obligations and duties of a contract, the contract must be interpreted in accordance with the laws of the state in which the contract was made.¹⁹ Once the respective obligations and duties have been ascertained then the performance of these duties may be sought in a foreign court, in accordance with the *lex fori*. Since this contract was issued in New York State, section 167 (3)

15. *Ibid.*

16. N.Y. DECEDENT ESTATE LAW §20; N.Y. REAL PROPERTY LAW §250.

17. 3 N.Y.2d 1, 163 N.Y.S.2d 626 (1957).

18. 1 A.D.2d 629, 152 N.Y.S.2d 879 (1st Dep't 1956).

19. *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954).

of the New York Insurance Law is incorporated and made part of the contract.²⁰ Thus, the sole question remaining is whether the legislature intended section 167 (3) of the New York Insurance Law to apply to accidents between spouses which occur in any state covered by the insurance policy or is limited solely to accidents occurring in New York State.

Prior to the enactment of section 57 of the New York Domestic Relations Law, which created tort liability between spouses, an action for the negligent operation of an automobile could not be maintained between spouses, unless the cause of action arose and was brought in a foreign jurisdiction which recognized tort actions by one spouse against the other.²¹ The defendant contended that since section 167 (3) of the New York Insurance Law and section 57 of the New York Domestic Relations Law were enacted simultaneously the sole intention of the legislature was to protect insurance companies from the new liability created in New York by the amendment to the Domestic Relations Law, and not to affect liability which previously existed in other states.

In refusing the construction offered by the defendant the Court held that section 167 (3) of the New York Insurance Law was not susceptible of such an interpretation. Where a statute is unambiguous in its terms there is no need to resort to rules of construction; but the court will literally construe the statute to best accomplish the legislative intent.²² Since the reason for the enactment of this section was to protect against the danger of collusive actions between spouses the Court felt that the legislature must have intended to include the possibility of collusive actions even where the cause of action arose outside the state.

Indemnification—Accident Involving Vendee Of Named Insured

During the past term, the Court of Appeals had two interesting opportunities to determine the liability of an insurer of a vendor of a motor vehicle who permits his vendee to retain the vendor's license plates on the purchased vehicle, during which time the machine caused injury to another.

In *Phoenix Insurance Company v. Guthiel*,²³ The Court held that since the vendor-insured had permitted the vendee to use the vendor's plates, contrary to law,²⁴ the vendor would be estopped from denying ownership.²⁵ The Court reasoned that the estoppel against the vendor-insured, for purposes of determining his liability to the injured party, should not carry over to the insurer. The policy indemnified the insured for liability arising out of the "ownership, maintenance or

20. *Stumpf v. Hallahan*, 185 N.Y. 550, 77 N.E. 1196 (1906).

21. *Mertz v. Mertz*, 271 N.Y. 466, 3 N.E.2d 597 (1936).

22. *Tishman v. Sprague*, 293 N.Y. 42, 55 N.E.2d 858 (1944).

23. 2 N.Y.2d 584, 161 N.Y.S.2d 874 (1957).

24. N.Y. VEHICLE AND TRAFFIC LAW §61.

25. *Shuba v. Greendonner*, 271 N.Y. 189, 2 N.E.2d 531 (1936).