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# AERONAUTIC RISK EXCLUSION IN LIFE INSURANCE CONTRACTS\*

FRED M. GLASS†

## III. STATUTORY LIMITATIONS.

### In General:

The matter of construction of terms was not by any means the only obstacle facing insurers in the effective use of specific clauses as excluding from coverage risks connected with aeronautical flight. In practically every state the inclusion of a clause in all policies making such contract incontestable after the expiration of an arbitrary period, usually one or two years from the date coverage began thereunder,<sup>173</sup> was required by statute,<sup>174</sup> resulting immediately upon the adoption of these aeronautical clauses in the rather doubtful query as to whether or not such exclusion was not in fact a limitation upon the force and effect of such incontestable clause and a

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\* Continued from the July issue, 7 JOURNAL OF AIR LAW 305 (1936).

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173. *Jefferson Standard Life Ins. Co. v. Wilson*, 260 F. 593, 171 C. C. A. 357 (1919); *New York Life Ins. Co. v. McCarthy*, 22 F. (2d) 241 (C. C. A. 1927); *Schwartz v. Northern Life Ins. Co.*, 25 F. (2d) 555 (1928), cert. denied, 278 U. S. 628, 49 S. Ct. 29, 73 L. Ed. 547 (1928).

174. A typical statute follows: "No policy of life insurance shall be issued in this state or be issued by a life insurance company organized under the laws of this state unless the same shall contain the following provisions: . . . (3) A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after two years from its date, except for non-payment of premiums and except for violations of the conditions of the policy relating to military or naval services in time of war."

See: *Ala. Code Ann.* (1928) §8365; *Rev. Code Ariz.* (Struckmeyer 1928) §1847 (3); *Gen. Laws Cal.* (1932) c. 145, §10206 (group insurance); *Comp. Laws Col.* (1932) §2516(2), §2595 (b) (group insurance); *Laws Del.* (1921) §606(3); *Dist. Col. Pub. Act.* 436, c. 5, §3(3) (73 Cong. 1934); *Idaho Code Ann.* (1932) §40-1303(2); *Ill. Ann. Stat.* (Smith-Hurd, 1935) c. 73, §261(3); *Ind. Stat.* (Burns, 1933) §39-801(3) (double indemnity may be excepted if desired); *Code Iowa* (1935) c. 399-E1, §8684-e5(1) (group insurance); *Rev. Stat. Kans.* (1933) §40-420(2) (disability and accidental death benefits may be excepted at the option of insurer); *Rev. Stat. Maine* (1930) c. 60, §147 (total and permanent disability may also be excepted at option of insurer); *Ann. Laws Mass.* (1932) c. 175, §132(2) (total and permanent disability may also be excepted at option of insurer); *Comp. Laws Mich.* (1929) §12427 (double indemnity and disability provisions may be excepted also at option of company); *Minn. Stat.* (Mason, 1927) c. 74, §3426 (double indemnity and disability provisions may also be excepted at option of insurer); *Comp. Stat. Neb.* (1929) §44-602(5); *Cons. Laws N. Y.* (Cahill, 1930) c. 30, §101 (disability and double indemnity may also be excepted at option of insurer); *N. C. Code* (1935) §6466(b) (group insurance); *Comp. Laws of N. D.* (1913) §6635(c); *N. M. Stat.* (1929) §71-161(3) (aviation a part of statutory exceptions); *Ohio Ann. Code* (Throckmorton, 1934) §9411; *Okla. Stat.* (1931) §10524(3); *Oregon Code Ann.* (1930) §46-506; *Penn. Stat.* (Purdon, 1930) §40-510(c); *Tenn. Code Ann.* (Williams, 1934) §6179(3); *Rev. Stat. Utah* (1933) §43-3-24(3); *Rev. Civ. Stat. Tex.* (1925) §4732(4); *Va. Code Ann.* (1930) §4228; *Rev. Stat. Wash.* (Remington, 1932) §7230(2); *Wyom. Rev. Stat.* (1931) §57-232(3).

"contest" of the policy within the meaning of such clause. Prior judicial decision upon analogous attempted limitations of risk gave ample room for conjecture as to such a probability.<sup>175</sup> Of similar degree of importance were the rather common statutes prohibiting the inclusion in a policy of any provisions for mode of settlement at maturity of less value than the amount insured by the policy, plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that might by the terms of the policy be deducted.<sup>176</sup>

### Incontestable Clause:

**Conflicting Views**—"The object of the clause is plain and laudable—to create an absolute assurance of the benefit, as free as may be from any dispute of fact except the fact of death."

Thus spoke the United States Supreme Court through Justice Holmes in determining the effect of an incontestable clause upon a provision declaring the policy void in case of suicide of the insured, contained in the contract involved in the famous *Northwestern Mutual Life Ins. Co. v. Johnson* decision.<sup>177</sup>

Consistent with this view promulgated by the nation's highest tribunal, an imposing array of state and federal courts have construed such clause as meaning that by agreement of the parties, the cause of death has ceased to be an issue of fact, and that the at-

175. *Northwestern Mutual Life Ins. Co. v. Johnson*, 254 U. S. 96, 41 Sup. Ct. 47, 55 A. L. R. 549 (1920) (suicide) affirming *Northwestern Mutual Life Ins. Co. v. Johnson*, *Nat. Life Ins. Co. of Montpelier, Vt. v. Miller*, 275 F. 757 (C. C. A. 6th, 1921); *Philadelphia Life Ins. Co. v. Burgess, et al.*, 18 F. (2d) 599 (D. C. S. C., 1927) (suicide); *Standard Life Ins. Co. v. Robbs*, 177 Ark. 275, 8 S. W. (2d) 520 (1928) (suicide); *Mutual Life Ins. Co. of N. Y. v. Lovejoy*, 201 Ala. 337, 78 So. 299 (1917) (suicide); *Mass. Benefit Life Ass'n v. Robinson*, 104 Ga. 256, 30 S. E. 918, 42 L. R. A. 274 (1898) (misrepresentations as to habits); *Royal Circle v. Achterrath*, 204 Ill. 549, 68 N. E. 492 (1903) (suicide); *Goodwin v. Prov. Sav. Life Assurance Ass'n of N. Y.*, 97 Iowa 226, 66 N. W. 157 (1896) (death by own hands); *Supreme Court of Honor v. Updegraff*, 68 Kan. 474, 75 Pac. 477 (1904) (suicide); *Mareck v. Mutual Reserve Fund Life Ass'n*, 62 Minn. 39, 64 N. W. 68, 58 Am. St. Rep. 613 (1895) (death at own hands); *Mutual Reserve Fund Life Ass'n v. Payne*, 32 S. W. 1063 (Tex., 1895) (death by own hands). See also 31 A. L. R. 103.

