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Insurance—Contract of Indemnity

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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).

This result is in harmony with the general principle, long recognized by the courts, that a "trial" of a factual dispute merely connotes a competent tribunal examining and determining issues of fact in accordance with law,[11] and therefore, may include tribunals other than the courts.[12] Arbitration, though informal, ranks as a trial.[13] Indeed, arbitration proceedings have received specific statutory sanction as a means of settling controversies.[14]

Particularly justifiable is the instant decision when reference is made to the established rule emanating from the law of contracts, that ambiguities in an insurance policy should be resolved against the insurer, who drew the policy.[15] Here the insurer had undertaken specifically to indemnify the insured for any liability which might accrue to him under the basic contract with the general contractor. Specific reference to that contract was appended to the policy. The contract provided for arbitration as an exclusive remedy, unless waived by the adverse party. Under the circumstances, if the insurer had prevailed, the coverage provided by the policy would have proved illusory.

Notice of Accident

Under an automobile liability insurance policy making "written notice" of an accident "as soon as practicable" a condition precedent to liability, the notice given must conform to the requirements of the policy, concluded the Court of Appeals in *Bazar v. Great American Indemnity Co.*[16] Notice of an accident was not given to the insurer until some twenty months after its occurrence. The manner of giving notice was as unusual as its tardiness: an agent of the insurer happened to be present when the insured's husband was accused by a police officer of having been involved in the accident.

The insured claimed that she had given notice "as soon as practicable" since she learned of the accident in the same way and at the same time as did the insurer's agent. No denial was made

11. *Ward v. Davis*, 6 How. Prac. 274 (1851); *People v. Richetti*, 302 N. Y. 290, 97 N.E. 2d 908 (1951).

12. Cf., *People ex rel. Hunter Arms Co. v. Foster*, 247 App. Div. 619, 288 N.Y. Supp. 295 (4th Dep't 1936); *People ex rel. Myers v. Barnes*, 114 N.Y. 317, 20 N.E. 609 (1889); *Roge v. Valentine*, 280 N. Y. 268, 20 N. E. 2d 751 (1939); *Davis v. Sayer*, 205 App. Div. 562, 200 N.Y. Supp. 134 (2d Dep't 1923); *People ex rel. Garrity v. Walsh*, 181 App. Div. 118, 168 N.Y. Supp. 440 (2d Dep't 1917); *Plunkett v. Wilson*, 179 Misc. 149, 37 N.Y.S. 2d 959 (Sup. Ct. 1942).

13. *Hyman v. Pottberg's Ex'rs.*, 101 F. 2d 262 (2d Cir. 1939).

14. C.P.A. §§ 1448, 1459. Under C.P.A. §§ 1464, 1466, a judgment may be entered on the award, and is enforceable as a judgment in an action.

15. 3 WILLISTON, CONTRACTS § 621 (Rev. Ed. 1938); 1 COUCH, INSURANCE LAW § 188 (1929).

16. 306 N.Y. 481, 119 N.E. 2d 346 (1954).