War Clauses in Life Insurance Policies

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WAR CLAUSES IN LIFE INSURANCE POLICIES

The right of a beneficiary to recover on an insurance policy, containing a clause which exempts an insurer from liability in case the insured "engages in military or naval service in time of war without the consent in writing of an executive officer of the company", promises to be the subject of much litigation within the next few years. The Pennsylvania statute of 1921 regarding this reads as follows:1

"No policy of life or endowment insurance, except policies of industrial insurance where the premiums are payable monthly or oftener, shall be issued or delivered by any stock or mutual life insurance company in this commonwealth unless it contains, in substance, the following provisions:

(e) "A provision that the policy shall be incontestable after it has been in force, during the lifetime of the insured, two years from its date of issue, except for non-payment of premiums, and for engaging in military or naval service in time of war without the consent in writing of an executive officer of the company."

I. Validity of Such Provision.

The question of the validity of such a provision was raised in numerous cases after the first World War on the ground that an exemption clause of this character was against public policy in that it detered enlistments in the Army and Navy and hampers the government in its war activities. Such a contention, however, has not been sustained in the decisions of the courts, and was specifically rejected in the case of Keininger v. Home Life Insurance Co. of America,2 where the court said:

"We find no sufficient reason for declaring void as against public policy provisions in contracts of insurance excluding therefrom the hazards incident to military service in time of war, or, what is the same thing, exacting a higher rate of premium for such risk."

See also Millen v. Ill. Bankers' Life Ass'n,3 and Redd v. Amer. Central Life Insurance Co.4 Clearly the Pennsylvania statute could not be held invalid on this ground.

II. Commencement of the Period.

A person is held to have entered the military service when he has passed the examination, taken the oath, been enrolled, and become subject to the orders

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1 Act of 1921, P.L. 682, Art. 4, Sec. 40; 40 PS 510(e).
3 138 Ark. 442, 212 S.W. 310 (1919).
of the military authorities. The limitation of the liability applies equally to persons inducted into the military service under the Selective Service Act, as to those who voluntarily enlist in the service.

III. Character and Nature of Risks Contemplated.

In the case of Redd v. Amer. Cent. Life Ins. Co., supra, it was said, "That service in the military forces in the time of war is a somewhat hazardous occupation must be admitted. The fact that the government enters largely into war risk insurance, doubtless at large expense and loss, was due, in part at least, to the fact that insurance companies were not willing to, and doubtless could not, except at a considerable increase in rates."

However the decisions construing provisions excluding full liability in cases where the insured engaged in military or naval service are not in harmony where an insured has died from disease or accident at a military camp before engaging in actual active combat service. Some of this conflict among the cases may be explained by noting the differences in phraseology of such provisions in the policies.

IV. Causation v. Status.

In Benham v. Amer. Cent. Life Ins. Co., the following "war clause" was incorporated into the policy:

"It should be incontestable except for violation of its provisions as to military or naval service in time of war, or in consequence of such service."

The court interpreted the clause as meaning, "death while doing, performing, or taking part in some military service in time of war," and held it inoperative where the insured enlisted man died from influenza in a Dallas hospital. The court here went to great length to define the word "engage" in the sense of action, or to take part in, much the same as an officer engaged in the discharge of his official duties. The court fortified its construction by emphasizing the last phrase of the clause, viz., "or in consequence of such service", and concluded that the death of the insured by influenza was not a hazard peculiar to those engaged in military service, during an epidemic which swept the country during that period.

In the case of Nutt v. Security Life Ins. Co., the policy contested contained a provision that after a year it should be incontestable, "except for naval or military service in time of war without a permit," and that, "In case of death while engaged in such service without a permit," the amount payable should be only

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10140 Ark. 612, 217 S.W. 642 (1920).
11142 Ark. 29, 218 S.W. 675 (1920).
the reserve value. The court construed the clause not to mean the death of the insured during the time he was in the army, but to mean death resulting from "war activities".

In Boatwright v. Amer. Life Ins. Co., it was held that the insured at the time of his death was not "engaged in military or naval service in time of war", within the meaning of the exemption provision of the policy sued on, where he enlisted in the Navy and died of influenza while located at the Great Lakes Naval Training Station at a time when the disease was prevalent throughout the United States, and was common to civilians as well as enlisted men.

Also in the case of Long v. St. Joseph Life Ins. Co., the policy provided that:

"... in case of death of the insured, while engaged in any military or naval service in time of war, the beneficiary would accept in full settlement a sum equal to the premiums paid."

Here it was held that the insurer was liable for the face of the policy upon its appearing that the insured, although he enlisted in the Navy prior to the signing of the Armistice, died after the signing from influenza while he was home on a furlough. A similar conclusion was reached in the case of Rex Health & Accident Ins. Co. v. Pettiford.