176. Typical of such statutes is the following: "No policy of insurance shall be issued or delivered in this state if it contains any of the following provisions: . . . (4) A provision for any mode of settlement at maturity of less value than the amount insured by the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that may by the terms of the policy be deducted, payments to be made in accordance with the terms of the policy." *Indiana Statutes* (Burns, 1933) §39-802(3). See also *Idaho Code Ann.* (1932) §40-1304; *Ill. Ann. Stat.* (Smith-Hurd, 1935) c. 73, §262; *Rev. Stat. Kan.* (1933) §40-421; *Comp. Laws Mich.* (1929) §12295; *Minn. Stat.* (Mason, 1927) c. 74 §3406; *Comp. Stat. Neb.* (1929) §44-603; *Comp. Laws N. D.* (1913) §6635(d)(4); *Ohio Ann. Code* (Throckmorton, 1934) §9421(5); *Okla. Stat.* (1931) §10525(3); *Penn. Stat.* (Purdon, 1930) §40-511(d); *Tenn. Code Ann.* (Williams, 1934) §6180(4); *Rev. Stat. Tex.* (1925) §4733(3); *Wyom. Rev. Stat.* (1931) §57-233.

177. 254 U. S. 96, 41 Sup. Ct. 47; see also 55 A. L. R. 549 (1920).

tempt to escape liability on the part of the insurer by asserting death from any cause other than those specified within the incontestable clause itself was a *contest* of the policy and therefore in direct conflict with such clause.<sup>178</sup>

In arriving at such determination, four judicial principles evolve as the grounds most consistently used by the courts: (1) that by inclusion of the incontestable clause the insurer proffers to the insured that if he pays the premiums on a policy that not only will the *contract* be incontestable, but the *right to recover* the death benefit shall be likewise incontestable; (2) *expressio unius est exclusio alterius*<sup>179</sup>—by making express exceptions within the incontestable clause itself, there can be no further exceptions; (3) the time limit set within the terms of the incontestable clause shall govern the entire contract—and the validity of any clause providing that such contract does not cover death from a specified cause ends with the expiration of such time limit; (4) ambiguity in any insurance policy must be resolved against the insurer.<sup>180</sup>

Various courts, however, began to slowly break away from the preponderance of cases ruling that the incontestable clause was all-controlling in life policies,<sup>181</sup> and in distinguishing between express risk exclusions and forfeitures and conditions, ruled that a provision for incontestability does not have the effect of converting a provision to pay on the happening of a stated contingency into a promise to pay whether such contingency does or does not happen.<sup>182</sup> A party to the instrument could not, according to these decisions,

178. Note 175. Typical of the view adopted by these courts is the following: "Construing this contract as a whole, it seems that if the insured died within two years of its date, the insurance company may contest the cause of death, or may set up fraud, or misrepresentation in the procurement of the insurance, or any other matter that would be a defense to the action on the policy; but if he does not die within two years from issuance of policy, and he pays all the premiums agreed to be paid, then the insurance company will not contest, or refuse the payment of the amount agreed to be paid on any ground whatever. . . . The company agreed that it would not litigate any of these questions, though without the incontestable clause they would be a defense." (*Mutual Life Ins. Co. v. Lovejoy*, note 175.)

179. For numerous citations, recognizing, explaining, and adopting this legal maxim, see 25 C. J. 220.

180. Note 43.

181. Note 175.

182. *Sanders v. Jefferson Standard Life Ins. Co.*, 10 F. (2d) 143 (C. C. A. 5th, 1925) (insured murdered); *Hearin v. Standard Life Ins. Co.*, 8 F. (2d) 202 (D. C. E. D. Ark., 1925) (suicide); *Conn. Gen. Life Ins. Co. v. Mack*, 12 F. (2d) 416 (C. C. A. 8th, 1926), cert. denied, 271 U. S. 687 (suicide); *Flannagan v. Provident Life & Acc. Ins. Co. et al.*, 22 F. (2d) 136 (C. C. A. 4th, 1927) (injured while intoxicated); *Wright v. Philadelphia Life Ins. Co.*, 25 F. (2d) 514 (D. C. S. C., 1927) (suicide); *Collins v. Metropolitan Life Ins. Co.*, 133 Ill. App. 326 (1907) (reversed on other grounds, 232 Ill. 37, 83 N. E. 542) (execution for crime); *Myers v. Liberty Life Ins. Co.*, 124 Kan. 191, 257 P. 353 (1927) (suicide); *Stean v. Occidental Life Ins. Co.*, 24 N. M. 346, 171 P. 786 (1918) (suicide); *Scarborough v. American Nat. Ins. Co.*, 171 N. C. 353, 88

be said to be contesting the policy by raising the question as to whether under the terms a liability asserted by another party had or had not accrued.

Particularly outstanding in this development were the cases involving suicide clauses,<sup>183</sup> which ordinarily provided that suicide was a risk not assumed, and that in event of suicide, the policy was void, or the company would return the premiums with interest, the cash surrender value, or some other amount. Pertinent also were the decisions to the effect that the insurer was not *contesting* the policy by denying coverage where the insured was executed for violation of law,<sup>184</sup> and a Federal court decision<sup>185</sup> that the insurer did not *contest* the policy by relying on a stipulation that the policy did not cover death of the insured if he was killed "while under the influence of narcotics . . . or while violating the law." This view was further supported by two decisions to the effect that it was not *contesting* a policy to rely on a clause excluding death from injuries intentionally inflicted by another,<sup>186</sup> while a New York court concluded that it was not a contest of a policy to insist on a provision that, if the insured misstated his age, the amount of insurance should be adjusted to what the premiums would have purchased at the insured's correct age.<sup>187</sup>

