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Insurance—Policy Interpretation

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held,[12] an agreement for appraisal is not the same as an agreement for arbitration, and the courts cannot order the parties to comply with such an agreement.[13]

The insured must present his case in an action at law; the 1941 amendment to §1448[14] did not make the section applicable to appraisal agreements; these can be enforced only by preventing the insured from bringing an action on the policy if they are not complied with. The amendment of 1952[15] is inapplicable; neither in this amendment nor in that of 1941 is there exhibited any legislative intent to change this rule.

Policy Interpretation

In *Harris v. Allstate Ins. Co.*[16] the Court decided that an automobile insurance policy which covered loss caused by water but excluded loss resulting from collision did not cover damage caused by a pool of water which pulled an automobile from its course. The policy stated that "loss caused by . . . water, flood . . . shall not be deemed loss caused by collision or upset." However, the Court considered that there was a considerable reduction in the premium rate because of the non-coverage of loss due to collision, and that the parties could not reasonably have expected coverage of a collision with water.[17] The majority claimed that, according to the principle of *noscitur a socis,* the word "water" must be read in the light of the other words in that same grouping, viz., "missiles, falling objects, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion," which are said to be causes included in policy coverage. All these "causes" are active agents which cause damage by falling against the object damaged. In this case, the car's collision with the water caused the damage; i.e., it was not the water's peculiar properties that caused the damage. It is true that water was one of the exceptions to things excluded from coverage but, even though a policy must be interpreted most strongly against the insurer where there

12. 309 N. Y. 60, 127 N. E. 2d 808 (1955).
13. *In Syracuse Savings Bank v. Yorkshire Ins. Co.*, 301 N. Y. 403, 194 N. E. 2d 73 (1950), the Court of Appeals held the section is not so applicable.
14. This says that an arbitration contract "may include questions arising out of . . . appraisals . . . collateral . . . to any issue between the parties."
15. Which included ". . . appraisals . . . independent of any issue between the parties."
16. 309 N. Y. 72, 127 N. E. 2d 816 (1955).
17. *Bird v. St. Paul Fire & Marine Ins. Co.*, 224 N. Y. 47, 120 N. E. 86 (1918), where, concerning a fire insurance policy, it was held that fire under freight cars, which caused an explosion which caused a concussion of the air which damaged the insured vessel, was not the proximate cause of the damage and not what was contemplated by the parties as within the coverage. Judge Cardozo said: "Our guide is the reasonable expectation and purpose of the ordinary business man when making an ordinary business contract."

are two possible constructions,[18] "resort to a literal construction may not be had when the result would be to thwart the obvious and clearly expressed purpose which the parties intended to accomplish, or where such a construction would lead to an obvious absurdity."[19]

The dissenters claimed that the "plain meaning" of the contract was that just such an occurrence as this was covered; water was one of the specific exceptions to what was excluded from coverage. They believed the court was now rewriting the contract for the parties according to what the parties intended. The majority decided in part on the assumption that the court must interpret the contract, where there is an ambiguity, as a reasonable business man would. The dissent contended that there was no ambiguity.

MISCELLANEOUS

Suit on Payment Bonds

In *McGrath v. American Surety Co.*,[1] plaintiff, a supplier of labor to a subcontractor, sued to recover on a payment bond given by the latter to indemnify the general contractor against liability to the subcontractor's suppliers of labor and materials under the Miller Act.[2] The Miller Act imposed upon the general contractor an obligation to furnish the Federal Government with both performance and payment bonds in public works projects. Parties such as the plaintiff, who have no contractual relation with the general contractor but have with a subcontractor, are given an action on the *payment bond.* The defendant is a surety on a *common law bond* given by the subcontractor. Whether plaintiff has a cause of action on this common law bond or whether his sole remedy would be under the Miller Act was the issue; the Court held, plaintiff had no cause of action. "The rights o f these laborers and materialmen of the subcontractor were definitely fixed and considered to be protected adequately by the Miller Act. The object in giving the bond in suit was to protect the contractor against this very liability imposed upon him by Federal Law."[3]

18. *Hartol Products Corp. v. Prudential Ins. Co. of America,* 290 N. Y. 44, 47 N. E. 2d 687 (1943). The dissent cites *Mutchnick v. John Hancock Mutual Life Ins. Co.,* 157 Misc. 598, 284 N. Y. Supp. 565, (1935), for the proposition that whether the results to the insured are harsh or beneficial there is no warrant for interpreting the deliberate language of the policy in other than its natural meaning.

19. *McGrail v. Equitable Life Assurance Society,* 292 N. Y. 419, 55 N. E. 2d 483 (1944).

1. 307 N. Y. 552, 122 N. E. 2d 906 (1954).
2. 40 U. S. C. 270-a, 270-b.
3. 308 N. Y. 464, 126 N. E. 2d 750 (1955).