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LEGAL NOTES

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COMMUNITY PROPERTY—NATIONAL SERVICE LIFE INSURANCE: *Wissner v. Wissner*, (United States Supreme Court, Feb. 6, 1950) 70 S. Ct. 398.

Major Wissner, domiciled in California, changed the beneficiary of his National Service Life Insurance policy from his wife to his mother as primary beneficiary and to his father as contingent beneficiary. Upon the insured's death in 1945, the Veterans Administration commenced installment payments to the mother. Thereafter, the widow of Major Wissner instituted this action in a California state court, claiming that under the California Community Property Law she was entitled to one-half of the proceeds of the policy since the policy was purchased with community funds.

The California courts all held that the proceeds of the National Service Life Insurance policy represented community property and that the widow was entitled under California law to one-half of such proceeds. The named beneficiary thereafter appealed to the United States Supreme Court, claiming that under the circumstances the California Community Property Law should not apply but that the proceeds should be paid to the named beneficiary.

The United States Supreme Court reversed the California decision, holding that the provision in the National Service Life Insurance Act to the effect that the insured should have the right to designate and to change the beneficiaries within the permitted class meant that such beneficiaries should receive the proceeds and that the Community Property Law of California could not serve to produce a different result. The Court also indicated that the exemption provision of the National Service Life Insurance Act would prevent a court from subjecting the installment proceeds to its judgment.

In its majority opinion, three justices dissenting, the Court stated:

> We are of the opinion that the decision below was incorrect. The National Service Life Insurance Act is the congressional mode of affording a uniform and comprehensive system of life insurance for members and veterans of the armed forces of the United States. A liberal policy toward the serviceman and his named beneficiary is everywhere evident in the comprehensive statutory plan. Premiums are very low and are waived during the insured's disability; costs of administration are borne by the United States; liabilities may be discharged out of congressional appropriations.
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> Pursuant to the congressional command, the Government contracted to pay the insurance to the insured's choice. He chose his mother. It is plain to us that the judgment

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of the lower court, as to one-half of the proceeds, substitutes the widow for the mother, who was the beneficiary Congress directed shall receive the insurance money. We do not share appellee's discovery of congressional purpose that widows in community property states participate in the payments under the policy, contrary to the express direction of the insured. Whether directed at the very money received from the Government or an equivalent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand.

AVIATION EXCLUSION—AERONAUTIC CASUALTY: *Faron v. Penn Mutual Life Insurance Company*, (C.A. 3, Jan. 31, 1950) 179 F. 2d 480.

The insured met his death while a fare-paying passenger on a regularly scheduled airplane flight. The double indemnity provision of his life policy excluded death resulting directly or indirectly from "aeronautic . . . casualty." The Penn Mutual claimed that the death in the commercial airline accident was as the result of aeronautic casualty and refused double indemnity benefits.

The beneficiary brought suit against Penn Mutual and in this action the United States District Court held that she was entitled to such benefits. On appeal, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court, stating:

To bring Faron within the literal language of the exclusion clause requires, as we have demonstrated, definition and redefinition of the terms of that clause and even then the result is very far from clear. We doubt if any person possessed of ordinary business intelligence on reading the exclusion clause would conclude that the beneficiary of a fare-paying passenger killed during the course of a scheduled commercial flight was intended to be excluded from the coverage of the policy or that Faron's death resulted from "aeronautic casualty." The phrase "aeronautic casualty" would be presumed by a person of ordinary business intelligence to embrace only casualties resulting from flights experimental, exploratory or adventurous. Riding as a passenger in a commercial airliner is no one of these.

REINSTATEMENT—AVIATION RESTRICTION: *Schiel v. New York Life Insurance Company*, (C.A. 9, Dec. 21, 1949) 178 F. 2d 729.

