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Insurance—Indemnification—Accident Involving Vendee of Named Insured

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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).

use" of his vehicle and since the vendor-insured was not in fact the owner of the vehicle, the insurer could in no way be held liable under the policy.

In *Switzer v. Merchants Mutual Casualty Company*,[26] the vendor-insured was a conditional vendor who as a dealer was permitted, pursuant to statute,[27] to issue his own plates to the vendee for temporary use. However, for failure to comply with the exact terms of the statute, he also had been held, in a prior proceeding,[28] to be estopped from denying ownership for purposes of determining his liability to the injured party. In the instant case there was no attempt to carry over this estoppel to the insurance company, but rather the insurer was sought to be held for the liability of the vendee, on the ground that the vendee was an "insured" under the policy. Since the policy in the *Switzer* case was issued to an automobile dealer, as contrasted to an individual owner in the *Guthiel* case, the Court took a broader view of the risks assumed by the insurer under such policy. Since the vendee's use was with the "permission" of the dealer, the vendee was deemed to be an "insured" under the policy, thus rendering the insurer liable regardless of the dealer's liability.

Thus, in the name of contract construction, the Court has apparently endeavored to set limits upon the insurer's liability. However, one may wonder how realistic these limits are in view of our policy of compulsory liability insurance. It would appear that while the risk that a dealer will permit a vendee to use his plates is apparent, the risk that an individual owner will be held liable by estoppel under similar circumstances is not so far removed as to warrant the distinction drawn by the Court.

MUNICIPAL CORPORATIONS

Notice In Indemnification Action Against Public Corporation

The General Municipal Law requires, as a condition precedent to a law suit against a public corporation, that notice be given to the public corporation within 90 days after the claim arises.[1] In *Valstrey Service Corporation v. Board of Election, Nassau County*, the Court stated in a per curiam opinion that notice was not necessary in a third-party indemnification action against a public corporation.[2]

26. 2 N.Y.2d 575, 161 N.Y.S.2d 867 (1957).
27. N.Y. VEHICLE AND TRAFFIC LAW §63.
28. Switzer v. Aldrich, 307 N.Y. 56, 120 N.E.2d 159 (1954).

1. N.Y. GENERAL MUNICIPAL LAW §50(e)(1).
2. 2 N.Y.2d 413, 161 N.Y.S.2d 52 (1957).