

THE MEANING AND EFFECT OF MILITARY SERVICE
AND WAR EXCEPTION CLAUSES IN LIFE
INSURANCE POLICIES

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Military service and war exception clauses are not normally included in life insurance policies issued during peacetime unless they are in connection with accidental death or disability provisions inserted therein. Under the ordinary accident insurance policy, the insurer does not intend to pay in the event of accidental death due to war, hence most life insurance policies that include accidental death provisions, follow the example of the ordinary accident insurance policies and exclude from coverage death due to war or sustained while the insured is in the armed forces in time of war. Accordingly, military service and war exception clauses are added to such policies and either exclude coverage or provide reduced benefits in the event the insured dies under circumstances specified therein.

Three main types of such exceptions have been utilized in specifying just what circumstances of this nature are excepted from coverage in policies issued by various insurers. These are: (1) *military service exception* clauses, *e. g.*, "While the insured is in military or naval service," "while engaged in military or naval service," "while enrolled in such service"; (2) *result of war* clauses, *e. g.*, "resulting, directly or indirectly, wholly or partly, from . . . war or riot"; and (3) *in time of war* clauses, *e. g.*, "from having been engaged in military service in time of war," "in the event that the insured shall engage in military or naval service in time of war." An insurance contract may contain any combination of these clauses.

Numerous problems have developed from the application of these particular exceptions, a few of which are here considered. The greater part of military service and war exception clause litigation arises from the question of whether the parties intended to exclude from coverage death caused under the particular circumstances.¹ *Military service*, *result of war* and *in time of war* exception clauses will be considered in turn with this paramount

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¹ VANCE, *INSURANCE* (3rd ed.), pp. 632-4.

question in mind. Particular attention will be given to the issue "in time of war" because of its current significance.

Military Service Exception Clauses—Construction

Courts have taken two different courses in interpreting provisions in life insurance policies limiting or excepting liability on the part of the insurer during the period of military service by the insured. One line of authority holds that the intent of the parties, as expressed in the usual military exception clause, is to terminate the liability of the insurer whenever the status of the insured becomes that of a member of the armed forces.² This is commonly known as the "status" interpretation and is usually given blanket effect where there is no ambiguity in the terms of the insurance contract.

Under the second line of authority, the courts have construed the language of the military exception clause as limiting the liability of the insurer *only* when death results from some *cause* growing out of military service and not common to civilian life.³ This is commonly known as the "causal" interpretation and is followed by a minority of authorities. These two lines of authority still persist.

Status interpretation.

A good example of the application of the "status" interpretation appears in a recent New York case, *White v. New York Life Ins. Co.*⁴ In that case a policy, dated March 28th, 1944, was issued on the life of a civilian woman. Several days later, on April 1st, 1944, this woman received a commission in the Army Nurse Corps. She served in this capacity until her death on April 29th, 1945. While off duty and on her way to a dance on Saipan, the insured was murdered by three sailors. Her death was not directly attributable to military service or war. The policy was a conventional life policy carrying a rider which set out a restricted amount pay-

² *Bending v. Metropolitan Life Ins. Co.*, 74 Ohio App. 182, 58 N.E.2d 71 (1944); *Miller v. Illinois Banker's Life Assoc.*, 138 Ark. 442, 212 S.W. 310, 7 A.L.R. 378 (1919); *Ruddock v. Detroit Life Ins. Co.*, 209 Mich. 638, 177 N.W. 242 (1920).

³ *Boatwright v. American Life Ins. Co.*, 191 Iowa 253, 180 N.W. 321, 11 A.L.R. 1097 (1920); *Gorder v. Lincoln Nat. Life Ins. Co.*, 49 N.D. 192, 180 N.W. 514, 11 A.L.R. 1080 (1920); *Myli v. American Life Ins. Co.*, of Des Moines, 43 N.D. 495, 175 N.W. 631, 11 A.L.R. 1097 (1919); *Redd v. American Cent. Life Ins. Co.*, 200 Mo. App. 383, 207 S.W. 74 (Kan. City Ct. of App. 1918).