The exclusion of specific risks from the double indemnity pro-

S. E. 482, L. R. A. 1918A, 896, Ann. Cas. 1917D, 1181 (1916) (execution for crime); *Jolley v. Jefferson Standard Life Ins. Co.*, 199 N. C. 269, 154 S. E. 400 (1930) (intentionally shot); *Sipp v. Philadelphia Life Ins. Co.*, 293 Pa. 292, 132 A. 221 (1928) (age misrepresentation); *Childress v. Fraternal Union*, 113 Tenn. 252, 82 S. W. 832, 3 Ann. Cas. 236 (1904) (suicide); *Scales v. Jefferson Standard Life Ins. Co.*, 155 Tenn. 412, 295 S. W. 58 (1927) (suicide); *Woodberry v. New York Life Ins. Co.*, 129 Misc. Rep. 365, 221 N. Y. S. 357 (1927) (suicide); *Murphy v. Travelers Ins. Co.*, 134 Misc. Rep. 238, 234 N. Y. S. 278 (1928) (age misrepresentation); *Howard v. Missouri State Life Ins. Co.*, 289 S. W. 114 (Texas, 1927) (suicide); *United Security Life Ins. Co. v. Massey, et al.*, 164 S. E. 529 (Va., 1932) (change of employment). See *Vance, Insurance, op. cit.*, p. 821, §231.

183. Full citation of the following cases appears in note 182. *Hearin v. Standard Life Ins. Co.*; *Conn. Gen. Life Ins. Co. v. Mack*; *Wright v. Philadelphia Life Ins. Co.*; *Myers v. Liberty Life Ins. Co.*; *Stean v. Occidental Life Ins. Co.*; *Childress v. Fraternal Union*; *Scales v. Jefferson Standard Life Ins. Co.*; *Woodberry v. New York Life Ins. Co.*; *Howard v. Missouri State Life Ins. Co.*

184. *Collins v. Met. Life Ins. Co.*, 133 Ill. App. 326 (1907) (reversed on other grounds, 232 Ill. 37, 83 N. E. 542); *Scarborough v. American National Life Ins. Co.*, 171 N. E. 353, 88 S. E. 482, L. R. A. 1918A, 896, Ann. Cas. 1917D, 1181.

185. *Flannagan v. Prov. Life & Acc. Ins. Co.*, 22 F. (2d) 136 (C. C. A. 4th, 1927).

186. *Sanders v. Jefferson Standard Life Ins. Co.*, note 182; *Jolley v. Jefferson Standard Life Ins. Co.*, note 182; "By the use of the term 'incontestable' the parties must necessarily mean that the provisions of the policy shall not be contested, and not that the insurance company agrees to waive the right to defend itself against a risk which it never contracted to assume. That is to say, the application of the incontestable clause precludes an insurance company from questioning the validity of the contract in its inception, or that it thereafter became invalid by reason of a broken condition. Hence, an ordinary incontestable clause, cannot be used as a means of rewriting into the contract risks and hazards which the policy itself positively excluded."

187. *Murphy v. Travelers Ins. Co.*, 134 Misc. Rep. 238, 234 N. Y. S. 278 (1928).

vision for accidental death issued with a large percentage of life policies, necessarily emphasized the query as to whether or not the incontestable clause contained in the policy extended to and covered such double indemnity provision. For some years the question remained in doubt, though the courts of two jurisdictions have since decided in the affirmative,<sup>188</sup> and three additional consistent decisions<sup>189</sup> go to great lengths in determining whether or not certain risk exclusions in the double indemnity provision were voided by the terms of the particular incontestable clause, thus holding by the strongest implication that such addition is within the scope of such incontestability provision unless the contrary is specifically stated within the wording of the clause itself.

**Conway Rule as to Aviation Riders**—It remained, however, for the New York Court of Appeals, speaking through Chief Justice Cardozo in the 1930 *Metropolitan Life Ins. Co. v. Conway, Supt. of Insurance*<sup>190</sup> case to judicially establish the validity of aviation exclusion riders in the case of policies containing statutory incontestable clauses not in themselves listing aviation as an exception from the force and effect of such clause, by distinguishing between assumption and non-assumption of risk. The litigation arose on the refusal of the New York Superintendent of Insurance to permit the use of the following rider for life policies because of its alleged conflict with the state statutory incontestable clause,<sup>191</sup> which made the policy incontestable after it had been in force for two years, except for non-payment of premiums and for violation of the conditions of the policy relating to military or naval service in time of war:

"Death as a result of service, travel or flight in any species of aircraft, except as a fare-paying passenger, is a risk not assumed under this policy; but if the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy."

In distinguishing between the case before him and the landmark *Northwestern Mutual Life Ins. Co. v. Johnson* decision<sup>192</sup> to the effect that the object of the incontestable clause is to create an absolute assurance of benefit free from any dispute of death, Justice Cardozo classified the exception clause in the *Johnson* case as a

188. *Fishel v. Union Central Life Ins. Co.*, 151 Misc. Rep. 153, 270 N. Y. S. 734 (1933); *Provident Life and Accident Ins. Co. v. Rimmer*, 157 Tenn. 597, 12 S. W. (2d) 365 (1928).

189. *Ness v. Mutual Life Ins. Co.*, 70 F. (2d) 59 (C. C. A. 4th, 1934); *Sanders v. Jefferson Stan. Life Ins. Co.*, note 182; *Jolley v. Jefferson Standard Life Ins. Co.*, note 182.

190. 252 N. Y. 449, 169 N. E. 642 (1930).

191. *Consolidated Laws* (New York, 1909) c. 28, §101.

192. Note 177.

forfeiture provision in contradistinction to a limitation as to coverage, and held that therefore the incontestable clause therein involved, coupled with the payment of premiums, would sustain a recovery in the face of any forfeiting condition. It was quite another thing, however, according to Cardozo, to say that the same facts would prevail against a refusal to assume the risk.

After disposing of the alleged binding effect of the *Johnson* case, the New York court concluded to the effect that the provision stating a policy to be incontestable after it had been in force during the lifetime of the insured for a period of two years is not a mandate as to coverage nor a definition of the hazards to be borne by the insurer, but means instead only that within the limits of the coverage the policy shall stand, unaffected by any defense that it was invalid in its inception or thereafter became invalid by reason of a condition broken. A provision for incontestability was described as not having the effect of converting a promise to pay on the happening of a stated contingency into a promise to pay whether such contingency does or does not happen, as where there has been no assumption of risk there can be no liability.