The life policy, issued in 1935, stipulated that it was free of conditions as to residence, travel, occupation, and military and naval service except as to the provisions and conditions relating to double indemnity. The insured permitted his policy to lapse in 1936 and in 1939, prior to his entry into service as a student pilot, he applied for reinstatement. As a condition to reinstatement the company insisted that an aviation restriction be imposed as to single indemnity benefits and the double indemnity benefits be eliminated. The insured agreed to this condition, but apparently through oversight the proper rider was not attached to the policy.

On the insured's death in an aviation accident the New York Life insisted that its liability was for the limited amount which would have been provided under the rider and which was agreed to by the insured, and when the beneficiary refused to agree, the New York Life commenced this action to reform this policy to incorporate the aviation restriction.

The United States District Court ordered that the policy be reformed in accordance with the New York Life's contention, but on appeal, the Court of Appeals for the Ninth Circuit held that the New York Life was not justified in insisting that the aviation restriction be imposed and under the circumstances it was obligated to reinstate the policy without this condition. The Court conceded that evidence of "insurability," which was required as a condition to reinstatement, was broader than evidence of "good health," but it was the opinion of the court that when the company agreed that the policy was unrestricted as to residence, travel, occupation, and military and naval service, it could not consider the fact that the insured was about to take up the occupation of a pilot. In its opinion the Court stated:

> The condition imposed on reinstatement of the ordinary life coverage for all practical purposes nullified the occupation clause. Under guise of reinstatement the insurer undertook to rewrite the contract in such fashion as to repudiate a risk assumed at the outset. If it could do that it could with equal facility have excluded altogether the risks of military service or travel, whereas the insured's liberty of action in all those matters was a measure of his insurability fixed and determined by the original contract. Without further laboring the point, we add only that the word "reinstate," as used in the policy, is entitled to be given its ordinary meaning, which is to restore to a former state or position.

WAR RIDER—VALIDITY: *Dempsey v. National Life & Accident Insurance Company*, (Supreme Court of Illinois, Nov. 22, 1949) 404 Ill. 423, 88 N.E. 2d 874.

The war rider attached to the life policy provided that the liability of the company should be limited to the premiums actually paid on the policy if the insured served in the military or naval service of any country at war unless he received the consent in writing of designated executive officers and paid the extra premiums required, the amount of such extra premiums not being specified. The insured was at the time a member of the Illinois National Guard and was thereafter sent to the Philippines, where he was killed. He did not seek the consent of the company to such military service or pay the extra premium required.

The insurance company insisted that its liability was limited, as provided, to the premiums paid, but in the trial court the administrator recovered the face amount of the policy. The Appellate Court reversed, holding that the company's position was correct; but on further appeal, the Illinois Supreme Court reversed the Appellate Court and held that the rider was invalid and therefore did not serve to limit the company's liability. The Court stated:

> The military clause found only in the rider attached to the policy purports to change and modify the express provision of the policy insuring against death, by reducing and limiting the obligation of insurance liability of the company. In order to keep the obligation of the company at $5,082, the amount provided on its face, the insured was required to obtain the consent of the company, if he entered military service in time of war, and also to pay extra premiums required by the company. If he entered war service without these two essential requirements the insurance liability of the company became limited to the amount of the premiums actually paid.

While the company was not obliged to consent, if it did so the insured was required to pay extra premiums. The amount and extent of any such extra premiums are not fixed or defined in the rider, nor is any standard or basis established by which they could be computed or determined. The insured is left completely uninformed as to the premium requirements necessary to keep his policy in full force and effect, in the event the company should consent to his entering war service. In this respect the rider is indefinite and uncertain and lacks mutuality. We cannot construe it as changing and limiting the primary obligation of insurance liability expressly provided for in the body of the policy. In view of our holding, it will not be necessary to decide any of the other points raised.

This decision is of questionable soundness.

COMMON DISASTER—UNIFORM SIMULTANEOUS DEATH ACT: *Prudential Insurance Company v. Spain*, (Illinois Appellate Court, Jan. 19, 1950) 90 N.E. 2d 256.

