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Limitation of Coverage in Life Insurance--Aviation Clause

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Further importance of this resort of a tried and condemned war criminal to the review of the Supreme Court of the United States is found in the fact that similar procedures may be resorted to in the case of the Nuremburg trials of Nazi war criminals and, further, that condemned Japanese General Mashura Homma whose trial followed in time and location that of Yamashita resorted to similar and as unsuccessful steps to obtain writs of certiorari, habeas corpus, and prohibition after he had been condemned to death for permitting atrocities to be committed by members of his command while he was commander of Japanese forces in the Philippines. The crime for which he was tried and condemned occurred in large part during the surrender of American forces in the spring of 1942 and upon the subsequent notorious Bataan Death March. An interesting addition to his petition that is not to be found so fully developed in the petition of Yamashita is that the commission could not come to an enforceable decision since the accuser was also the judge, that is, party to a trial in which it was to give judgment.

James D. Sullivan.

QUINONES v. LIFE AND CASUALTY INSURANCE CO. OF TENNESSEE (24 So. (2d) 270 La. 1945).— In one of the first cases of its kind to reach the courts the judicial history of aviation took unto itself another enlarging precedent. In *Quinones v. Life and Casualty Insurance Co. of Tennessee* the Supreme Court of Louisiana recognized the rapid wartime development of the Army-Navy Air Transport Service to a position equalling, if not surpassing commercial airlines.

On Oct. 1, 1942, Dr. Pascasio Quinones, a member of the Medical Corps of the United States Army was accidentally killed when a military plane in which he was riding crashed near the City of San Juan, Puerto Rico. At the time of his death Dr. Quinones held a twenty thousand dollar life insurance policy issued by the Life and Casualty Company of Tennessee which named the six minor children of the deceased as beneficiaries. In this case Mrs. Quinones, as tutrix and on behalf of her minor children, seeks to recover the amount of the policy from the insurance company.

The defendant insurance company answered the plaintiff by denying liability for the principal sum of the policy with two alternate defenses. The first defense, denying liability for any amount of the principal sum of the policy, relied on the aviation clause of the policy; the second defense, denying liability for more than one-fifth of the principal sum of the policy, relied on the military service clause of the policy.

The court below rendered judgment in favor of the plaintiff for the full amount of the policy and the defendant insurance company has appealed from the decision.

The defendant argues that Dr. Quinones, at the time of his death, was assuming risks which would not permit insurance coverage according to the policy's aviation and military clauses.

The Supreme Court of Louisiana held that Dr. Quinones' actions did fall within the coverage as permitted by the aviation and military clauses and discussed first the facts which led the court to place the Army-Navy Air Transport Service on the level of a commercial airline as far as the aviation clause of the policy was concerned.

The facts disclosed that Dr. Quinones was a passenger on an airplane regularly operated by the United States Government between Borinquin Field and the City of San Juan. The plane was one of many used before the war for transportation purposes by commercial airlines and after being requisitioned and slightly altered by the Army was used to carry passengers and cargo on this route. The airfields on this route were used by the Pan American Airways in conjunction with the Army and Navy and compare favorably with civilian airfields in the United States. The pilot was an experienced flyer having piloted passenger planes at Borinquin Field for a year and a half prior to the fatal accident. The passengers, members of the armed forces and civilians, were authorized by the commanding officer of the field to make this flight and Dr. Quinones was making the trip under military orders to obtain some serum.

The aviation clause in the policy is as follows: "Aviation. Should the death of the Insured result from operating, or riding in, any kind of aircraft, except as a fare-paying passenger in a licensed passenger aircraft operated by a licensed pilot on a regular passenger route between definitely established airports, only the reserve under this policy shall be payable and said reserve shall be in full settlement of all claims hereunder."

The court pointed out that it recognized the rights of insurance companies to limitations of liability contained in policies and noted that the intention of the parties in the construction of these limiting clauses must be controlling in determining the liability of the insurance companies.

Since the airplane has been proved to be the same as that used by the commercial airlines; the pilot as well qualified as any commercial pilot; the flight regular over an established route and the airfields as well equipped as civilian airports, the only remaining feature to be considered is the fare-paying status of the passenger. It is a matter of fact that Dr. Quinones enjoyed the privilege of travelling by airplane, by government car, or by train. If he had chosen to travel by

train, the Army would have furnished him a railroad ticket and certainly he would have been considered a fare-paying passenger. It seems fair, the court says, to conclude that no distinction should be made between a passenger whose fare is paid directly or indirectly or absorbed by his employer and a passenger who pays directly his own fare.

With all of the qualifications of the aviation clauses satisfied there is no reason why the insurance company should not be liable for the principal sum stipulated in the policy.

The second defense of the insurance company contended that the military service of the insured greatly reduced the principal sum to be paid. However the court held that the limited liability of the insurance company, as modified by its military service clause, pertained only to those cases where the insured was enrolled in the military service with no provision of such action being dealt with in the policy. The policy of the deceased most certainly acknowledged his status as a serviceman and by its acknowledgment grants full recovery of the principal sum, particularly when his death resulted from no hazards of combat.

Thomas Broden.

BOOK REVIEWS

JUSTICE FOR MY PEOPLE.—By Ernst Frankenstein, Dial Press, New York, 1944 — When Anne Morrow Lindbergh, in the days just before the war, impliedly sanctioned a “wave of the future,” the most active interventionists roundly damned her views as lacking courage and idealism. In these days just following a war fought for four freedoms, when many a voice proclaims that the wave of the present now engulfing eastern Europe must be accepted with “realism,” it is most refreshing to read a book which holds up the Atlantic Charter as a basis of its argument.

We have recently received for review “*Justice for My People*” by the celebrated international lawyer, Ernst Frankenstein. In brief, the work deals with a problem perhaps more tortured today than ever before: that of the seventeen million Jews on earth, a large number of whom are now displaced, homeless, and living in the midst of hostile populations. In concise language covering less than two hundred pages, Mr. Frankenstein states what he believes to be the case for his people, “the test case for humanity.”

Mr. Frankenstein, unlike some writers on international problems, is not more fond of the problem than of the solution. He is most specific as to the solution of the Jewish problem. It is “the estab-