A contrasting view was taken in the case of Bradshaw v. Farmer's and Banker's Life Ins. Co., supra, where the policy contained a clause similar to that set forth in the Pennsylvania statute. In that case the insured had been inducted into the Army under the Selective Service Act and was acting as chief blacksmith in a training camp and died of pneumonia. The court held, in effect, that:

"... the agreement limiting the liability of the insurer where the insured engaged in military service was one that the parties had a right to make, that such provision was binding on both of them, and that the extent of the liability of the insurer on the policy was the amount of the premiums paid thereon."

Also in Slaughter v. Protective League Ins. Co., it was held that under such a clause the only condition required to create the exemption was that the insured be engaged in naval or military service in the time of war. Here the court refused to make the close distinction in regard to the word "engaged" which was adopted in the case of Benham v. American Central Life Ins. Co., supra. Other cases holding similarly are Sandstedt v. Amer. Cent. Life Ins. Co. and Reid v. American Nat. Assurance Co.

9191 Iowa 253, 180 N.W. 321 (1920).
101225 S.W. 106 (Mo. App., 1920).
12205 Mo. App. 352, 253 S.W. 819 (1920).
13109 Wash. 338, 186 Pac. 1069 (1920).
14204 Mo. App. 643, 218 S.W. 937 (1920).
In the case of Keininger v. Home Life Ins. Co. of America, the policy contained the following clause:

"If the insured shall engage in any military or naval service in time of war, the liability of the company in event of the death of the insured while so engaged, or within six months thereafter, will be limited to the amount of the legal reserve to the credit of the policy less any indebtedness to the company herein; unless before engaging in such service, or within one month (of not less than 30 days) or at the time of paying the first premium thereon, if the insured shall be then so engaged, the insured shall pay to the company at its executive office in Philadelphia such extra premiums as may be required by the company, and in like manner shall pay annually thereafter on each anniversary of this policy, or within one month (of not less than 30 days) while the insured shall continue to be so engaged, such extra premiums as may be required by the company."

The insured was drafted into the army under the Selective Service Act, but did not notify the company of his change of status, as required under the terms of the policy, nor did he pay any additional premiums. The insured died in France, while with the American Expeditionary Force, from acute rheumatism. The court held:

"... that the clause (supra) is free from ambiguity, and expressed in clear and distinct language. It is not limited to the case of an insured, who participates in a military engagement or battle, but becomes applicable if the insured engages in any military service in time of war."

The case of McCabe v. John Hancock Mut. Life Ins. Co. would seem at first blush to be contrary to the Keininger case, but it is distinguishable on its facts in that there the insurer and the insured had placed a different interpretation on the "war clause" in the policy; the applicant was a member of the United States Marine Corps, stationed at Quantico, Va. This fact appeared on the application upon which the policy was issued, and war had already been declared against the Central Powers. The policy contained the following clause:

"The liability of the company during the first policy year shall be limited to the premiums paid, if he shall die during said year as a result of military or naval service in time of war."

Subsequently the insurer notified the insured by mail, "Should you receive orders involving service whereby you may be subject to the casualties of war or disease incumbent thereto, whether at sea or on land, you may obtain a war permit immediately by notifying us by mail or telegraph." Shortly thereafter the insured was accidentally killed by the accidental discharge of a revolver, while still located at the Quantico, Va., training station. The court permitted recovery for the

1627 Pa. Dist. 603 (1918).
face value of the policy, and in the course of the opinion stated:

"Where there is a doubt arising as to the meaning of any words incorporated into an insurance policy, when applied to specific facts, or where the words are capable of two interpretations, the courts have uniformly adopted the one which is most favorable to the insured, and have construed the policy most strongly against the insurer."

Other cases setting forth this principle are Humphreys v. National Benefit Ass'n.\(^{17}\) and Bole v. New Hampshire Fire Insurance Co.\(^{18}\)

V. Waiver or Estoppel.

Where the doctrines of waiver or estoppel have been applied in insurance contests, the cases have been largely those where the insurance companies have relied on a forfeiture of the contract, asserting breach of the warranties and conditions to work such forfeitures. In many cases the courts have held that if the companies have led the other party, to his prejudice and expense, to understand that such forfeitures would not be insisted upon, then the company would be estopped from asserting such defenses. Also in cases where at the time of issuing the policy, the insurer knows that one or more of its conditions are inconsistent with the facts, and the insured is guilty of no fraud, the insurer is estopped from subsequently setting up those facts as a breach.\(^{19}\) Furthermore, the courts are always prompt to seize hold of any circumstance to indicate an election to waive a forfeiture, or an agreement to do so, on which the insured has relied and acted.\(^{20}\)

In these war risk cases, the defendant insurance company does not claim a forfeiture of the contract; on the contrary, it is insisting upon the contract itself and asserting that by its terms it did not insure the deceased when engaged in military service in time of war. So it has been held that where the policy must contain all the contract, such a clause cannot be waived by the agent, but must be done by a duly authorized officer of the company, as was done in McCabey v. John Hancock Mutual Life Ins. Co., supra.\(^{21}\) Such waiver or estoppel cannot be maintained on the grounds that the company accepted premiums with\(^{22}\) or without\(^{24}\) knowledge of the fact that the insured was in the military service.