The husband's two policies were payable to his wife, if living, otherwise to his estate; and the wife's two policies were payable to the husband, if living, otherwise to her estate. Both met their deaths when their automobile collided with a train, and the administratrix of the wife's estate and the administrator of the husband's estate both claimed the policy proceeds. The insurance company interpleaded.

Immediately after the accident members of the train crew examined the husband and the wife, two of them later stating that in their opinions the husband was dead but that the wife was not dead though she died shortly thereafter. A physician testified as to the difficulty in determining finally and conclusively by mere observation that a person was dead.

Illinois, like most other states, has enacted the Uniform Simultaneous Death Statute, which provides:

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policies shall be distributed as if the insured had survived the beneficiary.

Largely on the basis of the testimony of the members of the train crew, the trial court found that the wife survived and hence awarded the proceeds of the four policies to her administratrix. On appeal, this decision was affirmed, the Appellate Court holding that there was "sufficient evidence" within the meaning of the statute on which to justify the finding that the wife survived the husband.

LOAN DEDUCTED FROM POLICY PROCEEDS—RIGHTS OF BENEFICIARY: *Fidelity Union Trust Company v. Phillips*, (Superior Court of New Jersey, Sept. 28, 1949) 5 N.J. Super. 529, 68 A. 2d 574.

The insured borrowed a substantial amount from the insurance company under a policy loan and thereafter named Fidelity Union Trust Company as trustee-beneficiary. Later he procured a loan at a lower rate of interest from a bank and with the proceeds of this bank loan he paid off the policy loan. In carrying out the transaction, the policy was made payable to the insured's estate, then assigned to the bank which made the loan, and thereafter he again named Fidelity Union Trust Company as trustee-beneficiary. The assignment to the bank stipulated that "no party interested in said policy shall, on account of the application of any of the proceeds of said policy on said indebtedness, have the right to contribution or reimbursement from any party or to be subrogated to the rights of the bank in any other collateral."

Upon the insured's death the bank to which the policy was assigned to secure its debt collected the entire policy proceeds, deducted the net amount of its debt and paid over the balance to Fidelity Union Trust Company, trustee. The trustee thereafter sued the insured's executors, claiming reimbursement to the extent of the policy proceeds deducted to satisfy the insured's indebtedness to the bank.

The trial court held that the trustee was not entitled to reimbursement under the circumstances and, on appeal, the Superior Court of New Jersey affirmed this judgment. The Court in its opinion pointed out that there is a clear distinction between a policy loan where there is no obligation to repay and the ordinary debt where there is such obligation. In this case the Court found that it was the intention of the insured that the trustee-beneficiary receive only the net proceeds after deduction of the indebtedness to the bank secured by the policy.

The general rule in connection with a policy loan is that even though the signature of the beneficiary is necessary in order to effect the loan, she has no claim to subrogation or to reimbursement. However, where the transaction involves a bank loan, the general rule is that the beneficiary who joins in the assignment to the bank is entitled to be reimbursed or subrogated on account of deductions made unless, as in the case digested above, a contrary intent appears.

AVIATION RESTRICTION—INCONTESTABLE CLAUSE: *McCann v. National Life and Accident Insurance Company*, (Texas Civil Appeals, Nov. 10, 1949) 226 S.W. 2d 177.

The insured died in an aviation accident in 1946 shortly after the issuance of his life insurance policy, which provided for the payment of the legal reserve in the event of such accident. The beneficiary refused to accept this limited amount, claiming that she was entitled to the face amount of the policy. The basis of her contention was that neither the Texas incontestable statute nor the policy's incontestable clause excluded death due to aviation and there was a conflict between the aviation provision in the policy and the incontestable clause. The Texas statute prohibiting any mode of settlement at maturity at less value than the amounts insured had been amended in 1941 to permit a lesser payment in the event of death of the insured as a result of aviation activities under the conditions specified in the policy, but there was no such amendment to the incontestable statute.

