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FEDERAL PROCEDURE—JURIES—RIGHT TO JURY TRIAL IN ACTIONS ON NATIONAL SERVICE LIFE INSURANCE POLICY CLAIMS—Plaintiff brought an action against the United States on a National Service Life Insurance policy in a federal district court.¹ Timely demand for trial by jury was made in accordance with Federal Rule 38.² *Held*, the plaintiff was entitled to a trial by jury. That section of the Judicial Code which reenacts the Tucker Act and denies jury trials in contract actions against the United States³ is not applicable to National

¹ Such suits are authorized in the “. . . event of disagreement as to any claim . . .” by 60 Stat. L. 788, §14, 38 U.S.C. (1946) §817.

² “The right of trial by jury . . . shall be preserved to the parties inviolate.” Fed. Rules Civ. Proc., rule 38.

³ 62 Stat. L. 971 (1948), 28 U.S.C. (Supp. IV, 1951) §2402.

Service Life Insurance claims. *Williams v. United States*, (D.C. Tex. 1951) 95 F. Supp. 672.

Although it is universally recognized that suits on World War I War Risk Insurance or World War II National Service Life Insurance policies⁴ are actions at "law,"⁵ it is equally recognized that since these suits are against the United States, the constitutional guarantee of a jury trial⁶ is not applicable.⁷ Rather, being sovereign, the United States may prescribe by statute the exact manner in which it may be sued.⁸ These procedures will then determine the precise jurisdiction of the court which hears the action.⁹ Normally, jurisdiction of the district courts to hear contract actions against the United States is governed by the Tucker Act,¹⁰ one section of which specifically denies the right of jury trial.¹¹ However, whether Congress intended to extend this section of the Tucker Act to War Risk suits has caused a good deal of difficulty. Actually, jurisdiction of the district courts to hear War Risk claims is conferred by a special statute,¹² and not by the general jurisdictional provisions of the Tucker Act. However, this statute as originally passed provided that ". . . the procedure in [War Risk] suits shall . . . be the same . . ." as that provided in the Tucker Act.¹³ Accordingly, it was universally acknowledged that trial by jury in these suits was denied.¹⁴ However, within a year, this special jurisdictional statute was amended to state that ". . . the procedure in [War Risk] suits shall be the same as that provided in sections 5, 6, . . . and 10 [of the Tucker Act] so far as applicable."¹⁵ Since none of these sections include the jury trial prohibition, most courts held that the intention of Congress to permit jury trials had been manifested.¹⁶ A congressional committee report accompanying the amend-

⁴ An action on a National Service Life Insurance policy is governed by the same conditions and limitations as those applicable to a War Risk policy. 60 Stat. L. 788, §14, 38 U.S.C. (1946) §817.

⁵ *Whitney v. United States*, (9th Cir. 1925) 8 F. (2d) 476. See cases collected at 147 A.L.R. 1228, annotation 12.

⁶ "In suits at common law . . . the right of trial by jury shall be preserved. . . ." U.S. Const., Amend. VII.

⁷ *Galloway v. United States*, 319 U.S. 372 at 388, 63 S.Ct. 1077 (1943). 5 MOORE, FEDERAL PRACTICE 233 (1951).

⁸ *Galloway v. United States*, supra note 7; *United States v. Sherwood*, 312 U.S. 584, 61 S.Ct. 767 (1943). 1A OHLINGER, FEDERAL PRACTICE 231 (1938).

⁹ See note 8.

¹⁰ 28 U.S.C. (Supp. IV, 1951) §§1346, 2402.

¹¹ *Id.*, §2402.

¹² 43 Stat. L. 612 (1924), as amended, 38 U.S.C. (1946) §445. This same statute governs National Service Life Insurance policies, supra note 4.

¹³ 43 Stat. L. 612 at 613.

¹⁴ *Galloway v. United States*, supra note 7; *Hacker v. United States*, (5th Cir. 1927) 16 F. (2d) 702.

¹⁵ 43 Stat. L. 1302 (1925), 38 U.S.C. (1946) §445. Section 5 is now 28 U.S.C. (Supp. IV, 1951) §1402; section 6 is now 28 U.S.C. §507, and in part is found in Fed. Rules Civ. Proc., rules 4(d), 12(a), and 55(e); section 10 is now 28 U.S.C. §2411.

¹⁶ *Galloway v. United States*, supra note 7; 5 MOORE, FEDERAL PRACTICE 142-143 and cases collected at note 2. All of the pertinent sections of the Tucker Act, the original

ment supports this view.¹⁷ Further, this reasoning is in accord with the generally accepted proposition that where the sovereign waives its immunity without specifically defining procedure, it subjects itself to the normal procedural rules of the forum which hears the case.¹⁸ Accepting this position, the principal case further logically reasons that the Tucker Act did not gain new application to War Risk Insurance cases merely by its re-enactment into the new Judicial Code.¹⁹ On the other hand, the few cases opposed to the majority view usually rest on the general applicability of the Tucker Act jury trial prohibition to all contract actions against the government;²⁰ or on the words of section 10 of the Tucker Act, which was specifically carried forward by the amendment.²¹ Since this action required the United States attorney defending the War Risk action to transmit to the Attorney-General ". . . the specific findings by the court of the facts therein . . ." (emphasis added), it was reasoned that a trial by the judge was still required.²² Such reasoning seems overly technical, and probably disregards the actual intent of Congress.²³ Nonetheless, these dissents are forceful in questioning the actual value of jury trials, particularly in suits against the government.²⁴ Persuasive arguments have been presented that jury trials are expensive, dilatory, and anachronistic,²⁵ and ought not be furthered except where constitutionally required.²⁶ Accordingly, specific congressional action abolishing them in War Risk suits would not only clarify an existing confused situation, but might well tend toward a more efficient administration of justice.

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jurisdictional statute, and the amendment are collected and discussed in *Whitney v. United States*, supra note 5. See also *Hacker v. United States*, supra note 14.

¹⁷ H.R. 1518, 68th Cong., 2d sess. (1925).

¹⁸ Thus, jury trials in law actions in the district courts would be permitted. *Law v. United States*, 266 U.S. 494, 45 S.Ct. 175 (1925).

¹⁹ Principal case at 674.

²⁰ *Burke v. United States*, (D.C. Pa. 1948) 85 F. Supp. 93 at 98, *affd.* (3d Cir. 1949) 176 F. (2d) 438.

²¹ *Allen v. United States*, (D.C. Tex. 1926) 10 F. (2d) 807. The principal case rejects the reasoning of both this case and the *Burke* case, supra note 20.

²² *Ibid.* In the enactment of the new judicial code, the quoted words "were omitted as unnecessary and covered by section 507 of this title which provides for supervision of United States attorneys by the Attorney General." Reviser's Note, 28 U.S.C. (Supp. IV, 1951) §2411.

²³ Supra note 17. However, it should not be thought that these courts were unaware of this committee report. Rather, these decisions were reached despite the report. See *Allen v. United States*, supra note 21.

²⁴ *Allen v. United States*, supra note 21.

²⁵ In England, the jury is seldom used in civil suits, and decreasingly in criminal suits. *Skidmore v. Balt & Ohio R.R.*, (2d Cir. 1948) 167 F. (2d) 54 at 56, note 4.

²⁶ James, "Trial by Jury and the New Federal Rules of Procedure," 45 *YALE L.J.* 1022 at 1026 (1936) and authorities there cited. For a digest of the pros and cons of the value of a jury trial, see *Evaluation of the Jury*, 5 *MOORE, FEDERAL PRACTICE* 8-19 (1951).