⁴ 190 F.2d 424 (5th Cir. 1951).

able if the insured met death as set forth under several conditions, *viz.*⁵

“outside the home areas, *while the insured is in the military or naval service of any country engaged in war.*”
(Italics added)

A court construing the wording of this policy might readily hold that since war was not the “proximate cause” of the insured’s death, the claimant should be allowed full recovery on the policy. In support of this construction, the claimant-beneficiary showed that the insured contracted for the insurance only four days prior to her going on active duty; that arrangements were made for the periodic payment of premiums; and that the insurer was notified by letter of the insured’s status, *i. e.*, that she was in military service and overseas. The fact that the company had been put on notice and continued to accept premiums on the policy, it was contended, indicated recognition by the company that the policy was in full force and effect.

Notwithstanding this persuasive argument, the New York court held for the insurer. The court pointed out that the company was bound to keep the policy in effect on a limited coverage basis and had the company terminated the policy, it would have been guilty of breach of contract.

To the same effect is a fairly recent Pennsylvania case⁶ which disallowed recovery even though the insured was on furlough and was killed in an automobile accident while at home. The insurance contract provided that the policy would be suspended “while the insured is in the military or naval service in time of war.” Clearly the death was not the result of war time military service, although it did occur during the excepted period.

Causal interpretation.

In *Barnett v. Merchant’s Life Ins. Co. of Des Moines*,⁷ the court applied the *causal* approach and said in effect that the phrase “engaged in military service in time of war,” in order to have a consistent and harmonious construction in connection with the general terms and scope of the insurance contract, must denote such service as would increase the hazard or risk of the insurer. Where the in-

⁵ *Id.* at 424.

⁶ *Wolford v. Equitable Life Ins. Co. of Iowa*, 162 Pa. Super. 259, 57 A.2d 581 (1948).

⁷ 87 Okla. 42, 208 Pac. 271 (1922), (insured, a marine, died of pneumonia two days after landing in France).

sured died at a place other than where there is military conflict, from a disease common alike to civilian and military life, there is no just reason to permit the insurer to escape liability for the event insured against under its primary obligation.

In accord with the *Barnett* view is the opinion in *Young v. Life & Casualty Ins. Co. of Tenn.*⁸ In this case the court noted that the view has been taken in some cases that a provision limiting liability of the insurer while the insured is "engaged" in military service means death while doing or taking part in some military activity, and that the parties intended that liability should relate to death resulting from some act connected with the service in contradistinction to a period of time when the insured was in such service. The court thereupon held the exception would reduce insurer's liability only if death should result from risk peculiar to military service and that the clause cannot reasonably refer to insured's status as a soldier.

Questions arising under military service exception clauses are of increasing importance in light of the recent war and the current Korean hostilities. Since ambiguous terms in an insurance policy are generally construed in favor of the insured and since juries are likely to find against the insurer, it is of extreme importance that insurance companies re-word their policies to express emphatically their intention. There is no reason why these clauses could not be plainly worded so as to adopt either the "status" or the "causal" meaning, and thus obviate needless litigation.

In cases interpreting "military service exception" clauses as applying solely to the cause of death and in those involving the phrase "result of war," the question arises as to just when is death the result of military service or of war? It is simple to lay down a rule which specifies that military service or war death is one that is normally a result of military service or war and not common to everyday life. A rule of this sort is of little help when a situation arises in which elements of both are involved. This leads to a consideration of the second problem.

Result of War Clauses—Causation

In *Grimes v. New York Life Ins. Co.*,⁹ a civilian engineer was killed when traveling between Army bases on his way to an assigned post. The engineer had been furnished to the Navy by a private corporation and was assigned to a post with the Navy. Death came

⁸ 204 S.C. 386, 29 S.E. 2d 482 (1944).

⁹ 84 F.Supp. 989 (E.D. Pa. 1949).

to the engineer when the military plane in which he was riding crashed into a mountain. An issue was raised as to whether the engineer's death was a "result of war" so as to limit recovery on a life insurance policy to paid premiums and interest. This was held to be a jury question.

