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## Abstracts of Recent Cases

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## ABSTRACTS OF RECENT CASES

INSURANCE—EFFECT OF STANDARD FIRE POLICY CLAUSE PROHIBITING ADDITIONAL INSURANCE ON INSURERS' LIABILITY.—Insured procured two standard form fire insurance policies on his residence, each with a clause prohibiting additional insurance without permission of the insurer. The policies provided that the insurer would not be liable for any loss which occurred while a condition of the policy was being violated. Insured sought recovery from the first insurer, who resisted on the ground that procurement of the second policy voided its liability on the first. *Held*, insured could recover under the terms of the first policy. The concurrent warranty of the second policy was violated at its inception by the existence of the original policy and as a consequence no insurance actually came into being to breach the original policy. *Kelley v. American Ins. Co.*, 316 S.W.2d 452 (Tex. Civ. App. 1958).

West Virginia has adopted the 1943 Standard New York Fire Insurance Policy, which contains provisions substantially the same as those in the policies of the principal case. W. VA. CODE ch. 33, art. 17, § 2 (Michie Supp. 1957). The provisions have been held valid because the moral hazard of over-insurance should not be increased by the insured without the knowledge of this additional risk by the insurer. *Heldreth v. Federal Land Bank*, 111 W. Va. 602, 163 S.E. 50 (1932).

As to the liability of the first insurer, it is the law in West Virginia that where such a provision is included in the policy, procurement of additional insurance voids this policy, and the insurer is not liable on his contract. *Cook v. Farmers Mut. Fire Ass'n*, 139 W. Va. 700, 81 S.E.2d 71 (1954); *Oates v. Continental Ins. Co.*, 137 W. Va. 501, 72 S.E.2d 886 (1952).

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MILITARY LAW—JURISDICTION OF MILITARY TRIBUNAL—CONSTRUCTION OF TERM "IN TIME OF PEACE."—Petitioner, serving a sentence in the custody of the Army within the borders of the United States, was convicted by a court-martial of conspiracy to commit the crime of murder. The offense was committed on June 10, 1949. Article of War 92, Act of June 4, 1920, ch. 227, subch. II, § 1, 41 Stat. 805, in effect at the time, provided that no person shall be tried by court-martial for murder committed in the United States "in time of peace." World War II was not officially terminated by a formal declaration of peace and a Presidential Proclamation until

April 28, 1952. Petitioner sought habeas corpus to set aside his conviction on the ground that the crime was committed "in time of peace." *Held*, the court-martial was without jurisdiction as the crime was committed in time of peace. Statutory language will be construed to conform to the traditional guarantees protecting the rights of citizens, and thus Article of War 92, *supra*, will be read generously to the end that officers and soldiers shall be protected by having secured to them a trial by their peers. *Lee v. Madigan*, 79 Sup. Ct. 276 (1959).

A forceful dissent points to the case of *Kahn v. Anderson*, 255 U.S. 1 (1920), which held that the term "in time of peace" contemplated complete peace, and this state of peace did not come to pass with the cessation of active hostilities. The dissent also points to *Ludecke v. Watkins*, 335 U.S. 160 (1948), for the proposition that a state of war continues until terminated by the political branch of the government. The majority opinion, however, brushes aside the language of the *Kahn* case, *supra*, as dictum and the language of the *Ludecke* case, *supra*, as generalized statements not dispositive of the immediate controversy and quotes approvingly from *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 22 (1955), to the effect that the "free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service." For a general discussion of what constitutes "time of peace" and "time of war", see 56 AM. JUR. WAR § 13 (1947).

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MONOPOLIES—DETERMINATION OF RESTRAINT OF TRADE—PROMOTION OF CHAMPIONSHIP BOXING CONTESTS CONSTITUTES A RELEVANT MARKET.—*D* gained exclusive control in 1949 of the promotion of championship boxing matches in three divisions, and required each title contender to grant to it an exclusive promotion contract for his championship fights for a period of from three to five years. *D* also controlled, exclusively throughout the nation, the key facilities for staging the contests, and during a four year period promoted and staged approximately 81% of the championship fights in this country. *Held*, that *D*, by virtue of this exclusive control, possessed power of monopoly and restraint of trade in respect to the relevant market in the promotion of championship fights as distinguished from the promotion of all boxing contests, and is subject to the

strong and far-reaching decrees which may be molded pursuant to the Sherman Antitrust Act. *International Boxing Club v. United States*, 79 Sup. Ct. 245 (1959).

When this antitrust action was originally instituted by the government, the district court dismissed the complaint on the authority of *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), followed in *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953), which had held that the business of giving baseball exhibitions was not within antitrust laws. The Supreme Court reversed the decision of the district court on the theory that Congress had taken no action on the decision in the *Federal Baseball* case, *supra*, and thus had not brought baseball under antitrust legislation, while, as to boxing, there was no such obstacle to prevent application of antitrust laws. See *United States v. International Boxing Club of N.Y.*, 348 U.S. 236 (1955). For a further discussion of antitrust laws as applied to professional sports, see Pierce, *Organized Professional Team Sports and the Antitrust Laws*, 43 CORNELL L.Q. 566 (1958); Keith, *Developments in the Application of Antitrust Laws to Professional Team Sports*, 10 HASTINGS L.J. 119 (1958).

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MUNICIPAL CORPORATIONS—POLICE PROTECTION—MUNICIPALITY LIABLE FOR NEGLIGENCE IN FAILURE TO ADEQUATELY PROTECT INFORMER.—*P*, as administrator, brought a wrongful death action against the City of New York for the death of *P*'s intestate. The complaint alleged that decedent had given information leading to the arrest of a dangerous fugitive from justice, that his part in the fugitive's capture had been highly publicized, and that decedent thereafter had received threats on his life of which he notified the police. He alleged that the city did not use reasonable care, in that it failed to supply police protection, which had been demanded; it imparted in decedent a false impression of safety and lack of danger, and, as a direct result of this lack of reasonable care, decedent was shot and killed by persons unknown. *Held*, that this complaint stated a good cause of action. The city breached its common law obligation by terminating its protection of decedent, when, in the exercise of reasonable care, it was apparent that acceptance of the information furnished by decedent, together with the publicity of his role, enlarged the risk of bodily harm to him,

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since a reciprocal duty arises on the part of society to use reasonable care for the police protection of persons who have aided in the apprehension of enemies of society. *Schuster v. City of New York*, 5 N.Y.2d 75, 154 N.E.2d 534 (1958).

This 4-3 decision is a reversal of the earlier case of *Schuster v. City of New York*, 286 App. Div. 389, 143 N.Y.S.2d 778 (1955), which held that there was no duty on the City of New York to protect *P*'s intestate and that, if a duty existed, *P* had failed to show in his complaint that the violation was the proximate cause of decedent's death. For a criticism of this earlier decision, and a compilation of cases which discuss the governmental duty to protect its citizens, see Comment, 58 W. VA. L. REV. 305 (1958). See also 18 MCQUILLIN, MUNICIPAL CORPORATIONS, §§ 53, 51 (3d ed. 1950), for a discussion of tort liability of municipal police forces.

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