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Estee Lauder Int'l., v. World Wide Marine Serv. Inc. United States Court of Appeals, Second Circuit, 14 January 1991 923 F.2d 238

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ESTEE LAUDER INT'L., INC. v. WORLD WIDE MARINE SERV. INC.
United States Court of Appeals, Second Circuit, 14 January 1991
923 F.2d 238

An insurance company which authorizes its insured to issue "special marine policies" is liable to those third parties for whom the policies are issued regardless of the third parties' knowledge of such policy.

FACTS: In February 1987 appellant, Estee Lauder International, Inc. (Estee Lauder) employed World Wide Marine Service Inc. (World Wide), a trucking company, to transport cosmetics from Melville, Long Island to Puerto Rico. The truck carrying the goods was stolen in New Jersey while on its way to Port Elizabeth, and only a small portion of the \$180,000 worth of cosmetics was ever recovered. Estee Lauder received \$147,000 for the stolen cosmetics from their insurer, Commercial Union Insurance Companies (Commercial Union). World Wide was insured under an open cargo policy issued by Travelers Indemnity Company (Travelers). Under this open cargo policy, World Wide was authorized to issue "special marine policies" on Travelers' forms. These policies provided warehouse to warehouse "all risks" insurance coverage to shippers who employed World Wide to move their cargo. Although the open cargo policy had specific restrictions pertaining to the issuance of special marine policies, these restrictions were not printed on the special marine policies. Exercising their authorization under the open cargo policy, World Wide issued a special marine policy for \$52,000 to cover the Estee Lauder cosmetics. The premiums for this policy were paid by World Wide. After the theft, World Wide immediately contacted Travelers and submitted claim documentation. Travelers accepted the claim documentation but then denied coverage on the grounds that Estee Lauder had other insurance and that World Wide had violated the open cargo policy by issuing the policy to obtain legal liability coverage for itself.

Estee Lauder and its subrogated insurer, Commercial Union (hereinafter referred to collectively as Estee Lauder) brought an action against World Wide and Travelers for the \$147,000 loss. Prior to the trial Estee Lauder filed three motions for summary judgment. The first motion, made against World Wide, resulted in a judgment against World Wide for the cargo loss. The other two motions were against Travelers to enforce

the special marine policy. These motions were denied because neither party could locate a countersigned original of the document, and the policy would not be binding without the counter-signature. The district court held for Travelers stating that the special marine policy was issued but that it was unauthorized since World Wide had paid the policy premiums and Estee Lauder had never submitted a written request for the policy and therefore it was not binding on Travelers.

ISSUE: Is an insurance company, which authorizes its insured to issue "special marine policies", liable to third parties for whom the policies are issued regardless of the third parties knowledge of such policy?

ANALYSIS: The Court of Appeals for the Second Circuit held that Travelers, which had authorized World Wide to issue special marine policies was liable to Estee Lauder, the third-party beneficiary to the policy. In reaching this decision the court relied on the district court finding that the special marine policy had been issued. Since the policy is a contract, the court found Estee Lauder to be a third-party beneficiary of the policy and therefore able to bring action to enforce the policy terms. The court went on to disagree with the remainder of the district court holding, stating it was not relevant which party paid the policy premiums in determining Travelers liability. The court also discarded the finding that the special marine policy was unauthorized since Estee Lauder did not make a written request for the policy as required in the open cargo policy. The court deemed the requirement merely a policy condition and that Travelers had waived this condition by accepting the policy premiums. Based on these findings the district court was reversed and Travelers was held to be bound to the special marine policy that World Wide issued for Estee Lauder.

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QUINTERO v. KLAVENESS SHIP LINES
United States Court of Appeals, Fifth Circuit, 16 October 1990
914 F.2d 717

A district court may enjoin further relitigation of a choice-of-law determination made pursuant to its forum non conveniens dismissal of a seaman's personal injury.

FACTS: A Filipino sailor, Rosauro Quintero (Quintero), was injured while unloading a Liberian-registered, Norwegian-owned ship, the M/V Barwa, docked in the port of New Orleans. In September 1986, Quintero filed suit against Torvals Klaveness & Co. A/S (Klaveness), who managed the vessel, in the Eastern District of Louisiana seeking damages for his injury. In July 1987, Quintero filed a parallel suit for the same injuries in Louisiana state court, later including in his petition the four Norwegian interests (A/S Otra; Harald Moller Investment A/S; Galva Limited A/S; and Gorrissen and Klaveness A/S henceforth referred to as the "Barwa interests") who owned the vessel. In April 1988, a federal court issued a final judgment dismissing Quintero's suit under the doctrine of *forum non conveniens*. The Court of Appeals for the Fifth Circuit vacated the district court judgment and remanded the case instructing the district court to reconsider its decision under the doctrine established in *In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 821 F.2d 1147 (5th Cir. 1987), *certiorari granted and judgment vacated, Pan American World Airways, Inc. v. Lopez*, 490 U.S. 1032 (1989), *on remand to, In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 883 F.2d 17 (5th Cir. 1989).

After remand Quintero was denied a motion dismissing his federal suit. The district court granted Klaveness's motion to dismiss for *forum non conveniens* with prejudice after determining that Philippine law should govern the controversy, and further granted Klaveness's request for an injunction preventing Quintero from relitigating the choice-of-law issues in state court. Quintero appealed to the Fifth Circuit claiming that the district court had abused its discretion by enjoining him from relitigating in state court, in dismissing the claim with prejudice on *forum non conveniens*, in not granting his motion for voluntary dismissal, and additionally, for refusing to compel Klaveness to answer interrogatories dealing with the choice-of-law issue. Quintero also claimed the district court had erred in deciding that Philippine law should govern and in making the choice-of-law determination prior to dismissal for *forum non conveniens*.

ISSUES: (1) Whether a district court in a maritime case may enjoin further relitigation in state court of a choice-of-law issue?

(2) Whether the district court committed error in granting a motion to dismiss for *forum non conveniens*, with

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