Michigan Law Review

Volume 44 | Issue 6

1946

INSURANCE-CONSTRUCTION OF POLICY-"MILITARY OR NAVAL SERVICE" CLAUSE-"AVIATION" CLAUSE

Paul J. Keller, Jr., S.Ed.
University of Michigan Law School

INSURANCE—CONSTRUCTION OF POLICY—"MILITARY OR NAVAL SERVICE" CLAUSE—"AVIATION" CLAUSE—Plaintiffs, six minor children of deceased, were beneficiaries of a $20,000 life insurance policy issued to deceased while a member of the United States Army. Traveling under Army orders, the deceased procured a permit from the operations officer at an Army airfield in Puerto Rico for space on a regular Army transport route to another Army field in Puerto Rico. The plane crashed, killing all of its occupants. The policy issued to the deceased contained an "aviation" clause [1] and a "military service" clause,[2] under both of which the defendant insurance company rests its defense. *Held:*

[1] "Aviation. Should the death of the Insured result from operating, or riding in, any kind of aircraft, except as a fare-paying passenger in a licensed passenger aircraft operated by a licensed pilot on a regular passenger route between definitely established airports, only the reserve under this Policy shall be payable and said reserve shall be in full settlement of all claims." Principal case at 271.

[2] "Military, Naval and Air Service. The liability of the Company shall be limited to the reserve on this Policy, or to one-fifth of the amount payable hereunder on the death of the Insured, whichever is greater, if the Insured should die while enrolled in military, naval, and air service in time of war, whether declared or undeclared; or if the Insured should die as a direct or indirect result of such service, without securing a permit signed by an executive officer of the Company and paying such extra premium as the Company may fix to cover the hazard. Any indebtedness on or secured by this Policy, shall be deducted from the amount otherwise payable." Principal case at 273.

Deceased was a "fare-paying passenger" within the exception of the "aviation" clause, and the defendant waived the military service clause by issuing the policy with the knowledge that the insured was in the service at the date of the application. *Quinones v. Life & Casualty Insurance Company of Tennessee*, (La. 1945) 24 S. (2d) 270.

Following World War I there arose many cases, on life insurance and accident insurance policies, involving claims for death or double indemnity for death occurring while the insured was in the military or naval service.[3] In most cases the construction of the "military or naval" service clause was the fact in issue.[4] Two arguments were ordinarily made: (1) death was not the result of the risks associated with military or naval service, and (2) the insurer had knowledge that the insured was in the service, and therefore waived its rights under the clause. The "military service" clause was generally held to cover only those risks peculiarly related to military service, such as being killed in action or death resulting under circumstances created by war in contrast to death resulting from diseases or accidents common to civilians.[5] On the other hand, the courts were very reluctant to find a waiver of the clause on the basis of knowledge of the insurer or its agent that the insured was in the military or naval service.[6] In all cases where a waiver was found it was done for the purpose of preventing a forfeiture of the entire amount of the policy. In the principal case it is not necessary to find a waiver to avoid such a result, since this policy provides for alternative benefits.[7] The so-called "aviation" clause of present day

[3] 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 1242 et seq. (1930); 4 A.L.R. 848 (1919); 7 A.L.R. 382 (1920); 11 A.L.R. 1103 (1921); 15 A.L.R. 1280 (1921).

[4] 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 1242 p. 4540 (1930). "Provisions in insurance policies exempting the insurer from, or limiting, liability for injuries or death while the insured is in the military or naval service, if ambiguous or of doubtful meaning, will be construed against the insurer."

[5] The usual provision in insurance policies during World War I contained the phrase "engaged in military or naval service." The courts construed this phrase and other similar phrases to mean either that the exclusion pertained to death caused by risks of military or naval service, or that it pertained to the status of the insured. For discussion of the problem, see Coit v. Jefferson Standard Life Ins. Co., (Cal. App. 1945) 161 P. (2d) 812. Cases construing status of the insured: Ruddock v. Detroit Life Ins. Co., 209 Mich. 638, 177 N.W. 242 (1920); La Rue v. Insurance Co., 68 Kan. 539, 75 P. 494 (1904). Cases construing causation: Arendt v. North American Life Ins. Co., 107 Neb. 716, 187 N.W. 65 (1922); Atkinson v. Indiana National Life Ins. Co., 194 Ind. 563, 143 N.E. 629 (1924); Illinois Bankers' Life Assn. v. Davaney, 102 Okla. 302, 226 P. 101 (1924). The use of the term "enrolled," as in the principal case has been construed to refer to the status of the insured. Life & Casualty Ins. Co. v. McLeod, (Ga. App. 1943) 27 S.E. (2d) 871. *Contra*: Young v. Life & Casualty Ins. Co. of Tenn., (S.C. 1944) 29 S.E. (2d) 482.

[6] 137 A.L.R. 1280 (1942), which deals with policies already in effect before the entry of the insured into military service. In Hungerford v. Mutual Life Ins. Co., 190 Iowa 852, 180 N.W. 849 (1921), the insured's application for insurance stated that he was engaged in an occupation prohibited by the terms of the policy that was issued, and the court held that the company had waived the prohibition.

[7] In Olson v. Grand Lodge, 48 N.D. 285, 184 N.W. 7 (1921), the life insurance policy contained a provision for assuming the war risk by obtaining war permit and paying additional premium, and that in the absence of the issuance of the war

life insurance policies takes the comparative safety of modern air travel into account by excepting "fare-paying passengers" on regular commercial lines from the effect of the condition. Though there is no distinction made between military and civilian passenger routes, the import of the clause refers plainly to commercial airlines.[8] By the rule of carriers, a "fare-paying passenger" is a person who gives the price of passage or a person for whom the price has been paid to the carrier for the transportation.[9] In the application of the rule, an employee of the carrier traveling by a pass in the performance of his duties is not considered a "passenger." [10] By analogy to the rule of carriers, it is difficult to justify a ruling, as a matter of law, that military or naval personnel traveling by regular Army or Navy transport routes are within the phrase "fare-paying passengers."

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permit, the insured would receive 20 per cent of the amount of the policy. The court held that the knowledge of the insurer did not waive the military service clause. The policy in this case was in effect prior to insured's entry into military service.

[8] The court's analysis of a clause similar to that in the principal case in Hyfer v. Metropolitan Life Ins. Co., (Mass. 1945) 61 N.E. (2d) 3, indicates that all of the provisions of the clause were fulfilled, but that a radio operator on an official Army transport plane is not a "fare-paying passenger."

[9] 10 C.J. 660, § 1078.

[10] Continental Life Ins. Co. v. Newman, 219 Ala. 311, 123 S. 93 (1929); Louisville & N.R. Co. v. Stuber, (C.C.A. 6th, 1901) 108 F. 934.