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NOTES

LIFE INSURANCE — MILITARY SERVICE — MILITARY EXCLUSION CLAUSES AND DEATH FROM NONMILITARY CAUSES

Introduction

Life insurance premium rates find their justification in fatality experience, within defined areas of coverage. The premium rate represents the culmination of a statistical and mathematical process by which a calculated income safely but reasonably exceeds administrative cost and foreseeable payments. Implicit in this prediction is the exclusion of areas where the risk is so unpredictable as to negate the possibility of the normal statistical accuracy. The war risk or military exclusion clause seeks to avoid such a risk in that it represents an awareness on the part of insurance companies of the hazards inherent in military service, particularly in time of war.

Military exclusion clauses were used as long ago as the Civil War where extra premiums were charged on the basis of proximity to the war zone.¹ World War I brought into existence the modern types of military exclusion clauses. The exclusion clause as it was developed during these wars sought to protect the insurance companies from the added risk of death due to war, which the companies in their actuarial planning, on the basis of normal experience, had not taken into consideration.² Some companies have not limited their exclusion clauses to war time but have made military service, regardless of whether in time of war or peace, the criterion of the clause.³ The change has occurred as a result of cold, limited or undeclared, war, where deaths often occur as a result of military causes but are not excluded under the war clause. However, the insured while in military service is not without life insurance protection; various government legislation has been enacted, the most recent example being the National Service Life Insurance Act of 1958.⁴

An increasingly important problem area is the applicability of war or military exclusion clauses when the insured, while in the military service, is killed from causes not peculiar to the military service, but equally likely to occur in civilian life. Cases in this area often arise when the insured dies as a result of disease, or from ordinary accidents while on furlough. Analytically, this is an ordinary risk the insurance companies are being paid to assume, but often the exclusion clause is so worded that it denies coverage. The scope of this note is a re-examination of the case law on the liability of the insurer under various military service exemption clauses where the death has resulted from a risk not peculiar to, or characteristic of, military service.

The purpose is more than to describe the particular areas of conflict. Some attempt at a synthesis of judicial attitudes towards the clauses will be made, with a view toward discarding the rationalization of conflicting results by recourse to the particular language of the individual clauses.

General Rules Of Interpretation

The validity of a war or military exclusion clause is universally recognized

1 KRUEGER AND WAGGONER, *THE LIFE INSURANCE POLICY CONTRACT* § 18.3 (1953).

2 Insurance companies cannot afford to insure war risks at peace-time rates. Such a practice would discriminate unjustly against policy holders not engaging in military service, would be indefensible as a business policy, and ought not to be permitted on grounds of public policy. *Lofstead v. Bank Savings Life Ins. Co.*, 118 Kan. 95, 234 Pac. 50, 52 (1925).

3 See uniform military exclusion clause of the state of New York, N.Y. INS. LAW § 155(2)(b) (Supp. 1960); *Report of the War Clause Subcommittee of the Life Committee*, 1952 PROCEEDINGS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 106; *Miller v. Illinois Bankers' Life Ass'n.*, 138 Ark. 442, 212 S.W. 310 (1919); *O'Daniell v. Missouri Ins. Co.*, 24 Ill. App. 2d 10, 164 N.E.2d 78 (1959).

4 38 U.S.C. §§ 701-788 (1958), which provides life insurance of up to \$10,000 for members of the military service.

and has been declared not contrary to public policy.⁵ They are either expressly permitted by statute,⁶ or their validity is founded on common law freedom to contract.⁷

Military exclusion clauses vary considerably from one company to another, which is unusual for a clause used so frequently. The entry of the insured into the military service may relieve the insurer of a double indemnity provision, limit the amount payable to the legal reserve of the policy, or the cash surrender value, or the return of the premiums paid, or the policy may be suspended during such service. In interpreting the various clauses the principal issue is usually whether the clause is of the status type, where the entry into the service is sufficient to limit the liability of the insurer, or whether it is a result clause, which demands a causal relationship between the fact of war or service and the death of the insured.