In *New England Mut. Life Ins. Co. v. Gillette*,¹⁰ the insured was killed in an airplane crash near Lisbon, Portugal, during World War II while traveling on an assignment for the Office of Civilian Defense. In this case, L. Hand, J., pointed out that the "result of war" provision cannot be considered to cover all deaths which would not have happened had there been no war. The line must be drawn some place between immediate death by enemy action and death as a remote result of war, in the sense that war was merely one of the conditions *sine qua non* to its happening. The insured did not die as an immediate result of enemy action, and it is certainly an issue of material fact whether the circumstances of his death falls on one side or the other of the line. The court went on to cancel the policy on other grounds.

It appears from the cases that where a court takes the *causal* interpretation of war clauses, it will require the insurer to pay only the reduced amount provided for in the policy if the insured met his death in combat or otherwise from a cause clearly related to and resulting from his service.¹¹ If a question arises as to whether the insured's death was a result of war, the question will be a question of fact for a jury to decide.

Most phases of the two preceding questions have been discussed by many writers,¹² but little attention has been paid to the third question which involves the problem of when a state of war exists so as to make the "war clause" operative.

In Time of War—or Result of War Clauses.

When Is There a War?

The interpretation of the terms "in time of war," "result of war" and "country engaged in war," as employed in war exception

¹⁰ 171 F.2d 500 (2d Cir. 1948).

¹¹ *Bradshaw v. Farmers and Bankers Life Ins. Co.*, 107 Kan. 681, 193 Pac. 332, 11 A.L.R. 1091 (1920); *accord*, *Nowlan v. Guardian Life Ins. Co. of Amer.*, 88 W. Va. 563, 107 S.E. 177 (1921) (draftee, killed in action, is engaged in military service and the restriction does not apply solely to one who enlists). See, also, VANCE, INSURANCE (3rd ed.), pp. 632, 637.

¹² 3 ARK. L. REV. 475 (1949); 17 FORD L. REV. 63 (1948); 44 MICH. L. REV. 1150 (1946); 32 MINN. L. REV. 74 (1947); 23 ST. JOHN'S L. REV. 149 (1948); 5 WASH. & LEE L. REV. 249 (1948); 56 YALE L. J. 746 (1947); and VANCE, INSURANCE (3rd ed.), pp. 632-640.

clauses of life insurance policies, where loss of life has occurred in periods when factually this country has appeared to be at war but before any formal declaration of war has been made, is a problem which raises the question of what is meant by "war." At the present time when fighting is going on in Korea without a formal declaration of war and in which this country is expending more and more lives, it becomes of vital interest to both insurance companies and insureds to know just what stand courts will take on policies carrying "war exception" clauses.

There has always been a time lapse between the cessation of hostilities and the formal recognition thereof. Moreover, actual war operations have become more and more frequent before there has been a formal declaration of war.

Probably the most pertinent case of note which involved the particular point of whether a "war clause" limitation was operative and wherein the court had to define "war" is that of *Vanderbilt v. Travelers' Ins. Co.*¹³ That case held that the insurance company was not liable on a policy which expressly provided that it did not cover death resulting directly or indirectly or wholly or partly from war. The insured was a passenger aboard the *Lusitania*, a British steamer which was sunk by a German submarine while a state of war existed between Germany and Great Britain. The insured was an American citizen. The court in denying recovery held that "war" is every contention by force between two nations under authority of their respective governments. It is not difficult to reconcile this decision with justice, as it seems to reach an eminently fair result in light of the language used in the policy.

It is no more difficult to uphold a ruling in favor of the insurer where the claimant was suing on a policy carrying a "war clause" for a death caused prior to our entry into World War II by the sinking by a German submarine of an American destroyer.¹⁴ The destroyer was shepherding a convoy which was transporting "lend-lease" war materials to Britain and her allies. At the time of the torpedoing the United States was theoretically a neutral country. Notwithstanding our neutrality, which was questionable, the court held that the sinking by submarines of ships belonging to a belligerent nation or of ships of another nation convoying war

¹³ 112 Misc. 248, 184 N. Y. Supp. 54 (Sup. Ct. 1920).