**Construction as to Aviation Riders Subsequent to Conway Decision**—This distinction between limitation on the coverage and limitation on a defense of invalidity, resulting in approval of the efficacy of aviation risk exclusion clauses even in policies containing statutory incontestable clauses not in themselves excepting such risk, was given unequivocal approval by the Circuit Court of Appeals of the Tenth Circuit in the case of *Head v. New York Life Ins. Co.*<sup>193</sup> just a few months subsequent to its first promulgation by the New York court.

Though only two state courts<sup>194</sup> have had occasion since the *Conway* case in 1930 to pass upon the point therein involved, directly contra results have been reached by these two tribunals. The Washington court, when faced in 1933 in the case of *Pacific Mutual Life Ins. Co. v. Fishback*<sup>195</sup> with precisely the identical situation involved in the *Conway* case,<sup>196</sup> adopted without reservation the

193. 43 F. (2d) 517 (C. C. A. 10th, 1930). (Insured was killed in an airplane accident subsequent to the expiration of the contestable period. Suit was brought on the double indemnity clause of the policy. Insurer relied on the aeronautic risk exception clause, while the insured's beneficiary relied on the incontestable clause.)

194. Louisiana and Washington.

195. 171 Wash. 244, 17 P. (2d) 841 (1933).

196. The Washington statutory clause (Remington's *Comp. Stat.* (1932) §§7223, 9230) excepted only non-payment of premiums and violation of policy conditions relating to military or naval service in time of war from the force and effect of such clause. The proposed aviation clause which was rejected by the insurance commissioner, Fishback, in this case follows: "Except as herein below provided, death resulting directly or indirectly, in whole or in part, from being in or on any vehicle or mechanical device for aerial navigation, or from

latter decision both as to reasoning and result. The Supreme Court of Louisiana, however, in the case of *Bernier v. Pacific Mutual Life Ins. Co.*<sup>197</sup> involving a specific aviation risk exclusion<sup>198</sup> and an incontestable clause which in itself listed as exceptions non-payment of premiums and violation of the conditions of the policy relating to military or naval service in time of war, distinguished between the facts therein involved and those faced by the court in the *Conway* decision. The latter case was interpreted by the Louisiana court as authority for the proposition merely that a life insurance company may, without doing violence to a provision making the policy incontestable after a stated period, except from the so-called *coverage*, or risk assumed, any cause of death that the company sees fit to except, provided, that the *exception* shall be expressed so plainly in the policy as to leave no reasonable doubt that the *exception* is to remain after the policy shall have become otherwise *incontestable*. Listing of specific exceptions in the incontestable clause itself, and failure to include the aviation risk exception therein was interpreted on the basis of the *inclusio unius est exclusio alterius* maxim<sup>199</sup> as of necessity denying effect to such aviation clause after the expiration of the incontestable period.

#### Statutes Prohibiting Settlement for Less Than Face Amount:

In construing the applicability of such statutory requisites to various queries arising thereunder, the Texas courts which have been by far the most prolific, have repeatedly ruled invalid policy provisions for payment of less than the maximum value of the policy in event of death resulting from certain causes, or occurring within a certain time.<sup>200</sup> Such view was even adopted by the

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falling therefrom or therewith, or while operating or handling any such vehicle or device, is a risk not assumed under this Policy, but in the event of death, so occurring, the Company will pay the reserve under this Policy, and the Policy shall thereupon be terminated . . . ."

197. 173 La. 1078, 139 So. 629 (1932).

198. "It is hereby understood and agreed, in the event of death of the insured arising in whole or in part, directly or indirectly, from engaging in aerial navigation, except while riding as a fare-paying passenger in a licensed commercial aircraft provided by an incorporated common carrier for passenger service, and while such aircraft is operated by a licensed transport pilot and is flying on a regular civil airway between definitely established airports, the only liability under the policy shall be for a sum equal to the premiums paid thereon, and the policy shall thereupon terminate."

199. Note 179.

200. *First Texas State Ins. Co. v. Smalley*, 233 S. W. 314 (Tex. Civ. App. 1921); *Amer. Nat. Ins. Co. v. Dixon*, 231 S. W. 165 (Tex. Civ. App. 1921); *Amer. Nat. Ins. Co. v. Hawkins*, 189 S. W. 330 (Tex. Civ. App. 1916); *First Texas State Ins. Co. v. Bell*, 184 S. W. 277 (Tex. Civ. App. 1916).

The statute involved in these cases was Sub. 3 of Art. 4742 of the *Rev. Stat. of 1911*, providing that no policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company incorporated under the laws of this state, if it contains: "A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less indebtedness to the company on the policy, and less any premium that may, by the terms of the policy be deducted; provided, that any



judiciary of this state where such provisions appeared on the *face* of the policy.<sup>201</sup>

Inclusion of aeronautical exceptions and exclusions in the body of the policy by the majority of companies without particular effort to print it on the first page thereof, necessarily brought into prominence in this connection the decisions inconsistently determinative of what constituted the *face* of the policy.<sup>202</sup> Texas decisions tend toward the strict interpretation of such word as meaning the first part of the policy,<sup>203</sup> while more recent authority of another jurisdiction is to be found construing such term as referring to the entire policy contract.<sup>204</sup>

Concern was likewise at one time felt as to whether double indemnity provisions in life policies were not in themselves accident provisions and therefore subject to not uncommon statutes prohibiting the inclusion of exceptions as to the coverage of accident policies otherwise than on the *face* of the contract. Such doubt, has, however, been removed by comparatively recent decisions rejecting the classification of double indemnity provisions in life policies as accident insurance.<sup>205</sup>

A distinction has apparently been drawn by the courts between contracts providing on the occurrence of some specified risk for return of a specified sum less than the total value of such policy,

company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand or while following stated hazardous occupations." For analogous statutes in other states see note 176.

201. *First Texas State Ins. Co. v. Smalley, et al.*, 111 Tex. Rep. 68, 228 S. W. 550 (1921).

202. *First Texas Prudential Ins. Co. v. Smallwood*, 242 S. W. 498 (Tex. Civ. App. 1922); *Amer. Nat. Life Ins. Co. v. Walker*, 256 S. W. 950 (Tex. Civ. App. 1923); *Julius v. Metropolitan Life Ins. Co.*, 299 Ill. 343, 132 N. E. 435, 17 A. L. R. 956 (1921).