The courts, when interpreting military exclusion clauses, apply the same rules of construction as they would to any other clause of an insurance contract.⁸ Primarily it must be remembered that the intention of the parties is controlling, but if this intention appears ambiguous then it will be resolved against the insurer as the maker of the instrument. However, this does not allow a rewriting of the contract under the guise of legal construction. Certain terms in military exclusion clauses have been found susceptible of ambiguity: words such as "engaged," "risk," "resulting from," "in consequence of," and "active service."⁹ Policies have also been held ambiguous on the basis of either another military clause, an aviation clause, or some other clause in the policy.¹⁰ Furthermore, clauses providing for forfeitures upon entry into military service are not favored.¹¹ Words in a life insurance policy are to be given their commonly accepted meaning,¹² although there is some precedent holding that the terms in such a clause should be given their technical meaning.¹³

Status Clauses

Status clauses preclude the liability of the insurer upon a finding that the insured at the time of his death was within the defined area of exemption. The insurer under a broad status clause is immune during the entire period the insured is in the military service regardless of the cause of the insured's death. Some of the clauses are less inclusive, as where the insurance company is protected when the death occurs outside the home area while the insured is in the military service.

Generally, an insured will be considered to be in the military service once he has passed the required examinations, taken his oath, been enrolled, and has

5 *Trimble v. Western & Southern Life Ins. Co.*, 83 Ohio App. 102, 82 N.E.2d 548 (1948); *Jorgenson v. Metropolitan Life Ins. Co.*, 136 N.J.L. 148, 55 A.2d 2 (1947); *Selenack v. Prudential Ins. Co.*, 160 Pa. Super. 242, 50 A.2d 736 (1947).

6 See, e.g., ILL. STAT. ANN. ch. 73 § 836(1)(c) (Supp. 1959); N.Y. INS. LAW § 155 (2)(a)-(c) (Supp. 1960); TEX. INS. CODE ANN. art. 3.44 (1952).

7 Freedom of contract seems to necessarily involve the right of the insurer to determine and specify the risks against which it is willing to insure another. The freedom of the insured is protected by his right to accept or reject the offered contract. *Badanjak v. Metropolitan Life Ins. Co.*, Pa. D. & C. 559, 572 (1944).

8 *Caruso v. John Hancock Mut. Life Ins. Co.*, 25 N.J. Misc. 318, 53 A.2d 222 (1947), *aff'd*, 136 N.J.L. 597, 57 A.2d 359 (1948).

9 See *Bending v. Metropolitan Life Ins. Co.*, 74 Ohio App. 182, 58 N.E.2d 71 (1944).

10 See Annot., 36 A.L.R.2d 1018, 1066-70 (1954).

11 *Jorgenson v. Metropolitan Life Ins. Co.*, 136 N.J.L. 148, 55 A.2d 2, 4 (1947).

12 *Saladino v. Prudential Ins. Co.*, 188 Misc. 601, 68 N.Y.S.2d 35, *appeal dismissed without opinion* (App. Div.), 70 N.Y.S.2d 577 (1946).

13 *Beley v. Pennsylvania Mut. Life Ins. Co.*, 373 Pa. 231, 95 A.2d 202 (1953); *Rosenau v. Idaho Mut. Benefit Ass'n*, 65 Idaho 408, 145 P.2d 227 (1944).

subjected himself to the orders of the military.¹⁴ Where "active service" is required, rather than just "service," the language has been interpreted to mean active duty before the enemy and hence does not include training periods.¹⁵ On the other hand, a person is in the military service until he is discharged; this includes furloughs and other time away from actual duty.¹⁶

Status clauses usually contain some form of the phrase "while in military or naval service" and usually an added limitation, "in time of war" or "of any country engaged in war." As mentioned earlier, the advent of "cold" or undeclared war has caused many companies to drop this war reservation. The following illustrative cases involve status clauses where the insured's death resulted from causes not peculiar to military service and the clauses in question were found to be unambiguous in their delimitation of coverage.

In *Trimble v. Western and Southern Life Ins. Co.*,¹⁷ the insured while in military service but on furlough was killed in an automobile accident. The policy provided for an accidental death benefit which would not apply where the fatal injuries "are sustained while the insured is in the military or naval service in time of war."¹⁸

In *Life & Cas. Ins. Co. v. McLeod*,¹⁹ the policy provided:

The insured may serve in the navy or army of the United States or in the National Guard in time of peace or for the purpose of maintaining order in case of riot; in time of actual war, however, a written permit must be obtained from the company for such service and an extra premium paid. Should the insured die while enrolled in such service in war time without such permit, the company's liability will be restricted to the net reserve of this policy.²⁰

The insured when he entered the Navy did not obtain the required permit, and while on leave was stabbed to death in a fight. The court reasoned:

While (the insured) may not have been subject to the hazards of naval service while on leave, his status as a sailor remained unchanged; and under the express provisions of the policy, his status is made the ground for the restriction of liability of the company, and not the risks or hazard of the insured at the time of his death.²¹

In *Miller v. Illinois Bankers' Life Ass'n*,²² the insured's death resulted from pneumonia while he was stationed at an Army camp in the United States. The court held applicable a clause which provided:

This policy shall be incontestable two years from its date, except for nonpayment of premium calls or death while engaged in, or caused by violation of the law or while in the service of the army or navy of any government, which is not a risk covered at any time during continuance or reinstatement of this policy, for any greater sum than the amount actually paid to the association thereon.²³

Feick v. Prudential Ins. Co.,²⁴ represents one of the broadest extensions of the status clause exemption. There the insured, who was a 17-year-old college student enrolled in the Navy V-12 program, suffered fatal injuries in an automo-

14 *Feick v. Prudential Ins. Co.*, 1 N.J. Super. 88, 62 A.2d 485 (1948); *Bending v. Metropolitan Life Ins. Co.*, 74 Ohio App. 182, 58 N.E.2d 71 (1944); *Ruddock v. Detroit Life Ins. Co.*, 209 Mich. 638, 177 N.W. 242 (1920).

15 In *Redd v. American Cent. Life Ins. Co.*, 200 Mo. App. 383, 207 S.W. 74 (1918), it was held that death of insured from pneumonia while at a training camp was not death in "active service."

16 "One is in the military service from the time he takes the oath until he receives his discharge, honorable or otherwise, and the courts have uniformly so held." *Bending v. Metropolitan Life Ins. Co.*, 74 Ohio App. 182, 58 N.E.2d 71, 75 (1944).

17 83 Ohio App. 102, 82 N.E.2d 548 (1948).

18 *Id.* at 550.

19 70 Ga. App. 181, 27 S.E.2d 871 (1943).

20 *Id.* at 872.

21 *Id.* at 876.

22 138 Ark. 442, 212 S.W. 310 (1919).

23 *Ibid.*

24 1 N.J. Super. 88, 62 A.2d 485 (1948).

bile accident while on furlough. The court held that the insured had the status of one in the Navy under an exclusion clause which denied accidental death benefits "if death results from any cause while the insured is in the Military or Naval Forces."²⁵ In speaking of this clause the court said: "It would be difficult to express more clearly that the cause of death is immaterial to the question of liability."²⁶

A recent case in which a status clause was held to preclude double indemnity benefits was *O'Daniell v. Missouri Ins. Co.*,²⁷ decided by the Appellate Court of Illinois for the Fourth District on November 3, 1959. In that case the insured, serving in the Army, died as a result of injuries sustained in an automobile accident while he was on furlough. Clause (2) under "Exceptions" in the policy provided:

There shall be no liability on the part of the company under the double indemnity benefit of the policy if the death of the insured results from suicide while sane or insane or from submarine diving or aeronautic operations as a passenger or otherwise, or while the insured is in military or naval service of any country, or if any pre-existing ailment or disease contributes with the bodily injury to cause the insured's death. (Emphasis added.)²⁸

The main thrust of the plaintiff's argument was:

The whole idea of military exclusion is because of the greater risk to life resulting from such service. The words "if the death of the insured results from" surely have meaning in this clause of one sentence, which meaning is that if the death results from military service there is no double indemnity. At least, can defendant say that such words are not susceptible of such construction? . . . or at least render it ambiguous in that respect?²⁹

The plaintiff argued that even if the court would not construe the clause as one of result, the clause was at least ambiguous, and ambiguities are to be resolved in favor of the insured. The court in rejecting this argument said: "This phrase cannot be attached to the preposition, 'from,' because there is no such English construction as this: 'results from while in military service.'"³⁰ The court, after a review of precedent, held the clause to be one of status, which afforded immunity to the insurer for the entire length of the military service.³¹

The principal justification for the use of status clauses is the difficulty in determining the manner or cause of death of the insured, particularly in time of war or when the death occurs in a foreign country.³² Nonliability flows from a status clause when there is proof that the insured was in the military. The nature of the cause of death is not material, whereas under a result clause it would be. A supporting argument in the favor of status clauses is drawn from freedom of contract. The situation *envisualized* is one wherein the insured bargains for an area of coverage and insurance companies adjust their price accordingly. One case went so far as to state, "That the conditions may be harsh does not affect the rule, as no one is compelled to deal with the insurers on the basis of such conditions."³³

A contrary argument has been advanced on the contractual notion of failure of consideration. According to this theory, if the insurance company is accepting a premium for coverage and at the same time denying this coverage while the insured is in the military service, there is a lack of consideration on the part of

25 *Id.* at 486.