¹⁴ *Stankus v. New York Life Ins. Co.*, 312 Mass. 366, 44 N.E.2d 687 (1942).

materials and supplies to a belligerent nation is the usual result of "waging war" by one nation against another. This, too, appears to be a sound and logical view of the factual components of a "shooting war."

From the two preceding cases it would appear that the law had taken a definite trend and insurance companies could rely on the insulation afforded by their "war clauses." But Pearl Harbor was attacked on December 7, 1941, and cases arising out of this incident have shattered any complacency insurance companies may have been enjoying prior to that date. Directly out of the attack on Pearl Harbor five cases arose which hinged on the issue of whether the period from the time of the attack until the following day, December 8, 1941, when Congress formally declared war, constituted a period of war so as to make "war clause" provisions operative to limit the insurer's liability. Four of these five cases held that "war" in its *legalistic* sense did not take effect until the time when Congress made a formal declaration of war;¹⁵ the fifth held that war existed from the time of the initial Japanese attack.¹⁶

In *Pang v. Sun Life Assurance Co.*¹⁷ the court pointed out that the Japanese bombing of the *U. S. S. Panay* in China four years before Pearl Harbor, like the depredations of the bandit Villa with their ensuing incidents, did not subsequently lead to war. Thereon the court reasoned that war did not exist until Congress and the President confirmed and stated officially on December 8 that a state of war existed.

In *New York Life Ins. Co. v. Bennion*,¹⁸ which held contra to the *Pang* case, the court reasoned that when one sovereign nation attacks another and the latter resists attack, war in the fair sense of the word exists, and the courts are not required to wait on formalities before recognition of the fact. A formal declaration by Congress was not essential to determine that a state of war commenced with the attack on Pearl Harbor.

¹⁵ *Pang v. Sun Life Assur. Co. of Canada*, 37 Hawaii 208 (1945); *Savage v. Sun Life Assur. Co. of Canada*, 57 F. Supp. 620 (W.D.La. 1944) (death did not result from "war or any act incident thereto"); *Rosenau v. Idaho Mut. Ben. Ass'n*, 65 Idaho 408, 145 P.2d 227 (1944) (not military service of any country at war); *West v. Palmetto State Life Ins. Co.*, 202 S. C. 422, 25 S.E.2d 475 (1943) (not in time of war).

¹⁶ *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (10th Cir. 1946), cert. denied 331 U. S. 811 (1947), rehearing denied 331 U. S. 867 (1947).

¹⁷ See note 15, *supra*.

¹⁸ See note 16, *supra*.

Immediately after World War II there came an interim when no actual full-scale war was in progress, and still there was no formal treaty of peace. Out of this period came a case where the *legalistic* approach worked against the insured. In *Stinson v. New York Life Ins. Co.*,¹⁹ the plaintiff as beneficiary of an insurance policy brought suit to recover the face amount of a policy which contained a provision limiting the liability of the insurance company to a restricted amount if the death of the insured occurred outside the "home areas" while in the military or naval forces "of any country engaged in war." The insured, a major in the Quartermaster Corps of the United States Army, died instantly in a fall from a window of a hotel in Reims, France, on October 2, 1945. The defendant's motion for summary judgment was granted.

The term "engaged in war" as used in this policy, it was held, does not count merely the actual exercise of hostile forces between nations, but refers to the status of war or peace as determined by the political branches of government. It was not until December 31, 1946, that the President declared hostilities to be ended, therefore the United States continued to be in a *legal state of war* at the time of the accident.

The United States is now engaged in a United Nations police action of questionable status. Cases can be expected to appear in the near future involving the interpretation and effect of war clauses under the existing situation. With the advent of the legalistic interpretation of such clauses came a significant change in the outlook for insurance companies. This is indicated by two recent decisions of a Superior Court of Pennsylvania.

In *Harding v. Pennsylvania Mutual Life Ins. Co.*,²⁰ the insured was killed in a railroad accident in route to camp for military training, and the plaintiff claimed double indemnity under a policy which provided in part as follows:²¹

"Termination:—These provisions for the Accidental Death Benefit shall immediately terminate: . . .

