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## Contracts--Insurance--Interpretation of Word "War"

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problem is whether or not the carrier has an I.C.C. permit, for state authority to revoke a local permit to do interstate commerce was there not to be superseded as to a carrier whose application for a permit was pending before the I.C.C., the carrier having carried on intrastate commerce evasively without the necessary local permit. *H. P. Welch Co. v. New Hampshire, supra*, however, involved a carrier clearly within the coverage of the Motor Carrier Act. Citation of the two cases in conjunction, in deciding *Columbia Terminals Co. v. Lambert, supra*, indicates a Supreme Court understanding in line with the interpretation Mr. Justice Black attributes to that case.

In view of the result reached in *Columbia Terminals Co. v. Lambert, supra*, and of the previous holdings cited, the majority view appears correct and consistent with prior authority; for the permit requirement was no more than a device for the orderly administration of the state's highways. However, the I.C.C. has now issued regulations dealing with the lessor-driver relation, which have been approved, see *American Trucking Ass'ns v. United States*, 73 Sup. Ct. 307 (1953); so there still may be uncertainty as to the precise limits of the state's regulatory powers over contract carriers within the ambit of the regulated relationship.

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CONTRACTS—INSURANCE—INTERPRETATION OF WORD "WAR".—*P's* deceased husband was insured by *D* under an insurance contract which included a provision for double indemnity if death resulted solely from accidental means. This clause further provided, however, that the company should not be liable for the additional death benefit if death resulted by reason of "military, air or naval service in time of war" and that this provision for double indemnity would immediately terminate if the insured should at any time, "voluntarily or involuntarily, engage in military, air or naval service in time of war." The insured, called to service, was killed accidentally while enroute to camp for training some three months after commencement of the Korean action. *D* attempted to invoke the termination clause. Held, that the word "war" is ambiguous in that it does not distinguish between declared and undeclared war and the policy will be construed most strongly against the insurer. Therefore, the termination clause was inoperative. *Harding v.*

*Pennsylvania Mutual Life Ins. Co.*, 171 Pa. Super. 236, 90 A.2d 589 (1952). *Accord*, *Savage v. Sun Life Assur. Co.*, 57 F. Supp. 620 (W.D. La. 1944); *Rosenau v. Idaho Mutual Benefit Ass'n*, 65 Idaho 408, 145 P.2d 227 (1944); *West v. Palmetto State Life Ins. Co.*, 202 S.C. 422, 25 S.E.2d 475 (1943). *Contra*: *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (10th Cir. 1946); *Mutual Life Ins. Co. v. Davis*, 79 Ga. App. 336, 53 S.E.2d 571 (1949); *Stankus v. New York Life Ins. Co.*, 312 Mass. 366, 44 N.E.2d 687 (1942).

Most cases which have arisen on this point necessitated an interpretation of the word "war" as used in *result* clauses, which provide that the insurer is excused from liability if death results from war or any act incident thereto, as distinguished from *termination* clauses such as in the instant case. It is submitted that the decision should be the same irrespective of the type of clause involved. If death results from war, assuming that death is immediate, it logically follows that the deceased was killed in time of war. Thus, cases construing result-type clauses support the view propounded in this comment.

It is readily apparent from the cases cited above that there is a distinct split of authority on the point involved and that each line has received substantial support. It is submitted that the better view is contrary to that represented by the instant case. Courts which follow the contrary rule refuse to resort to the ubiquitous and convenient principle that insurance contracts, when ambiguous, shall be construed most strongly against the insurer. They maintain that the word "war" is not ambiguous but that, unless further restricted by the context, it applies to every situation which ordinary people would commonly regard as war. *Stankus v. New York Life Ins. Co.*, *supra*. A state of actual war may exist without any formal declaration of it by either party. *The Prize Cases*, 2 Black 635 (U.S. 1862).

The foregoing conclusions of law are well founded. The cardinal rule of construction of all contracts is to ascertain the intent of the parties, and to do this the courts should place themselves in the position of the parties at the time the contract was executed. *Mutual Life Ins. Co. v. Davis*, *supra*. "It is well known that insurance companies base their premiums upon the risks insured." *Nowland v. Guardian Life Ins. Co.*, 88 W. Va. 563, 567, 107 S.E. 177, 178 (1921). Thus, the parties are using the term "war", not in any restricted sense, but to denote a particular state

of facts which involve risks too great to be insured against for the premium charged. They are using it as ordinary people use it. Economic considerations, not technical niceties, should be determinative. *New York Life Ins. Co. v. Bennion, supra.*

It would seem, therefore, that the Pennsylvania court has erred in refusing to face economic realities. The interests of public policy militate strongly against its decision. Such a holding will tend to expose insurance companies to liabilities arising from increased hazards for which they have not received commensurate compensation.

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EMINENT DOMAIN—PARTICULARITY OF DESCRIPTION OF AN EASEMENT.—Petitioner, electric company described the easement sought to be condemned by defining the center line thereof. The question was, should the easement be limited to a certain width? *Held*, that the petition must describe the land or easement sought to be appropriated with such particularity as to enable the court to determine that no more property is being appropriated than reasonably necessary for the purpose for which it is being acquired. *Monongahela Power Co. v. Shackelford*, 73 S.E.2d 809 (W. Va. 1952).

The court relied upon W. VA. CODE c. 54, art. 1, § 6 (Michie, 1949). This statute provides that the quantity of land acquired by a condemning agency "shall be limited to such quantity as is necessary for the purpose or purposes for which it is appropriated." This section, it would seem, has little relevance to a question concerning the particularity with which the petition must describe the land sought to be condemned. It would appear that the questions of quantity and description should remain separate and distinct. In other words, after the petitioner has described the land it wants, then the question should arise as to whether it wants too much.

In a consideration of the question of particularity of description, W. VA. CODE c. 54, art. 2, § 2 (Michie, 1949) is of immediate assistance. It is there prescribed that the "petition shall describe with reasonable certainty the property proposed to be taken, . . ." The sole difficulty encountered in an interpretation of this section emanates from the generality "reasonable certainty". All will concede that the phrase, although meaningless for practical purposes, contemplates at least a modicum of certainty. And, it is