26 *Ibid.*

27 24 Ill. App. 2d 10, 164 N.E.2d 78 (1959).

28 *Id.* at 79.

29 Brief for Appellee, pp. 2, 4, on file in the Notre Dame Law Library.

30 *O'Daniell v. Missouri Ins. Co.*, 24 Ill. App. 2d 10, 164 N.E.2d 78, 79 (1959).

31 *But see* *Edwards v. Life & Cas. Ins. Co.*, 210 La. 1024, 29 So. 2d 50 (1946); *Benham v. American Cent. Life Ins. Co.*, 140 Ark. 612, 217 S.W. 462 (1920).

32 VANCE, *INSURANCE* § 101, at 638 (3d ed. 1951).

33 *Hatch v. Turner*, 145 Tex. 17, 193 S.W.2d 668, 669 (1946). Such a distinction seems to be a little far from the truth as few purchasers of insurance ever go "clause shopping."

the company. In *Koplovitz v. New York Life Ins. Co.*,³⁴ the court held there was no failure of consideration where the exemption was a result clause since there was coverage for nonmilitary risks. The court expressly left open the question of whether there would be a failure of consideration if the clause had been one of status. However, this argument was rejected in *Metropolitan Life Ins. Co. v. Stagg*,³⁵ where the court reasoned that the cash reserve which was accumulating, together with the continued availability of life insurance after the insured's discharge, was sufficient consideration.

Result Clauses

The insured's immunity under a result clause is dependent upon a finding of causal relation between the event within the described area of exemption and the death of the insured. Usually the sole question in these cases is whether the insured did in fact die from causes peculiar to the military service. The essential feature of these clauses, so far as the subject matter of this note is concerned, is that deaths due to nonmilitary causes, such as from diseases or while on furlough, are not excluded under policies incorporating these clauses. When death has occurred from military causes there is no material difference between a status clause and a result clause.

Where the courts have decided that a clause is one of result rather than status, there has usually been some word or phrase indicating that death due to military causes was intended. Sometimes the court was uncertain about part of the clause, and this ambiguity was resolved in favor of the beneficiaries. The typical result clause will contain such phrases as "death while engaged in war" or "as the result of engaging in" military service.

In the following cases the courts had little difficulty in determining that the clause in question was one of result, although in some, recovery was denied due to a finding that the facts constituted a sufficient causal connection between the death and the military service.

In *Arendt v. North American Life Ins. Co.*,³⁶ the exclusion read: "This policy insures the life of the insured against death occurring in any part of the world and in any occupation, or from any cause, except military or naval service. . . ."³⁷ Insured was drafted during World War I and while still in training he contracted pneumonia and died. The court held the insurer liable when it concluded that the death was not an incident of military service.

*Bologna v. New York Life Ins. Co.*³⁸ contained a war result clause which provided that double indemnity for accidental death would not be payable "if the insured's death resulted, directly or indirectly, from . . . war or any act incident thereto. . . ."³⁹ The insured was a merchant seaman during World War II, serving on a ship carrying war materials; he was killed when his ship collided with another ship loaded with gasoline. The court denied recovery; the death resulted from war activity although there was no direct conflict.⁴⁰

*Neidle v. Prudential Ins. Co.*⁴¹ was another case involving a result clause; full recovery was denied here on the ground that death resulted from military operations near the front. The exclusion barred accidental benefits only if "death resulted . . . from participating in military service."⁴² Insured, while in military

34 101 N.Y.S.2d 745 (Mun. Ct., Syracuse 1947).

35 215 Ark. 456, 221 S.W.2d 29 (1949).

36 107 Neb. 716, 187 N.W. 65 (1922).

37 *Id.* at 66.

38 40 So. 2d 48 (La. App. 1949).

39 *Id.* at 49.

40 It is interesting to note that if the clause had been one of status the insurance company would probably have been liable for the full amount of the double indemnity provision as it was debatable whether the insured was in the military service. *Id.* at 52.

41 299 N.Y. 54, 85 N.E.2d 614 (1949).