203. *First Texas Prud. Ins. Co. v. Smallwood, ibid.*; *Amer. Nat. Life Ins. Co. v. Walker, ibid.*

204. *Julius v. Metropolitan Life Ins. Co.*, note 202: "The face of an insurance policy is the entire insurance contract contained in the policy. To construe the term to mean the first page of the policy would compel the insurance companies to print the policies on a sheet of paper large enough to accommodate all the terms and conditions on the front of the sheet. Such a requirement would find no support in reason or in law. \* \* \*

"The object of the statute is to prevent the insurance company from inserting provisions in its policy provisions for optional modes of settlement professedly for the benefit of the insured, but which in fact, provides modes of settlement of less value than the amount fixed in the insurance contract which the insured or beneficiary might have paid to him in one sum. . . . The face of the policy under consideration is all the matter printed on the first three pages, together with the riders attached and made a part of the policy by reference."

205. *Mutual Benefit Health & Acc. Ass'n of Omaha, Neb. v. Bell*, 49 Ga. App. 640, 176 S. E. 124 (1934); *Logan v. Fidelity & Casualty Co. of N. Y.*, 146 Mo. 114, 47 S. W. 948 (1900); *Purcell v. Wash. Fidelity Nat. Ins. Co.*, 141 Ore. 98, 16 P. (2d) 639 (1932); *Fishel v. Union Central Life Ins. Co.*, 151 Misc. 153, 270 N. Y. S. 734 (1933); *Provident Life & Acc. Ins. Co. v. Rimmer*, 157 Tenn. 597, 12 S. W. (2d) 365 (1928). See also Ch. 74, *Minn. Laws 1935* to the effect that the standard accident and health policy provision was inapplicable to disability or accidental death provisions supplemental to life or annuity contracts; and reversing the rule adopted in this state as a result of the prior decision of *Joyce v. New York Life Insurance Company*, 250 N. W. 674, 255 N. W. 927, adopting the contrary view. See also the following pertinent statutes: *Laws Cal.* (1935), c. 145, §10271; *Ind. Stat.* (Burns' Supp. 1935) §39-4306 (k) (2); *Comp. Stat. N. J.* (1910, amend. c. 97, L. 1935) §99, p. 2871; *Penn. Stat.* (Supp. 1928, amend. Act 359, L. 1935) §12490 (b)-629 (b); *W. Va. Acts* (1935) c. 56, §20 (b).

and those providing for the return of premiums paid or the reserve, as affected by the statutes prohibiting inclusion of provisions in a policy for settlement at less than the face amount thereof. Illustrative of this distinction is an Ohio decision<sup>206</sup> construing a specific suicide clause as a "risk not assumed," and interpreting the return of premiums therein promised by the insurer in event insured met death in this manner, to be mere generosity on the part of the insurer, not affected in any way by such statute as mentioned above.

### Opinions of State Insurance Commissioners:

In order to definitely ascertain the opinions of the state insurance commissioners, in the light of statutory incontestable clauses and statutes prohibiting settlement for less than face amount of contract, as to the issuance of policies in their respective states, with aviation exclusion riders similar to that approved by the New York court in the *Conway* case, the American Life Convention<sup>207</sup> submitted, immediately subsequent to the promulgation of that opinion in 1930, the following rider to the commissioners of the forty-eight states and the District of Columbia:

"Death as a result of service, travel or flight in any species of aircraft, except as a fare-paying passenger, is a risk not assumed under this policy; but, if the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy."

Three queries concerning the rider were propounded to the commissioners:

(1) Will your department object to the use of a rider, or provision, in language similar to the above, when presented to your department for approval?

(2) If the response to query one is answered in the affirmative, may total and permanent disability provisions specifically except a loss from such hazard?

(3) May double indemnity provisions contain a like exception?

Though the replies to query one failed to approach any marked degree of unanimity, there was nevertheless a rather surprising degree of uniformity in the answers. Thirty-five of the replies expressed unqualified approval of the use of the riders;<sup>208</sup> four ap-

206. *Western & So. Life Ins. Co. v. Horne*, 100 Ohio St. 478, 137 N. E. 416 (1919).

207. Executive Offices, 230 N. Michigan Avenue, Chicago, Illinois.

208. Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Dist. of Columbia, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

proved with qualifications;<sup>209</sup> eight disapproved;<sup>210</sup> one refused to comment;<sup>211</sup> while one refused to permit the aviation exception in a rider, but approved of such exclusion in a policy provision.<sup>212</sup> Queries two and three were unanimously answered in the affirmative.

Since the date of these opinions, however, the aviation exclusion rider has been approved by the State of Oregon,<sup>213</sup> and the States of Washington and Louisiana have each been forced to reverse the stands taken by their respective commissioners because of judicial decisions.<sup>214</sup> At the present time, it may be generally asserted that aviation exclusions in life policies will meet with approval in thirty-two states and the District of Columbia, while the validity of such exclusions remains doubtful in the remaining sixteen states.<sup>215</sup>

#### IV. HISTORY AND DEVELOPMENT OF AERONAUTICAL EXCEPTIONS.

##### In General:

Though recognized for more than two decades as an insurance risk,<sup>216</sup> aviation has never generally been excluded from coverage by specific provision within the policy itself, but instead has either been fully covered or else excepted by riders attached to such policy.<sup>217</sup> Full coverage, however, has been granted only after

209. California (insured must understand and accept provision); Indiana (applicant must sign a written consent to such modification, and policy must show on title page that it contains provisions modifying coverage for aviation death); Missouri (will approve provided modifications are made for refund to beneficiary of premiums paid on policy, instead of payment of reserve); Utah (did not pass directly on queries presented—merely quoted opinion of Attorney General to effect that aviation rider was valid if death occurred within ten years from date of issuance of policy).

210. Illinois, Michigan, Minnesota, North Dakota, Oklahoma, South Dakota, Texas and Washington.

211. Oregon.

212. Nebraska: "Department has no objection to the inclusion of a policy provision, excluding the aviation risk, but a rider to the same effect will not be approved. Disability and double indemnity provisions may contain like exceptions."