(b) if the Insured shall at any time, voluntarily or involuntarily, engage *in military, air, or naval service in time of war*; . . ." (Italics added).

¹⁹ 167 F.2d 233 (D.C. Cir. 1948).

²⁰ 171 Pa. Super. 236, 90 A.2d 589 (1952).

²¹ *Id.*, at 590.

The appellate court, in allowing recovery on the double indemnity provision, reasoned that the term "war" in the double indemnity clause was susceptible to more than one construction. It was ambiguous in that it failed to distinguish between declared and undeclared war, and therefore the term should be construed in favor of the insured.

In *Beley v. Pennsylvania Mut. Life Ins. Co.*,²² decided immediately after the *Harding* case, the court reaffirmed its holding in the earlier case. However, the facts were somewhat different. In the *Beley* case the insured was recalled into the Army in October 1950; he was subsequently killed in action in Korea in March 1951; the policy included a double indemnity clause for accidental death; the policy provided *inter alia* that:²³

"In the event that the Insured engages in military or naval service *in time of war*, the liability of the company shall be limited to the return of the premiums paid . . . , unless the Insured shall have previously secured from the Company a permit to engage in such service . . .

"Risks Not Assumed:—The company shall not be liable for the additional Accidental Death Benefit specified above if said death shall result by reason of any of the following:
(d) Military . . . *service in time of war.*" (Italics added.)

The Superior Court in holding for the plaintiff said the claimant could recover under the principal insuring clause and also under the double indemnity provision notwithstanding the fact that the insured was killed in action in Korea while in the Army. The result was reached in a state which takes the "status" view in interpreting "military service" exception clauses.²⁴ The court distinguished an earlier decision rendered by it by saying:²⁵

"The Wolford case, [162 Pa. Super. 259, 57 A.2d 581 1948] . . . while recognized as authority for holding that 'status' and not 'character of service' is the test of termination of the double indemnity feature, is not controlling here, for there the fact that the insured met death 'in time of war' was not questioned. Here it is seriously questioned. In fact, the case turns on what the parties intended by the word 'war'."

²² 171 Pa. Super. 253, 90 A.2d 597 (1952).

²³ *Id.* at 598.

²⁴ See note 6, *supra*.

²⁵ Case cited *supra* note 20, quoted from 90 A.2d at 591.

Imagine the vast effect on the resources of insurance companies whose policies carry simple "war clauses" which a decision such as this may have if followed in sufficient numbers. At the time of this writing there have been over 123,000 American casualties in Korea. Of these casualties, 21,741 have been killed; 10,793 remain missing and unaccounted for; and a force of approximately 525,000 Americans remain engaged in hostilities. There is an ever present possibility of the scope of the war being enlarged with little prospect of a cessation of hostilities in the near future.

Conclusion

Military service and war exception clauses are not against public policy. It is a widely recognized right of an insurance company to choose and to limit the kinds of risks it is willing to assume. As has been shown, the advent of the legalistic interpretation of establishing the time when a "war clause" can become operative have worked both for and against the insurer.

Today we are engaged in a United Nations policing action which has the length, breadth and scope of a full scale war. If the few jurisdictions which have taken the legalistic view of "war clauses" stand by this approach and multiply their numbers to a considerable extent, when more and more cases of this nature find their way into their courts, it is inevitable that insurance companies are going to suffer and be forced to alter their policy provisions. Insurance companies can and will revise their actuarial tables to include the added risks which may be forced on them in greater numbers than heretofore anticipated.

It is submitted that the problems involved in this particular phase of the law may well result in: (1) new provisions in life insurance policies; (2) legislation defining war and regulating these new provisions; (3) legislation designed to avert a severe strain on insurance companies; and (4) an increasing number of jurisdictions recognizing the Korean hostilities as an actual "war." Again it is emphasized that, since ambiguous terms in an insurance policy are generally construed in favor of the insured and since juries tend to find against the insurer, it is of extreme importance that insurance companies clearly express their intention in the wording of military service and war exception clauses in the policies they issue.