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WAR RISK INSURANCE CASES

By Luke J. Kavanaugh of the Denver Bar

ON September 2, 1914, Congress established the Bureau of War Risk Insurance, "to make provisions for the insurance by the United States of American vessels, their freight and passage moneys and cargoes against loss or damage by the risks of war."

October 6, 1917, Congress enlarged the scope of the Bureau in order to give to every commissioned officer and enlisted man, and to every member of the Army, Navy and Nurse Corps when employed in active service, protection for himself and his dependents in the form of insurance, without medical examination. This insurance was granted against the death or total permanent disability of the persons designated. The policies were issued in any multiple of \$500, not less than \$1,000, and not exceeding \$10,000.

Insurance and compensation are entirely different. The latter provides, briefly, for death or disability resulting from personal injury suffered, or disease contracted in the military or naval service on or after April 6, 1917 and before July 2, 1921, or for an aggravation or recurrence of a disability existing prior to examination, acceptance and enlistment for service, when such aggravation was suffered and contracted in, or such recurrence was caused by, the military or naval service on or after April 6, 1917 and before July 2, 1921.

A veteran may be totally and permanently disabled for compensation purposes and not for insurance. Partial disability may have arisen in the service, to become total and permanent after his policy lapsed. In that event, he is entitled to compensation but not insurance. Compensation matters do not reach the courts, except in those extremely rare cases where there is flagrant abuse of discretion or gross error by Bureau officials. The decision of the Director upon a right to compensation claimed under the Act is final and conclusive, and not subject to judicial review, at least unless the decision is wholly unsupported by evidence, or is wholly dependent upon a question of law, or is purely arbitrary or capricious. (Silberschein v. U. S. 266 U. S. 221).

Lawyers as a rule are not employed in compensation cases, these being handled directly by the Bureau and veteran. Possibly the maximum attorney fee of ten dollars in these cases, regardless of the work involved, has something to do with this elimination.

Here is a typical war risk insurance case: The veteran allowed his Government insurance to lapse in July, 1919. His physical examination upon discharge showed him in good condition. Various pains and aches bothered him but he had to work or starve. He chose the former course and lost one job after another, working intermittently for several years until his final collapse. He brings suit to recover for total and permanent disability incurred while his policy was in effect, which generally means about the time of discharge.

Before bringing suit he must file what is known as a "threat letter" or claim, with the Bureau. In this he demands payment under his policy. In from one to fifteen months the Bureau answers by declining to pay. Meanwhile, he marks time. Mere delay by the Bureau in replying to his claim does not justify bringing suit upon the ground of laches or negligence. The "final disagreement", as it is called, must be obtained first. The courts have held this to be jurisdictional.

The Veterans' Bureau generally does not dispute plaintiff's total disability at the time of trial, but denies that plaintiff was totally disabled while the policy was in effect, eleven years before.

Total disability, under the War Risk Insurance Act, is defined to be "any impairment of mind or body, rendering it impossible for insured to follow continuously a substantially gainful occupation without seriously impairing his health, and that disability is permanent when of such nature as to render it reasonably certain to continue throughout the lifetime of the insured." (*U. S. v. Eliasson*, C.C.A., 20 Fed. (2d) 821.)

Assuming that plaintiff gets to trial eventually, he is likely to find arrayed against him Government doctors from various parts of the country. Their mere presence is indicative of the fact that they will testify that in their opinion plaintiff was able to work when they examined him. These witnesses are all experts—from the legal standpoint at least. Also, the

plaintiff will find all and sundry his letters to the Bureau written over a period of years.

Why, in 1922 when he tried to reinstate his policy, did he say he was not totally disabled, when now he says he was a physical wreck at that time? Why did he sign vocational training reports galore, stating that he was putting in eight hours daily learning to be a jeweler, when now it develops that most of the time he was lying on a couch gasping for breath? Why, and again and again, why?

Nobody, least of all the wraith-like witness, knows why he signed anything between hemorrhages. That is, nobody but the jurors. They seem to understand thoroughly—in Colorado, at least.

Medical experts battle one another, and altogether, the veteran finds that while in the World War he fought for Uncle Sam, he now has a little war of his own with his redoubtable Uncle.

Last year, according to testimony of Veterans' Bureau officials at a Congressional hearing, there were 690 war risk insurance cases tried in the Federal District Courts. The Government won 324. There are probably 150 of these cases pending in Denver. A dozen law firms handle ninety per cent. of this litigation in the United States.

In this district the policies sued upon range from \$5,000 to \$10,000, the average probably being \$8,000. Attorney fees allowed by statute are not to exceed ten per cent. of the total recovery. From the figures above quoted it may be said that attorneys' fees are not only contingent, but highly speculative. In any event, these fees are taken out of the veteran's award, and paid directly to the attorneys, in a lump sum, on the basis of \$5.75 per month on a \$10,000 policy from date of award to the first payment. Then at \$5.75 per month until the total recoverable amount is paid.

Most of the suits are brought upon the old term policies. Where these policies were converted or reinstated, numerous decisions held that plaintiff was estopped to sue on his original policy. The Congressional Act of July 3, 1930, ended decisions of this sort by providing that except in cases of fraud and one or two other contingencies, the insured in cases of

conversion or reinstatement might bring suit on his original policy by surrendering any subsequent contract or policy.

The recent Act also extended the time for filing insurance claims against the Government to July 3, 1931, which is the new period of limitations. Unusual features of these policies are that all Bureau regulations are a part of the contract, and statutes affecting the same are also retroactive.

It is estimated that there are five thousand war risk insurance cases pending in Federal courts, a remarkable increase from three hundred sixty-eight suits at the close of the fiscal year, June 30, 1927. The greatest number of policies in force at one time was about four and one-half million, representing forty-one billions of dollars in insurance. There are now over six hundred thousand Government insurance policies in effect, representing approximately three billions of dollars in insurance.

It will be seen, therefore, that despite criticism of the Veterans' Bureau, the percentage of cases actually brought is small.

The boards of appeal which have the last word as to whether the Bureau will pay claims, have been composed of attorneys, doctors and Bureau officials. If the Bureau lawyers alone could make the final decisions, the writer believes that more cases would be paid without trial.

This is insurance litigation, but it is *sui generis*. Government counsel are always fully prepared. They are armed with depositions, photostatic copies of the latest decisions not yet reported, formidable reports with every detail of the plaintiff's past life, and canny medical experts who see for the plaintiff only a rosy future of health.

All in all, it is small wonder that these trials have made experts of courts and counsel on both sides.