\(^{17}\)139 Pa. 264, 20 A. 1047 (1891).
\(^{18}\)159 Pa. 53, 28 A. 205 (1893).
\(^{19}\)Ins. Co. v. Spencer, 53 Pa. 353 (1866).
\(^{21}\)209 Mich. 638, 177 N.W. 242 (1920).
VI. War Clause in Present Policies.

In a standard life insurance policy, issued by one of the larger companies, there is contained a clause providing for additional benefits in the event of death by accidental means. This clause excepts from its operation accidental deaths occurring under certain circumstances, among which is the following, viz: "No such benefit shall be payable if such death results (d) while a member of the military, naval or air forces of any country at war (declared or undeclared)."

Following is a copy of the War Clause which has been incorporated into some life insurance policies since January 1, 1942:

It is hereby provided that, notwithstanding anything in this Policy to the contrary, the liability of the Company shall be limited to the amount specified below if the Insured dies:

(A) As a result of military or naval service in the forces of a nation at war, whether declared or undeclared, should death occur during such service or within six months after discharge; or

(B) As a result of operating or riding in any kind of aircraft, except as a passenger on a regularly scheduled passenger flight of a commercial aircraft.

In the event of such death the full liability of the Company under this Policy shall be the amount of premiums paid less any dividends apportioned and credited, together with compound interest at the rate of 3 per cent, per annum, plus any dividends left to accumulate and the reserve on any paid-up additions, and less any indebtedness on this Policy. Such liability shall not, however, exceed the amount that would be payable in the absence of this provision, nor be less than the insurance reserve on this Policy (including the reserve on any paid-up additions) plus any dividends left to accumulate and less any indebtedness on this Policy.

If this Policy contains provision for a benefit in event of death by accidental means, such provision is not altered by this rider.

If this Policy contains provisions for benefits in the event of total and permanent disability, such benefits shall not be allowed if disability results from disease originating or bodily injury occurring while in military or naval service in the forces of a nation at war, declared or undeclared, or from operating or riding in any kind of aircraft except as a passenger on a regularly scheduled passenger flight of a commercial aircraft.

These provisions shall also apply to any reduced paid-up insurance put in force in accordance with the Non-forfeiture Provisions, if any, contained in this Policy, and shall be included in any policy to which this Policy may be changed or converted.

It will be noticed that under the clause providing for additional benefits in the case of accidental death, and also in the paragraph (B) of the war clause covering total and permanent disability, the phrases "while in" and "while a member of" the military or naval service of a nation at war are utilized. Compare with these phrases the phrase "as a result of" military or naval service in the forces.
of a nation at war, which is utilized in paragraph (A) of the war clause, and
which applies to the liability of the insurer, in the case of death of the insured,
for the face value of the policy. In the light of the cases, previously discussed,
and also in consideration of the fact that this different phraseology appears in
the same policy, it is reasonable to presume that the insurer contracts for a dif-
ferent liability where these first two phrases appear, than where the latter is
used. In the case of Keininger v. Home Life Ins. Co.²⁵ the phrase, “Shall en-
gage in any military or naval service,” is interpreted as not being limited to the
case where the insured participates in a military engagement or battle, but as be-
coming applicable if the insured becomes a member of the armed forces of a
nation in time of war. On the other hand where the phrase, “As a result of
military or naval service in the forces of a nation at war,” is used, we have as
authority the case of McCabe v. John Hancock Mutual Life Ins. Co.²⁶
which held the phrase to mean “death while doing, performing, or taking part in some
military engagement.” There is another interesting question arising here as to
the status of members of the Home Defense Corps under these policies, where
they are engaged in fighting fires, or manning anti-aircraft guns, or perhaps en-
gaged in bomb-demolition squads. Since it would be impossible to anticipate the
construction of these different “war clauses” being utilized in the policies, and
since, as pointed out in this article, an interpretation by an agent is not binding
on the insurance company, it would seem that in cases of doubt the only way to
ascertain the extent of protection would be by an official interpretation by an
executive officer of the company.

CONCLUSION

It is not the intention of the author of this article to infer or speculate
whether or not the insurance companies will pay under the policies now in force,
but whether or not, under the construction of these clauses by the courts, the
actual liability of the insurer exists when an insured dies or is killed while in
the military or naval service in time of war.

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²⁵Supra, note 2.
²⁶Supra, note 16.