42 *Id.* at 615.

service during wartime, was killed while returning from the forward area when his jeep collided with an Army ammunition truck. It should be noted that the court expressly reserved the question of liability of insurer when death occurs while the insured is on furlough.⁴³

In *Smith v. Sovereign Camp W.O.W.*,⁴⁴ the insured was killed in an auto accident while on furlough from the Navy. The exclusion clause provided:

This benefit does not cover . . . death caused directly or indirectly, wholly or in part, by war, riot or insurrection, or any act incident thereto, either on land or water; death resulting from any . . . military or naval service. . . .⁴⁵

The court in granting full recovery said that the facts failed to show increased risk:

To hold that the terms of the policy apply where there is no connection whatsoever between the accident and the enlistment in the Army or other military service would seem to be an unfair discrimination not based on sound reason and not actually expressed in the policy. Of course, the language of the policy must be resorted to in order to ascertain its meaning or correct interpretation.⁴⁶

Status Or Result?

The previously discussed cases would seem to establish a clear line of demarcation between status and result. The distinction fades when the insurer fails to use such stock phrases as "while in the military service" or "as a result of military service." The courts in these cases have had little choice but to interpret the language as either status clauses or result clauses. Where these basic clauses are changed to include some form of the word "engage," much litigation has arisen as to which they are.⁴⁷

In *Wolford v. Equitable Life Ins. Co.*,⁴⁸ the insured was an Army captain killed in an automobile accident en route to his home while on furlough. The clause in the policy stated: "Disability and the Double Indemnity benefits . . . shall terminate . . . in the event that the insured shall engage in military or naval service in time of war."⁴⁹ The court in holding the clause applicable said:

[T]he insurer, by plain words, provided for the *termination* of the double indemnity provisions upon the happening of an event. What event? The contract answers this without ambiguity: "(In) the event that the insured shall engage in the military . . . service in time of war." Since the event bears no relationship to cause and effect, the policy terminated when the insured entered the military service of the United States in time of war, for then he was *engaged* in the military service and was required, except for leaves or furloughs, to give his entire time thereto. We construe the word "engaged" to mean "enter into". . . .⁵⁰

Other cases where the word "engaged" was construed as connoting a status clause are *Reid v. American Nat'l Assur. Co.*,⁵¹ wherein the life insurance policy provided for reduced benefits "if the insured shall die or become disabled while engaged in naval or military service in time of war or in consequence of such service";⁵² *Field v. Western Life Indemnity*,⁵³ wherein limited benefits were payable "if at any time the insured shall, without the company's written permission, engage in military or naval service";⁵⁴ and *Mullen v. Pacific Mut. Life Ins.*

43 *Id.* at 616.

44 204 S.C. 193, 28 S.E.2d 808 (1944).

45 *Id.* at 811.

46 *Id.* at 810.

47 For a comprehensive listing of cases on this subject see Day, *The Applicability of War Risk Exclusion Clauses to Deaths from Ordinary Causes*, 19 ROCKY MOUNTAIN L. REV. 242, 247-53 (1947).

48 162 Pa. Super. 259, 57 A.2d 581 (1948).

49 *Id.* at 581.

50 *Id.* at 582.

51 204 Mo. App. 643, 218 S.W. 957 (1920).

52 *Id.* at 958.

53 227 S.W. 530 (Tex. Civ. App. 1921).

54 *Id.* at 531.

Co.,⁵⁵ where the applicable provision read "while the Insured is engaged in military or naval service."⁵⁶

On the other hand some courts have used the word "engage" when found in an exclusion clause to signify result. In *Benham v. American Central Life Ins. Co.*,⁵⁷ the policy excluded full coverage for "death while engaged in military or naval service in time of war, or in consequence of such service."⁵⁸ Insured, while in the military service, died of influenza which at that time was prevalent throughout the United States. The court held for the beneficiary, stating:

The word "engaged" denotes action. It means to take part in. . . . An officer engaged in the discharge of the duties of his office is one performing the duties of his office. So here the words "death while engaged in military service in time of war" mean death while doing, performing or taking part in some military service in time of war; in other words, it must be death caused by performing some duty in the military service.⁵⁹

The exclusion clause in *Long v. St. Joseph Life Ins. Co.*,⁶⁰ was very similar to the one in the *Benham* case. In reasoning that this was also a result clause the court stated that:

If insured's mere status of being an enlisted soldier or sailor at the time of his death is to give effect to the clause and reduce liability, what necessity existed for saying therein that death must occur while insured is "engaged" in any such service? The usual and ordinary . . . way of expressing a man's status in that regard, where no idea or thought of what he is doing therein is intended, is to say that he "is in the service," not that he is engaged in the service.⁶¹

Another case where the word "engage" was held to make the exclusion clause one of result was *Gipson v. First Nat'l Life Ins. Co.*,⁶² where the insured died of a "pulmonary embolus" while in the Navy. The clause provided for reduced benefits "if . . . the Insured shall engage in military or naval service in time of war" and fail to secure a permit from the company plus pay an extra premium, which was not levied.⁶³ In holding the clause inapplicable the court relied heavily on letters from the president of the insurance company in which he used the expression "should [those insured] lose their lives while engaged in military service."⁶⁴ The court reasoned that you do not speak of a person "losing his life" when he dies from natural causes.⁶⁵

The confusion that resulted from the use of the word "engage" prompted many companies to eliminate it from their contracts at the start of World War II.⁶⁶

Another problem area in interpreting military exclusion clauses centers on the use of the word "risk."⁶⁷ Other cases have put emphasis on phrases such as "result of service."⁶⁸ Words and phrases such as "military service," "while serv-

55 179 F.2d 556 (3d Cir. 1950).

56 *Id.* at 557.

57 140 Ark. 612, 217 S.W. 462 (1919).

58 *Ibid.*

59 *Id.* at 463.

60 225 S.W. 106 (Mo. App. 1920), *aff'd*, 248 S.W. 923 (1923).

61 *Id.* at 107-108.

62 25 So. 2d 844 (La. App. 1946).

63 *Id.* at 845.

64 *Id.* at 847.

65 *Ibid.*

66 Day, *supra* note 47, at 253.

67 *Atkinson v. Indiana Nat'l Life Ins. Co.*, 194 Ind. 563, 143 N.E. 629 (1924) (result clause); *Ruddock v. Detroit Life Ins. Co.*, 209 Mich. 638, 177 N.W. 242 (1920) (status clause).

68 *Selenack v. Prudential Ins. Co.*, 160 Pa. Super. 242, 50 A.2d 736 (1947) (result clause); *Bending v. Metropolitan Life Ins. Co.*, 74 Ohio App. 182, 58 N.E.2d 71 (1944) (status clause). Where the phrase reads "result of war," it is a result clause. *Bologna v. New York Life Ins. Co.* 40 So. 2d 48 (La. App. 1949); *Eggena v. New York Life Ins. Co.*, 236 Iowa 262, 18 N.W.2d 530 (1945).

ing," "while enrolled," or "participating in" have at times also had particular significance.⁶⁹

Occasionally in these cases the courts will construe what would clearly appear to be a status clause as being inapplicable to the facts of the case and allow full recovery. Some of these cases are: *Edwards v. Life & Cas. Ins. Co.*,⁷⁰ where liability was limited to the reserve on the policy if insured died "while enrolled in military, naval, or air service in time of war,"⁷¹ and insured died of pneumonia while serving with the Navy in Colorado; *Young v. Life & Cas. Ins. Co.*,⁷² where in the applicable clause provided for reduced benefits if death occurred "while in" or "while enrolled in" military or naval service,⁷³ and insured was killed in an automobile accident while on furlough; and *Illinois Bankers Life Ass'n v. Daveney*,⁷⁴ where insured died of influenza in an Army training camp and the court allowed full recovery, even though the policy excluded death "while in the service in the army or navy of any government."⁷⁵ These cases seem to refute effectively the oft-expressed theory that result depends wholly upon phraseology.

Uniform Military Exclusion Clauses

The multitude of litigation that has arisen over the interpretation of military exclusion clauses underscores the need for some sort of uniformity. However, agreement on any uniformity is difficult due to the varied opinions of insurance planners as to what degree of risk or exposure to the hazards of military service should be assumed. The wording of any such clause also poses a problem; some courts have been exacting in their interpretation of military exclusion clauses while others have only looked at their literal meaning.

Our age is one of almost continuous cold war and occasional limited undeclared wars, but we stand under the ever present threat of a major global war of unprecedented dimensions. This has caused two basic changes in the old type of war exclusion clause; these should be taken into consideration in any uniform military exclusion clause. First, the war reservation has been dropped by many companies; and second, the exclusion of civilian casualties in wartime under the exclusion clauses is now being used extensively.

