St. John's Law Review

Volume 23
Number 1 *Volume 23, November 1948, Number 1*

Article 14

Insurance--Life Insurance--Accidental Death Benefits--Military Service Exemption Clause (Jorgenson v. Metropolitan Life Insurance Co., 55 A.2d 2 (N.J. 1947))

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final by statute and those final agency actions for which no other adequate remedy exists.[18] While application of the Act does not substantially enlarge the petitioner's remedy, it may make it more effective in that it is available sooner.

Although this decision has already been followed,[19] there is considerable opposition to it outside of the courts;[20] nor is there any assurance that the Supreme Court will follow it in view of their most recent pronouncements of policy.[21]

B. F. N.

INSURANCE—LIFE INSURANCE—ACCIDENTAL DEATH BENEFITS —MILITARY SERVICE EXEMPTION CLAUSE.—The court was called upon to construe the meaning of a clause exempting the insurance company from paying double indemnity while the insured is in military service. The defendant insurance company had issued on August 3, 1936, two policies of life insurance, each for $500, on William Jorgenson. The plaintiff, his wife, was named beneficiary. Each policy contained a provision to the effect that if the insured died as a result of an accident, double indemnity would be paid. Each policy also contained the provision, "No Accidental Death Benefit will be paid if the death of the Insured is the result of self-destruction . . . or while the Insured is in military or naval service in time of war." On October 18, 1944, the insured, a member of the U. S. Army, was on duty at Bangolore, India. While on town patrol the motorcycle on which he was riding became involved in an accident, and the insured suffered a fractured skull from which he later died. The beneficiary submitted proof-of-death and a claim for $1,000 under each policy. The company paid $500 on each policy, refusing to pay the additional $500 for accidental death on the ground that the insured

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[18] 60 STAT. 243, 5 U. S. C. § 1009c (1946), provides: "Acts reviewable. Every agency action made final by statute and every final agency action for which there is no other adequate remedy in any court, shall be subject to judicial review. . . ."

[19] United States *ex rel.* Cammarata v. Miller, 79 F. Supp. 643 (S. D. N. Y. 1948).

[20] The Commissioner of Immigration and Naturalization has steadfastly insisted that the Act does not apply to his agency, 8 I. & N. S. Monthly Review 105 (1947); and a bill was submitted to the 80th Congress to make the Act inapplicable to the Immigration and Naturalization Service. H. R. 6333 (Hobbs 1948).

[21] Chicago & Southern Air Lines v. Waterman Steamship Corp., — U. S. —, 92 L. ed. 367, 369 (1948). "This court has long held that statutes which employ broad terms to confer power of judicial review are not always to be read literally. Where Congress has authorized review of 'any order' or used other equally inclusive terms, courts have declined the opportunity to magnify their jurisdiction, by self-denying constructions which do not subject to judicial control orders which, from their nature, from the context of the Act, or from the relation of judicial power to the subject-matter, are inappropriate for review."

was not covered since he was a member of the armed forces in time of war. In an action to recover the additional $500, the Court of Common Pleas rendered judgment for defendant. Appeal was made to this court. *Held,* judgment affirmed. *Jorgenson v. Metropolitan Life Insurance Co.,* — N. J. —, 55 A. 2d 2 (1947).

In construing military exemption clauses the courts have come to conflicting opinions.[1] The question in each case has been whether the provision contemplates merely the status of military service as the basis for relieving the insurer from liability,[2] or whether it must appear that in addition to the status the death occurred as a result of military activities.[3] The courts have agreed, however, that the wording of the provision is of primary importance in determining the intent of the parties.

Where the provision has read "engaged," [4] "in consequence of" [5] or "as a result of such service" [6] the courts have been of the opinion that the military status alone was not sufficient to avoid liability. Where the provision has read "while in," [7] "while enrolled in" [8] or a "risk" not assumed [9] the courts have been of the opinion that the status alone was sufficient. Plaintiff contends that any ambiguity or doubt as to the construction of the terms should be construed in her favor and that the provision is contrary to public policy since it is an inducement to refrain from enlistment. The court points out there is no ambiguity in the contract,[10] no doubt as to the construction of the terms,[11] and the provision is not contrary to public policy. In respect to the last point, they failed to see how the provision could be an agreement not to enlist; an attempt to evade the draft law; or an inducement to refrain from enlisting,[12] as the plaintiff had con-

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[1] See Note, 137 A. L. R. 1263 (1942).