213. Approved March 27, 1934, as a result of opinion to Insurance Commissioner Averill by Attorney General Van Winkle.

214. *Bernier (Leidenger) v. Pacific Mutual Life Ins. Co.*, note 197; *Pacific Mutual Life Ins. Co. v. Fishback as Ins. Com.*, note 195.

215. Tennessee, Michigan, Minnesota, North Dakota, South Dakota, Oklahoma, Louisiana, Idaho, Indiana, Kansas, Missouri, Nebraska, Ohio, Pennsylvania, Wyoming and Illinois. (The Insurance Code proposed before the last session of the Illinois legislature contained a provision (Art. 1, Sec. 229 (3)) specifically excepting from the statutory incontestable clause, non-payment of premiums, violation of conditions of the policy relating to naval or military service in time of war, and violation of an express condition, if any, relating to aviation. Provision is further made that in the latter case, the liability of the company may be limited to a definitely determinable reduced amount, which shall not be less than the full reserve of the policy and any dividend additions.)

216. *Supra* p. 306.

217. *J. E. Hoskins*, "Aviation and Life Insurance," *National Aeronautical Magazine*, April, 1936, p. 18, at p. 36: "There is one point in which the treatment of applicants with aviation hazard does differ from general life insurance practice, namely, the use of the so-called Aviation Exclusion Rider. Policies are sometimes issued which reduce the death benefit if death occurs as a result

specific inquiry into the aeronautical activities of a prospective insured in the form of application queries, supplemented by independent company investigations.<sup>218</sup> Complete rejection of applicants exposed to aviation risks resulted in those jurisdictions which, either because of a statutory incontestable clause<sup>219</sup> or prohibitions against settlement for less than the face amount<sup>220</sup> provisions, denied efficacy to riders or policy provisions excluding such risks.

Almost without exception, however, in common with certain other extraordinary risks, aviation has been specifically excluded from disability and accidental death provisions, the result being that these clauses afford by far the most fertile field for study of the development and evolution of aviation risk exceptions.<sup>221</sup> Even in the comparatively rare situations where such exceptions were included within the body of the policy, language identical with that of these disability and accidental death exclusions has been generally employed.<sup>222</sup>

#### Disability and Double Indemnity Provisions:

Complete lack of uniformity in the expression of aeronautical risk exception on the part of the various insurance companies<sup>223</sup> has, of necessity, involved in this study a detailed examination of the policies of each separate company. However, the evident impracticability of the presentation of such a study here makes it mandatory to limit this discussion to the evolution of the exceptions used over the past two decades by ten well-known and representative insurance companies.<sup>224</sup>

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of aviation. Sometimes flying as a passenger on scheduled lines is permitted and, in other cases, any flying as a fare-paying passenger. This type of exclusion is almost unique in life insurance. The only other hazard which is ever excluded for more than the first two years of a policy is war service. (The vast majority of policies are written without either of these restrictions.) The reasons why life insurance companies write policies which exclude the hazard of death while engaged as a pilot, and not policies which exclude coverage while engaged as a yard switchman, are: (1) purchasers of large amounts of insurance are more liable to be engaged in flying than in any other hazardous pursuit; (2) men now in business or professional positions are more liable to take up aviation than they are to turn to some other hazardous occupation; (3) the difference in risk between the best and worst pilots is unusually great." (Italics are the author's.)

218. See pages 6 and 7.

219. Note 174.

220. Note 176.

221. The 1935 Handy Guide to Standard and Special Contracts, and Premium Rates, Non-Forfeiture Values, Dividends, Net Costs and Annuities. The Spectator, 1913 to 1935, inclusive.

222. *Ibid.*

223. The 1935 Handy Guide (note 221) lists 173 companies doing business in the United States and Canada.

224. Connecticut General Life Insurance Company, Hartford, Connecticut; Connecticut Mutual Life Insurance Company, Hartford, Connecticut; Continental Assurance Company, Chicago, Illinois; Equitable Life Assurance Society of the United States, New York, New York; Lincoln National Life Insurance Company, Fort Wayne, Indiana; Massachusetts Mutual Life Insurance Company, Springfield, Massachusetts; Mutual Life Insurance Company of New York, New York, New York; Penn Mutual Life Insurance Company, Philadelphia,

While *participating in or in consequence of having participated in aeronautics*, and *engaged in aeronautics*<sup>225</sup> appear to have been rather consistently used prior to the landmark *Bew v. Travelers Insurance Co.* case<sup>226</sup> in 1921, (though in spite of the approval of the *participate* exception in this case as covering a casual passenger in a plane), a general flurry of revamping of these exceptions in the light of possible future developments in aviation resulted from the innuendo of the decision suggesting *engage* to refer only to one taking an active part in the operation of a plane, and *participate* as having general efficacy only so long as aviation remained a non-occupational activity.<sup>227</sup>

**Developments 1921-1936**—Equitable Life and Lincoln National adopted *engaging as passenger or otherwise* exceptions, the former using the exception with *submarine and aeronautic expeditions*,<sup>228</sup> while the latter employed *aerial flight or submarine descent*<sup>229</sup> as expressive of the activity excepted from coverage. Connecticut Mutual varied only in the use of *aeronautic or submarine operations*,<sup>230</sup> while Prudential failed to include the *as passenger or otherwise* phrase and added *or in military or naval service or from state of war or insurrection*.<sup>231</sup> Connecticut General was one of the first companies to abandon the use of either *engage* or *participate* as expressive of the action to be excepted, adopting instead in 1922 the clause *contracted or sustained while in or on or operating or handling any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith*. Penn Mutual and Massachusetts Mutual early<sup>232</sup> chose *aeronautic or submarine casualty* while Travelers varied from this only in the use of *expedition* instead of *casualty*. Mutual Life of New York and Continental Assurance Company, however, apparently accepting the *Bew* decision as worthy authority, continued to use *participation in aeronautics* as expressive of the exclusion.

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Pennsylvania; Prudential Insurance Company of America, Newark, New Jersey; The Travelers Insurance Company, Hartford, Connecticut.

225. Prudential Insurance Company of America used "engaged in aviation operations."

226. *Bew v. Travelers Ins. Co.*, note 32.

227. *Ibid.* at 860.