The National Association of Life Insurance Commissioners, at the request of the Life Insurance Association of America and the American Life Convention, made a thorough study of the problem of uniformity in 1951 as a result of which they formulated a statement of principles.⁷⁶ The statement, which embodied a result clause, sought to exclude deaths due to diseases or accidents which are not attributable to the "special hazards incident to service."⁷⁷ To meet the threat of modern types of warfare, a civilian exclusion was provided for and the risks of military service, regardless of whether in time of war or peace, were excluded.

The state of New York recognized the need for a modern type of a uniform military exclusion clause and in 1951 enacted its present uniform clause, which states:

No policy of life insurance . . . shall contain any provision which excludes or restricts liability in the event of death caused in a certain specified manner, except the following provision, or provisions which in the opinion of the superintendent are substantially the same or more favorable to policyholders.

69 See Annot., 36 A.L.R.2d 1018, 1037-40 (1954).

70 210 La. 1024, 25 So. 2d 552 (1946).

71 *Id.* at 551.

72 204 S.C. 386, 29 S.E.2d 482 (1944).

73 *Id.* at 483.

74 102 Okla. 302, 226 Pac. 101 (1924).

75 *Id.* at 103.

76 *Report of the War Clause Subcommittee of the Life Committee*, 1952 PROCEEDINGS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 106, 106-07.

77 *Id.* at 107.

Provisions excluding or restricting coverage in the event of death:

(a) As a result of war or an act of war, if the cause of death occurs while the insured is serving in the military, naval or air forces of any country, international organization or combination of countries or in any civilian non-combatant unit serving with such forces, provided such death occurs while in such forces or units or within six months after termination of service in such forces or units.

(b) As a result of the special hazards incident to service in the military, naval or air forces of any country, . . . if the cause of death occurs while the insured is serving in such forces or units and is outside the home area, provided such death occurs outside the home area or within six months after the insured's return to the home area. . . .

(c) As the result of war or an act of war, within two years from the date of issue of the policy, while the insured is not in such forces or units, if the cause of death occurs while the insured is outside the home area; provided such death occurs outside the home area or within six months after the insured's return to the home area.⁷⁸

The statute then went on to define the terms "home area," "war," "act of war," and "special hazards incident to service."

The statement of principles put forth by the National Association of Insurance Commissioners closely resembles the uniform military exclusion clause of the state of New York.

Conclusion

The courts have shown a definite preference for result clauses over those turning on status, and at times have gone to great lengths to make such an interpretation. There are two reasons for this: First, the purpose of military exclusion clauses is said to be the protection of the insurance company against the added risks of military service. The boundary of the status clause not only covers this added risk but goes on to encompass death from any cause while in military service.

This unrealistic spirit of the Status clause in totally ignoring the *cause* of death is inconsistent with the principle of insurance unless the insurer's liability is materially increased by the particular risk involved. . . .⁷⁹

Secondly, where the cause of death is one which is common to civilian life also, it is statistically unjustifiable that the company under a status clause should refuse to accept an ordinary risk it is being paid to assume. The anomalous situation that results here is that the insured, when he is enrolled in the military service, is not protected from the same risks that he would be protected from if he were a civilian.

Although this judicial preference is warranted to a degree, it must be condemned when it reaches the point of definite misconstruction as in *Edwards v. Life & Cas. Ins. Co.*,⁸⁰ *Young v. Life & Cas. Ins. Co.*,⁸¹ and *Illinois Bankers Life Ass'n v. Daveney*.⁸² Such cases only add to the confusion already inherent in this area. Insurance companies should be allowed to determine what risks they will assume. The misfortune is that they should draw the line at the mere status of the individual in military service.

One is compelled to admit that the best way to alleviate this confusion is for the states to enact uniform military exclusion clauses similar to that of New York.⁸³ This would lead to the uniform interpretation and application which is essential to both insurance company and policy holder.

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⁷⁸ N.Y. INS. LAW § 155(2) (Supp. 1960).

⁷⁹ RICHARDS, INSURANCE § 254, at 870-71 (4th ed. 1952).

⁸⁰ 210 La. 1024, 25 So. 2d 552 (1946).

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

⁸² 102 Okla. 302, 226 Pac. 101 (1924).

⁸³ N.Y. INS. LAW § 155(2) (Supp. 1960). Congress has left this power to regulate insurance to the states under the McCarran Act § 1-2, 59 Stat. 33 (1945), 15 U.S.C. §§ 1011-12 (1959).