[2] Miller v. Illinois Bankers' Life Ass'n, 138 Ark. 442, 212 S. W. 310 (1919); Huntington v. Fraternal Reserve Ass'n, 173 Wis. 582, 181 N. W. 819 (1921).

[3] Gorder v. Lincoln Nat. Life Ins. Co., 46 N. D. 192, 180 N. W. 514 (1920); Malone v. State Life Ins. Co., 202 Mo. App. 499, 213 S. W. 877 (1919).

[4] N. Y. Life Ins. Co. v. Durham, 166 F. 2d 874 (C. C. A. 10th 1948); Railey v. United Life & Accident Ins. Co., 26 Ga. App. 269, 106 S. E. 203 (1921).

[5] Gorder v. Lincoln Nat. Life Ins. Co., *supra* note 3.

[6] Malone v. State Life Ins. Co., *supra* note 3.

[7] Huntington v. Fraternal Reserve Ass'n, *supra* note 2. *Contra:* Young v. Life & Casualty Ins. Co., 204 S. C. 386, 29 S. E. 2d 482 (1944).

[8] White v. Standard Life Ins. Co., 198 Miss. 325, 22 So. 2d 353 (1945).

[9] Miller v. Illinois Bankers' Life Ass'n, *supra* note 2.

[10] "The latent ambiguity found by courts of other jurisdictions in construing military service exemption clauses is not applicable here since those provisions were of different terminology." Jorgenson v. Metropolitan Life Ins. Co., — N. J. —, 55 A. 2d 2, 4 (1947).

[11] "The terms of the instant contract are clear." *Ibid.*

[12] "We do not think the argument is well founded. An insurance company has the right to select the particular risks it is willing to assume, and there is no public policy against a contract of this sort exempting the insurance company in advance, from liability for death of the insured while in military or naval service of the government. The stipulation does not provide for a for-

tended. This viewpoint has been specifically approved in other jurisdictions.[13]

In New York the matter seems to have been settled once and for all by statute.[14] The language is quite clear and leaves little room for doubt If the insured dies inside the United States his death must be a result of his being a member of such service.[15] In the event the insured dies outside such states, his military status alone is sufficient to avoid liability.[16]

L. J. L.

INSURANCE — LIFE INSURANCE — MATERIALITY OF MISREPRESENTATIONS IN APPLICATION IN NON-MEDICAL POLICY.—This is an action on a non-medical policy of life insurance. The insured died of a rheumatic heart condition about one year after the policy was issued. The defense is that the insured's negative answers to questions in the application, as to whether she ever had any illness or prior medical consultation within five years, were material misrepresentations and that had the defendant known the true facts it would not have issued the policy. The family physician had examined the insured on several occasions prior to the issuance of the policy and had discovered a chronic endocarditis condition. The insurer also proved that in its practice, it uniformly rejected applications revealing a heart condition. The trial court submitted to the jury the question of the insured's knowledge of her heart condition and the jury rendered a verdict for the plaintiff. *Held,* judgment reversed. The question of knowledge on the part of the insured concerning the condition of her health has no part in the determination of liability in this case. Section 149 of the New York Insurance Law provides that misrepresentations as to consultations are deemed to be mis-

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feiture of the policy, but merely for an exemption from liability under certain circumstances and conditions. It holds out no inducements to the assured to refrain from enlistment in his country's service, and does not constitute, in any sense, an agreement not to enlist or to evade the draft law." *Id.* at 5, the court here adopts a quotation from Miller v. Illinois Bankers' Life Ass'n., 138 Ark. 442, 212 S. W. 310, 311 (1919).

[13] Railey v. United Life & Accident Ins. Co., 26 Ga. App. 269, 106 S. E. 203 (1921); Bradshaw v. Farmers' & Bankers' Life Ins. Co., 107 Kan. 681, 193 Pac. 332 (1920); Marks v. Supreme Tribe of Ben Hur, 191 Ky. 385, 230 S. W. 540 (1921).

[14] N. Y. INS. LAW § 155.

[15] "No policy of life insurance . . . shall contain any provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except the following provisions . . .

(1) Inside the forty-eight states of the United States, the District of Columbia or the Dominion of Canada as a result of service in (a) the military, naval or air forces of any country at war, . . ." *Ibid.*

[16] (2) "Outside such state, district, and dominion while in such forces or units." *Ibid.*