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Insurance—Variance Between Option and the Settlement Agreement Will Not Defeat A Supplementary Contract

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INSURANCE—VARIANCE BETWEEN OPTION AND THE SETTLEMENT AGREEMENT WILL NOT DEFEAT A SUPPLEMENTARY CONTRACT

The beneficiary of a life insurance policy selected an option whereby she was to receive interest on the principal for life, and upon her death the proceeds to go to the plaintiff. Beneficiary's estate contends that, as the terms of the agreement vary with the terms of the option, the contract is independent, not supplementary, and therefore an invalid testamentary disposition. *Held* (4-1): Trivial variances between the agreement and the option do not prevent the contract from being supplementary. *Hall v. Mutual Life Ins. Co. of New York,* 282 App. Div. 203, 122 N. Y. S. 2d 239 (1st Dep't 1953).

An insurance contract must conform to the general rules of law relating to contracts. MOWBRAY, INSURANCE 52 (3d ed. 1946). A supplementary contract is formed when the insured or the beneficiary accepts the terms of an option in the original policy, the option being a continuing offer on the part of the insurer. *Pequot Mfg. Corporation v. Equitable Life Assur. Soc.,* 253 N. Y. 116, 170 N. E. 514 (1930). In order that a contract be supplementary, it must comply exactly with the express terms of the option. *Aetna Life Ins. Co. v. Dunken,* 266 U. S. 389 (1924); *Dannhauser v. Wallenstein,* 169 N. Y. 199, 62 N. E. 160 (1901); *Gram v. Mutual Life Ins. Co. of New York,* 300 N. Y. 375, 91 N. E. 2d 307 (1950). A variation between the terms of the option and the new agreement results in the new agreement being an independent contract. *Mutual Ben. Life Ins. Co. v. Ellis,* 125 F. 2d 127 (2d Cir. 1942). Under a supplementary contract, the rights and duties flow from the original agreement, whereas under an independent contract, they flow from the new agreement. *Gram v. Mutual Life Ins. Co. of New York, supra.*

In the instant case, the beneficiary arranged to have the interest paid quarterly instead of annually as stated in the option, and included the right to withdraw part of the principal in addition to the existing right to withdraw the entire amount. The majority decided that where the variation from the original options of a policy is only slight, there is still a supplementary contract. The dissent maintained the variance, however slight, created an independent contract.

As the principal in the instant case was to be paid over upon the beneficiary's death to a third party, there is a form of testamentary disposition. A testamentary disposition is invalid where it fails to comply with the Statute of Wills. However, the New York Legislature by Personal Property Law § 24-a has expressly provided that supplementary insurance contracts do not have to conform with the statutes governing testamentary dispositions. In some jurisdictions the independent contract is deemed to be a valid third party donee beneficiary contract and not a testamentary disposition. *Mutual-Ben. Life Ins. Co. v. Ellis, supra; Kansas City L. Ins. Co. v. Rainey*, 353 Mo. 477, 182 S. W. 2d 624 (1944); for a discussion of this aspect of the case see 1 BFLO. L. REV. 338 (1951).

When the court found that the variances between the option and the settlement contract did not impair the validity of the agreement as a supplementary contract, it was following legislative policy. It has long been recognized that life insurance policies including the use of optional modes of settlement are of great benefit to society and as a result they have been given the protection of statutory enactment. The court here arrived at the desired result, but the degree of variation before such contract will be held independent now presents an area that will probably be subjected to much litigation before its scope is defined.

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LABOR LAW—SPECIFIC PERFORMANCE OF ARBITRATION AGREEMENT GRANTED UNDER § 301 (a) TAFT-HARTLEY ACT

Union brought suit in federal district court under § 301 (a) of the Labor Management Relations Act, 61 STAT. 156 (1947), 29 U. S. C. § 185 (Supp. 1952) for an order compelling arbitration. *Held:* Specific performance of labor arbitration agreements may be granted under § 301 (a). *Textile Workers Union of America (CIO) v. American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953).

The common law rule was that specific performance of executory arbitration clauses in contracts would not be granted. *Kulakundis Shipping Co. v. Amtorg Trading Corp.*, 126 F. 2d 978 (2d Cir. 1942). The principal reasons given for this holding were that the courts would thereby divest themselves of their ordinary jurisdiction, *Insurance Co. v. Morse*, 20 Wall. 445 (U. S. 1874); that lay arbitration tribunals could not guarantee legal safeguards, *Tobey v. County of Bristol*, 23 Fed. Cas. 1313, No. 14,065 (C. C. D. Mass. 1845); and that the agreement to arbitrate might always be revoked by either party prior to an award, *People* ex rel. *The Union Life Insurance Co. v. Nash*, 111 N. Y. 310, 18 N. E. 630 (1888). Although specifically unenforceable, arbitration clauses were not invalid and damages were recoverable for their breach. *Red Cross Line v. Atlantic Fruit Co.*, 264 U. S. 109 (1924). The