228. Equitable Life (1922): "engaging as a passenger or otherwise in submarine or aeronautic expeditions." (See *Day v. Equitable Life Assur. Soc. of U. S.*, note 79, for litigation involving this exception in connection with the death of an insured while flying as a casual passenger.)

229. Lincoln National (1924): "engaging as passenger, or otherwise, in an aerial flight or submarine descent."

230. Connecticut Mutual (1923): "if death resulted directly or indirectly from engaging as a passenger or otherwise in aeronautic or submarine operations."

231. Prudential Ins. Co. of Amer. (1924): "from having been engaged in aviation or submarine operations or in military or naval service or from a state of war or insurrection."

232. Penn Mutual (1922) and Mass. Mutual (1928).

The construction of the *engage* exception in 1927 as not covering a casual passenger, in the initial decision involving the word as expressive of the *action* excepted,<sup>233</sup> was in all likelihood the cause of the immediate abandonment of such clause by the Connecticut Mutual Insurance Company,<sup>234</sup> though the subsequent approval of *as passenger or otherwise* in the *Gits*<sup>235</sup> and *Head*<sup>236</sup> cases as assuring general efficacy to either a *participate* or *engage* clause, obviously caused this company to again adopt the clause in 1930 with the *as passenger or otherwise* addition.<sup>237</sup>

The *having been engaged in aviation or submarine operations or in military or naval service in time of war* 1927 exception of the Prudential Insurance Company was likewise drastically revised two years later as the likely result of the *Gits* decision<sup>238</sup> construing *operations* as restricting the coverage of the exception to the actual handling of the mechanics of the plane, and of the *Peters* case<sup>239</sup> construing the *in time of war* phrase in an identical exception to extend not only to the military or naval service, but also to the aviation or submarine operations part of the clause. In the light of these two interpretations combined with the judicial approval of the *as passenger or otherwise* addition,<sup>240</sup> the 1929 exception of this company emerged *having been engaged in aviation or aeronautics, as a passenger or otherwise*.

Travelers Insurance Company discontinued the use of *expeditions* in favor of *hazards* in 1929,<sup>241</sup> and even though such expression was construed in favor of the insurer in the *Gibbs* case<sup>242</sup> in 1931, the Equitable Life Assurance Society did likewise shortly thereafter. In company with Prudential Insurance Company and Connecticut Mutual Insurance Company, Equitable dropped *engage* as expressive of the *action* excepted from coverage, subsequent to

233. *Benefit Association Ry. Employees v. Hayden*, note 53.

234. Connecticut Mutual (1927): Changed to "while in or on, or operating or handling any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith."

235. *Gits v. N. Y. Life Ins. Co.*, note 66.

236. *Head v. N. Y. Life Ins. Co.*, note 34.

237. Connecticut Mutual (1930): "engaging as a passenger or otherwise in aeronautic or submarine operations."

238. *Gits v. N. Y. Life Ins. Co.*, note 66.

239. *Peters v. Prudential Life Ins. Co.*, note 55.

240. *Head v. N. Y. Life Ins. Co.*, note 34; *Gits v. N. Y. Life Ins. Co.*, note 66.

241. Travelers Insurance Co. (1929): "provided death does not result from any hazard of aviation except as hereinafter provided. It is further agreed that the additional indemnity hereby provided will be paid if the death shall result from injuries caused by any of the hazards of aviation while the insured is riding as a passenger in a licensed passenger aircraft piloted by an incorporated passenger carrier and while operated by a licensed pilot on a regular passenger route between definitely established airports, but shall not be payable if the death of the insured shall result from injuries sustained in any military or naval aircraft or in any form of aviation travel or hazard not herein specified, nor from death resulting from injuries sustained by the insured while acting as a pilot, navigator or mechanic of an aircraft."

242. *Gibbs v. Equitable Life Assur. Soc.*, note 72.

the construction of such word in the 1930 *Charette* case<sup>243</sup> as being ambiguous when applied to passenger death, and adopted the exception *riding as passenger or otherwise in an airplane or in any other type of aircraft*. Prudential Insurance Company adopted generally the same clause,<sup>244</sup> while Connecticut Mutual chose *aeronautic flight or submarine descent*.

The development of the aviation exclusion clause in the Connecticut General policies presents perhaps the most diligent attempts to word the exception in the light of judicial decisions, as successfully to cope with every situation arising in connection with aviation risks. Though abandoning the usual *engage* and *participate* exceptions shortly after the early *Bew* case<sup>245</sup> in favor of a very technical and specific exception,<sup>246</sup> such exception was even further changed in 1929 to *or loss from being in or on, or about, or operating or handling any vehicle or mechanical device for aerial navigation or in falling or being thrown therefrom or therewith*. The *about* addition was undoubtedly the result of the 1927 *Pittman* case<sup>247</sup> involving for the first time the death of a passenger from contact with the revolving propeller after completing the flight, while the *being thrown* addition suggests the 1927 *Wendorff* case<sup>248</sup> involving the death of an insured as the result of being thrown from a seaplane by the impact of high waves during a forced landing. Unaffected by the numerous *engage* and *participate* judicial interpretations, the exception at the present time is in effect unchanged from that of 1929, though worded in more concise phraseology.<sup>249</sup>

Alongside of the tendency to adopt stricter language in order to adhere to court decisions, is to be noticed a more liberal development resulting from the general recognition of the comparative safety of modern commercial airlines.<sup>250</sup> This liberalization is

243. *Charette v. Prudential Life Ins. Co.*, note 94.

244. Prudential Life Ins. Co. of Amer. (1931): "from operating or riding in, any kind of submarine or aircraft whether as a passenger or otherwise."

245. *Bew v. Travelers Ins. Co.*, note 32.

246. Connecticut General Life Ins. Co. (1922): "contracted or sustained while in or on or operating or handling any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith."

247. *Pittman v. Lamar Life Ins. Co.*, notes 104 and 105.

248. *Wendorff v. Missouri State Life Ins. Co.*, notes 104 and 111. The policy involved in this case contained the following aviation proviso: "The insurance hereunder shall not cover injuries fatal or nonfatal sustained by the insured while in or on any vehicle or mechanical device for aerial navigation or in falling therefrom or therewith or while operating or handling any such vehicle or device."

249. Connecticut General Life Ins. Co. (1935): "Being or having been in, on or about, operating or handling or falling with or from any vehicle or mechanical device for aerial navigation."

