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Insurance—Airline Trip Insurance

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agreement fails to do so and the agreement itself remains unimpeached.[4]

In addition, when the separation agreement is incorporated in a divorce decree of a sister state, it becomes part of the decree[5] as in the instant cases, and therefore it becomes entitled to full faith and credit.[6] Consequently an allocation can not be made by a New York court as it would substantially impair the rights established in the prior decree.[7]

VIII. Insurance

Airline Trip Insurance

An often noted aspect of modern commercial distribution is the increased use of automatic vending machines as purveyors of myriad goods and services. Not the least imaginative use of these devices is in the sale of short-term policies of specific-risk life insurance. The attendant consequences of possibly misleading advertising, and its effect on construction of the insurance policy, together with the difficulty of applying proverbial doctrines of contract law where the offeror is a mechanical agent, were the subject of decision in *Lachs v. Fidelity & Casualty Co. of New York.*[1]

Decedent had purchased an insurance policy from such a machine located in front of the ticket counter at Newark Airport. In letters ten times larger than any other words on the machine, prominently lighted, were the words: "Airline Trip Insurance." This legend was repeated several times in smaller print on the machine and in the application. Across the face of the policy, which consisted of twenty-two inches of printed matter, in large type, appeared the words: "This Policy Is Limited To Aircraft Accidents Read It Carefully." But the policy was accompanied by an envelope, presumably to permit the purchaser to mail it immediately.

The coverage clause in the policy provided that the insurance would apply only to injuries sustained by reason of a flight on a "Scheduled Airline", defined in the clause as "a Civilian Scheduled Airline maintaining regular, published schedules and licensed for . . . transportation of passengers . . ."

4. *Harwood v. Harwood,* 182 Misc. 130, 49 N.Y.S. 2d 727, (Sup. Ct.), aff'd, 268 App. Div. 974, 52 N.Y.S. 2d 573 (1st Dep't 1944); *Cogswell v. Cogswell,* 130 Misc. 541, 224 N.Y. Supp. 59 (Sup. Ct. 1927).

5. 1 Nelson, Divorce and Annulment § 13.51 (2d ed. 1945).

6. 3 Nelson, Divorce and Annulment §§ 33.20, 33.24 (2d ed. 1945).

7. *Schacht v. Schacht,* 295 N.Y. 439, 68 N.E. 2d 433 (1946).

1. 306 N.Y. 357, 118 N.E. 2d 555 (1954).

Hanging on the wall at the end of the counter where decedent picked up her ticket was a "fairly large" sign captioned: "Non-Scheduled Air Carriers Authorized to Conduct Business In This Terminal." There followed a list of ten airlines, included among which was the airline upon which decedent was to travel and meet her death. There was no proof that decedent saw the sign, and the court viewed it as irrelevant, for ". . . applicants for insurance are not affected with notice by reason of wall signs nor do they incorporate words or definitions from wall signs into their insurance contracts."[2]

When the language employed in a contract is ambiguous or equivocal, and its interpretation depends upon external factors, it becomes a mixed question of law and fact for the jury.[3] The burden is on the insurer to establish that the words must be construed as the insurer suggests, and that no other interpretation is possible.[4] The court here attached great significance to the position of the vending machine in front of the ticket counter "utilized by all non-scheduled airlines operating out of the Newark Airport."[5] The court found that in view of all the circumstances, a jury could find that the insurer was inviting passengers on non-scheduled airlines to insure themselves by its Airline Trip Insurance, and therefore, the insurer's motion for summary judgment was properly denied.

The dissent observed that defendant insurer had marshalled mountains of material to indicate on the basis of statutes, regulations, opinions, reports, newspapers and magazines, that the terms "scheduled airline" and "non-scheduled airline" or "non-sked" have gained such general currency as to be part of ordinary vocabulary. Therefore, it was argued, the insurer having reasonably decided to limit its liability to scheduled airlines, such a clear restriction in the policy cannot be altered by the court, since no ambiguity which would sustain decedent's claim was present.[6]

"The test for ambiguity," the dissent suggested, "is not subjective . . . the issue is, not whether the insured knew, but whether she had reason to know, the content and purport of the contract she signed."[7]

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2. *Supra* note 1 at 364, 118 N.E. 2d at 558.
3. *Kenyon v. Knights Templar & Masonic Mut. Aid Assn.*, 122 N.Y. 247, 254, 25 N.E. 299, 300 (1890).
4. *Hartol Products Corp. v. Prudential Ins. Co.*, 290 N.Y. 44, 49, 47 N.E. 2d 687, 690 (1943).
5. *Supra* note 1 at 365, 118 N.E. 2d at 559.
6. *Houlihan v. Preferred Acc. Ins. Co.*, 196 N.Y. 337, 340, 89 N.E. 927 (1909).
7. *Supra* note 1 at 373-374, 118 N.E. 2d at 564, and cases cited.

The position of the majority clearly indicates that when such machines are used, together with advertising, to vend insurance, a jury is justified in resolving conflicting inferences in favor of the claimant.

Contract of Indemnity

In *Madawick Contracting Co. v. Travelers Ins. Co.*,[8] the insured was a sub-contractor who, in a contract with the general contractor, guaranteed to indemnify him should any liability for injury to property arise as a result of performance by the sub-contractor. The contract required the sub-contractor to secure adequate liability insurance of various types, and provided that any dispute arising under the contract was to be settled by arbitration.

The subcontractor had previously secured insurance coverage with defendant insurer, but the policy bore no reference to contractual indemnification. An agent of the insurer read the contract and subsequently the insurer appended an indorsement to the policy, including by specific reference the contractual indemnity in question.

During the course of construction an injury to property occurred and the general contractor invoked his right to indemnity under the contract. The insured immediately notified the insurer and demanded that it defend in accordance with the terms of the policy, which provided that the insurer would defend any "suit" in the insured's name, and would indemnify the insured for amounts determined ". . . by judgment against the insured after actual trial . . ."

The insurer refused to defend on the ground that the policy in its terms applied only to a "suit" and not to arbitration, and also contended that it would not be liable to indemnify the insured for any award emanating from arbitration, since it could be bound only by a "judgment" after "actual trial."

The insured sued for a declaratory judgment. The Court of Appeals, reversing the Appellate Division[9] and reinstating the Special Term judgment,[10] held that the terms of the policy must be construed together with the contract to which it referred, and concluded that the words "trial" and "judgment" were sufficiently broad to encompass arbitration proceedings and an award arising therefrom.

8. 307 N.Y. 111, 120 N.E. 2d 520 (1954).
9. 281 App. Div. 754, 118 N.Y.S. 2d 115 (2d Dep't 1953).
10. 202 Misc. 411, 114 N.Y.S. 2d 300 (Sup. Ct. 1952).