The trial court held that there was no conflict between the aviation restriction provision of the policy and the incontestable clause and the Texas Court of Civil Appeals agreed, stating:

> We therefore hold that the clause in the policy limiting the liability of the appellee to the amount of legal reserve under the policy is a valid and binding provision, that it is

not in conflict with the incontestable provision in the policy, that no ambiguity exists by reason of the two provisions, that this is not a contest under the incontestable clause of the policy or of the statute, and that the trial court did not err in rendering judgment for the amount of the legal reserve stipulated by the parties.

Most cases are in accord. In the few instances where contrary decisions have been rendered remedial legislation has been enacted.

DOUBLE INDEMNITY—WAR RESTRICTION—STATUS CLAUSE: *Laurendeau v. Metropolitan Life Insurance Company,* (Supreme Court of Vermont, Feb. 7, 1950) 71 A. 2d 588.

The double indemnity provision of the life policy excluded death occurring "while the insured is in the Military or Naval service in time of war," and provided for the refund of premiums paid during such service. The insured was killed while in the military service in an automobile accident while on furlough. The Metropolitan admitted liability under the primary life benefits but denied that it was liable for the double indemnity benefits.

The beneficiary commenced a suit against Metropolitan, her claim being that Metropolitan was liable under its double indemnity clause unless the death was service-connected. The trial court and, on appeal, the Supreme Court of Vermont denied this contention and also found that the Metropolitan was not estopped to assert that the risk was not covered by its policy. The Court in its opinion stated:

> As a general rule, courts, in determining an insurer's liability under "war exception clauses" classify them as either "status" clauses or "result" clauses. In the present case the exclusion clause is of the simple "status" type. The words "while in the Military or Naval service in time of war" are precise and are not ambiguous. They make no reference to any relation between this "service" and the cause of death; and it is significant that in other parts of the supplemental contract exclusion from coverage is stated in terms of death from specified causes, such as death as a result of suicide, as a result of travel by air, except in regular passenger service, as a result of participating in assault or felony, and as a result of poison gas or fumes. These contrasting terms of exclusion found in the immediate context add emphasis to the obvious fact that, as to war service, the exclusion from coverage is governed purely by status and not by the cause of death.

INCONTESTABLE CLAUSE—REINSTATEMENT: *Ambrose v. Acacia Mutual Life Insurance Company,* (Virginia Supreme Court of Appeals, Nov. 21, 1949) 190 Va. 189, 56 S.E. 2d 372.

The life policy, issued in 1944, lapsed for nonpayment of premiums in 1946 and was reinstated. Shortly thereafter the insured died and the Acacia Mutual refused to pay on the basis that the reinstatement was procured through fraud. The policy contained no provision relating to the contestability of a reinstatement, but the Virginia life standard provisions statute in force when the policy was issued permitted a provision "that such reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to original issue."

The beneficiary brought an action against Acacia Mutual and the trial court held that the Acacia Mutual was not liable for the face amount of the policy because of the fraud in connection with the reinstatement. On appeal, the Supreme Court of Appeals of Virginia reversed, three of the seven justices dissenting, holding that the reinstatement was not contestable because the Acacia Mutual had not exercised the privilege as permitted by statute of inserting a clause in its policy to the effect that reinstatement might be contested. The Court stated:

> In our opinion, the legislature, in its wisdom and with foresight, imposed this condition for the express purpose of allowing the insurer to include a provision in its policy reserving to it the right to contest the validity of the policy for fraud in obtaining the reinstatement; or permitting insurer to omit this provision if it chose to include a provision more favorable to insured, and having elected to do the latter, it is now precluded from contesting its validity after expiration of one year during the lifetime of the insured next following its original date.

After the *Ambrose* decision the Virginia Legislature amended its statute so as to permit reinstatements to be contested for a one-year period after reinstatement even though the life policy contains no specific reference to the contestability of reinstatement. Several other states have statutes similar to that involved in the *Ambrose* case.