Marquette Law Review

Volume 36
Issue 1 *Summer 1952*

Article 10

Insurance - Construction of Airplane Life and Accident Policy

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> pass from him because he no longer has the legal capacity to retain it. So, if it is not otherwise disposed of, it must necessarily revert to the bankrupt as the original owner from whom in the first instance the trustee got title. Clearly one person cannot lose title without another getting it."[13]

Title should revert to the bankrupt subject to reopening proceedings, which should be instituted when it appears that the bankrupt estate was closed before being fully administered. Other state courts conclude that title should revest in the bankrupt subject to the liens which were valid at the beginning of the bankruptcy proceeding.[14]

The most expedient rule and one followed by all decisions, except the principal case, is that title to assets passes to the trustee whether they be scheduled or unscheduled, since it must be deemed that once the bankruptcy court assumes jurisdiction all the bankrupt's assets come within its power. Once the trustee is discharged title must go somewhere for it cannot repose in a nonexistent trustee. Title to the assets should reinvest in the bankrupt subject to reopening proceedings by which creditors can successfully reach any assets which may subsequently appear. Any other approach seems to totally disregard the rules applicable to trustees and also to unnecessarily burden bankruptcy court procedure.

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Insurance — Construction of Airplane Life and Accident Policy — An airplane life and accident insurance policy of the type sold in vending machines at airports in the amount of $20,000 was issued to one Smith by defendant to cover a round trip from Albuquerque, New Mexico, to Washington, D. C., via TWA. The policy also provided coverage if the original transportation ticket was exchanged for another ticket issued by a scheduled airline covering all or any portion of the trip specified in the original ticket. Smith was required by his employer to go to Dallas, Texas, from Washington before returning to Albuquerque. A new ticket on another airline was purchased for the Dallas trip, the old one not being exchanged. Smith purchased a $10,000 policy covering that flight. The plane crashed and Smith was killed. Defendant paid the $10,000 but denied liability on the $20,000 policy. Judgment was entered for the plaintiff, Smith's beneficiary, and the defendant appealed. *Held:* Affirmed. The accident in which insured was killed was covered by the policy even though the original ticket was not exchanged. *Fidelity & Casualty Co. of New York v. Smith, 189 F. 2d 315, (10th Cir., 1951).*

The court decided the case on the ground that an insurance policy

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[13] *Ibid.*
[14] Normal State Bank v. Killian, 318 Ill. App. 637, 48 N.E. 2d 212 (1943).

shall be liberally construed in favor of the insured. In deciding in favor of the plaintiff, the court apparently interpreted the exchange ticket clause as having for its basic purpose coverage of the insured on a substitute route. Therefore, it hesitated to give effect to the wording of the clause which required an exchange of the old ticket. While under the liberal construction doctrine the decision may be a sound one, a problem arises as to where the line will or should be drawn.

The principle that an insurance policy shall be liberally construed in favor of the insured cannot be applied generally. It only applies where the provisions of the policy are ambiguous.[1] Here the provision in question is unambiguous. The policy states clearly that insurance shall apply *only* to injury sustained while the insured is traveling on his original ticket or a ticket exchanged for it. Policies must be construed to give effect to intention and express language thereof.[2] Neither party to an unambiguous insurance policy is to be favored in the construction thereof, and it is the court's duty to enforce such contract as parties made it.[3]

Even if the principle of liberal construction in favor of the insured is applicable in the instant case, this doctrine has limitations. A court has no power to enlarge or restrict, by artificial construction, liabilities and benefits under an insurance policy.[4] Courts will not make a better insurance contract for parties than they saw fit to make or alter the contract for the benefit of a party.[5] It would seem that this case did enlarge the insurer's obligation since it held that the insurance covered a situation which did not come under the terms of coverage in the policy, i.e., a distinct and different trip not a substitute for the original trip.

An insurance policy is a contract between insurer and insured and courts are bound to give legal effect to it according to intent of parties, and such intent is to be determined by the words of the contract when they are clear and explicit.[6] There appears to be no doubt as to the meaning of the words of the policy. The terms could not reasonably be intended to cover a passenger traveling on a different line on a *new* ticket.

Nevertheless the beneficiary of the insured was permitted to recover, the court's rationale being liberal construction. To what lengths shall a

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[1] Equitable Life Assurance Society of U.S. v. Deem, 91 F. 2d 569 (4th Cir., (1937); Brown v. Tennessee Auto Insurance Co., 237 S.W. 2d 553 (Tenn., 1951.)

[2] Travelers' Insurance Co. v. Ansley, 22 Tenn, App. 456, 124 S.W. 37 (1939).

[3] Hill v. Standard Mutual Casualty Co., 110 F. 2d 1001 (7th Cir., 1940).

[4] Miami Jockey Club v. Union Assurance Society, 12 F. Supp. 657 (S.D. Fla., 1945); Aff'd. 82 F. 2d 558 (5th Cir., 1936). Union Paving Co. to use of U.S. Casualty Co. v. Thomas, 186 F. 2d 172 (3rd Cir., 1951).

[5] Illinois Banker's Life Assurance Co. v. Tennison, 202 Okla. 347, 213 P. 2d 848 (1949).

[6] Boyd v. American Fire & Casualty Co., 218 La. 669, 50 So. 2d 688 (1951).

court go in its construction of the terms of a contract of insurance? If this decision is to be followed, does it mean that the insurance company will be liable no matter to what extent the insured varies the original route, as long as he intends eventually to return to his starting point? The decision contains no limitation in this regard. The rule of liberal construction cannot be used to refine away terms expressed with sufficient clearness to convey the plain meaning to the parties.[7]

Besides the principle of liberal construction, there is a cardinal principle that all provisions in written contracts are entitled to their due significance so far as consistently possible.[8] The court does not seem to have given sufficient consideration to this principle.

Further the meaning of the contract can also be ascertained by the actions of the parties under it.[9] Here Smith's acts indicated he considered himself no longer covered by the insurance. His original policy was for $20,000. Before starting for Dallas, he procured a $10,000 policy on that flight. Yet the maximum liability for one passenger is $25,000. Was this the act of a man who considered his previous insurance still in effect? Hardly, since no one is apt to take more than the maximum. Intent upon liberal construction the court apparently gave no weight to the acts of the insured in construing this policy.

In a life insurance policy case it was said that a court will not arbitrarily or artificially stretch the language in their interpretation, and where there is no pretense of fraud, accident or mistake (and there is none in the instant case) the actual language used will be followed.[10] This seems to be a just and reasonable principle. Should it not be followed in the interpretation of airplane policies as well?[11] This would prove a check on liberality of construction.

In the light of general insurance principles and previous decisions, the instant case does not appear to be a sound one. At the same time, this case is of some importance since it is the first case construing this type of provision in an airplane life and accident policy, and therefore sets a precedent. This decision should not be followed, for it is the function of a court to interpret insurance policies, not re-write or draw up new contracts for the parties.

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[7] Terry v. New York Life Insurance Co., 104 F. 2d 498 (8th Cir., 1939).
[8] Barco v. Penn Mutual Life Insurance Co. of Philadelphia, 36 F. Supp. 932 (S.D. Fla., 1951).
[9] Sulzbacher v. Travelers' Insurance Co., 137 F. 2d 386 (8th Cir., 1943).
[10] Quigley v. Western and Southern Life Insurance Co., 86 P.L.J. 400; Aff'd. 136 Pa. Super. 27, 7 A. 2d 70 (1937).
[11] VANCE ON INSURANCE, § 256 (1930). The same rules of law apply to the making of special insurance contracts and to their construction as are applicable to other types of insurance.