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Insurance—Notice of Accident

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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).

of the fact that the notice, even if timely, was unwritten, except that it was argued that the applicable statute[17] did not require written notice, and therefore, the policy provision, being in conflict with the statute, was invalid. But the court, although expressing the opinion that notice was timely under the circumstances, pointed out that on the basis of the legislative history of the statute and its predecessor, and the cases interpreting the section,[18] a requirement of written notice did not contravene the statute.

The insured's final argument was that the insurer's agent bound the insurer by waiver or estoppel. But the court concluded on the authority of the *Nothhelfer* case[19] that a non-waiver agreement in the policy was binding, and found no estoppel present, since there was no showing that the agent had accepted the notice as sufficient, or acted on it in any manner.

The result in the *Bazar* case is consonant with earlier cases, which have held that in the absence of waiver or estoppel by the insurer's receiving oral notice without objection and acting upon it, a requirement of written notice is binding on the insured.[20] The court's opinion that notice was timely did not affect the decision, which relied on the failure to furnish notice in written form; but generally, and in the absence of a requirement that notice be given "immediately" or within a specified time, the requirement of timeliness is satisfied by the furnishing of notice within a reasonable time after the occurrence of the accident,[21] unless it appears that the insured is ignorant of the existence of the policy.[22] But ignorance of the occurrence of the accident, or physical effects of the accident which preclude giving notice, are not grounds for delay, although the latter rule is applied most strictly in cases involving specific time requirements.[23]

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17. INSURANCE LAW § 167 (1) (c).

18. *Nothhelfer v. American Surety Co. of N. Y.*, 277 App. Div. 1009, 100 N. Y. S. 2d 331, *aff'd*, 302 N. Y. 910, 100 N. E. 2d 184 (1951); also see, *Weatherwax v. Royal Indemnity Co.*, 250 N. Y. 281, 165 N. E. 293 (1929), which reached the same conclusion under the former INSURANCE LAW § 109, identical to present § 167 with reference to notice by the insured.

19. *Supra* note 18.

20. *Travelers Ins. Co. v. Edwards*, 122 U. S. 457 (1887); *Farrell v. Merchants M. A. L. Ins. Co.*, 203 App. Div. 118, 196 N. Y. Supp. 383 (2d Dep't 1922).

21. *Brink v. Hanover F. Ins. Co.*, 80 N. Y. 108 (1880).

22. *Treiger v. Commercial Trav. Mut. Acc. Assn.*, 122 Misc. 159, 202 N. Y. Supp. 410 (Sup. Ct. 1923).

23. *Whiteside v. No. Amer. Acc. Inc. Co.*, 200 N. Y. 320, 93 N. E. 948 (1911); *Hammill v. Un. Commercial Trav.*, 178 App. Div. 338, 164 N. Y. Supp. 815 (3d Dep't 1917). The New York position is distinctly a minority view; see, 7 COUCH, *op. cit., supra* note 15, § 1538k. Also, it is not entirely clear that the rule applies with equal force in both specified-time and reasonable-time situations.