250. J. E. Hoskins, "Aviation and Life Insurance," note 217 at 569: "Over the last five years the passenger death rate in scheduled flying has been .000042 per trip, or 4.2 per 100,000 passengers carried. Expressed in another way, the odds are more than 20,000 to 1 against the traveler being killed on a trip by air transport and several thousand to 1 that the traveler will reach his destina-

clearly evidenced in the ever-increasing tendency on the part of insurers to cover, even in disability and accidental death provisions, the risks incident to flight in the planes operated by these lines. Equitable Life Assurance Society, Prudential Life Insurance Company and Mutual Life Insurance Company of New York policies, at the present time, are practically identical in excepting from the aeronautical exclusion of their accidental death benefit clause anyone riding as a *fare paying passenger in a licensed passenger aircraft provided by an incorporated passenger carrier and operated by a licensed pilot on a regular scheduled flight over a regularly established air-route between definitely established airports.*<sup>251</sup> Travelers Insurance Company's present accident death provision varies from the above only in the language employed in expressing the coverage granted.<sup>252</sup>

Connecticut Mutual Life Insurance Company grants the same liberalized coverage in its modern disability provisions,<sup>253</sup> while Massachusetts Mutual Life Insurance Company and Continental Assurance Company go even further and extend coverage in disability provisions not only in flight over definitely established passenger routes, but also to any *fare-paying passenger on a licensed aircraft operated by a licensed pilot.*<sup>254</sup>

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tion in as good condition as when he started (since non-fatal injuries are also comparatively few). Since the average trip in this period has been nearly three hours long, the death rate on the basis of hours has been .000016 or 1.6 per 100,000 passenger hours. To put it still another way, in a group of policy holders who each travel 100 hours a year by air transport under average conditions, the death claim cost to the life insurance company will be \$1.60 a year from each \$1000 of insurance. This is practically all extra cost caused by the aviation hazard because the normal chance that a business or professional man will meet accidental death in the course of 100 hours costs an insurance company only about \$.01 for each \$1000 insured. For a number of reasons too technical to discuss here, the actual cost to the company will somewhat exceed the theoretical \$1.60."

251. Equitable Life Assurance Society of the U. S. (1935): "resulting from or caused directly or indirectly by riding in an airplane or in any other type of aircraft except as a fare-paying passenger in a licensed passenger aircraft provided by an incorporated passenger carrier and operated by a properly licensed pilot on a regular passenger route between definitely established airports."

Prudential Life Ins. Co. of America (1935): "while operating or riding in any kind of submarine or aircraft except as a fare-paying passenger in a licensed aircraft provided by an incorporated passenger carrier and operated by a licensed pilot on a regularly scheduled flight over a regularly established air-route between definitely established airports."

Mutual Life Ins. Co. of N. Y. (1935): "from operating or riding in any kind of aircraft, whether as a passenger or otherwise, except as a fare-paying passenger in a licensed passenger aircraft provided by an incorporated passenger carrier and operated by a licensed pilot on a regular passenger route between definitely established airports."

252. Travelers Ins. Co. (1935), note 241.

253. Connecticut Mutual Ins. Co. (1935 disability): "resulting directly or indirectly from service, travel or flight in any species of aircraft, except as a fare-paying passenger in a licensed passenger aircraft piloted by a licensed passenger pilot on a regular passenger route between definitely established airports."

254. Massachusetts Mutual Life Ins. Co. (1935 disability): "participating as a passenger or otherwise in aviation or aeronautics, except as a fare-paying passenger in or on any type of licensed aircraft operated by a licensed pilot."

Continental Life Assurance Company (1935 disability): "while participating or in consequence of having participated in aviation or aeronautics, except as a fare-paying passenger on a licensed aircraft operated by a licensed pilot."



## Aviation Riders:

**General History**—The generally supposed efficacy of the statutory incontestable clause in voiding, after the expiration of the particular time period therein provided, all risk exceptions not specifically listed within the terms of the clause itself,<sup>255</sup> combined with the statutory prohibitions against any provisions for settlement in a sum less than the face amount of the policy,<sup>256</sup> led insurers for many years to rely almost entirely on careful selection of risks in the issuance of policies. General acceptance of the belief that immediately on the expiration of such contestable period the *inclusio unius est exclusio alterius* doctrine<sup>257</sup> prevented further exception from the policy coverage, is apparent in the early aeronautical riders.<sup>258</sup> Wide variance, however, ranging from return of premiums by the insurer to forfeiture of premiums by the insured, is to be found in the provisions as to the settlement under the policy in case of the death of the insured in the manner specified in the aeronautics exclusion.<sup>259</sup> This discrepancy in the amount returnable under these riders can apparently be attributed only to variances in company actuarial policies, when such discrepancy is considered in the light of the recognized rule that in the absence of stipulation to the contrary, where the risk has once attached, the whole premium is deemed to be earned and no portion thereof is returnable, even though the risk may terminate before the expiration of the term contracted.<sup>260</sup> Where, however, such termination

255. See *supra* pages 561 to 566, inclusive.

256. See note 203.

257. Note 179.

258. Representative of such riders are those issued in 1919 by Travelers Insurance Co. and Connecticut General Life Ins. Co.:

Travelers: "In consideration of the issuance of this contract, it is expressly agreed that if the death or permanent total disability of the insured shall result within one year from the effective date of the contract from injuries sustained while the insured is acting as a pilot or passenger in an aircraft, the obligation of the company shall be fully discharged by the return without interest of the premiums theretofore paid on the contract." (Italics are the author's.)

Connecticut General: "If at any time within two years from the date of issue of this policy, the death of the insured shall be caused by, or result directly or indirectly, wholly or in part, from his being in a submersible boat of any description in any capacity whatsoever while submersed, or from engaging in or undertaking aero flights, or riding in any kind of airship, balloon or flying machine, it is understood that said policy shall be null and void, and all premiums paid thereon shall be forfeited to the company. (Italics are the author's.)

259. *Ibid.* See italicized sections.

260. *Lowell et al. v. St. Louis Mutual Life Ins. Co., et al.*, 111 U. S. 264, 4 S. Ct. 390, 28 L. Ed. 423 (1884); *Joshua Handy Machine Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 24 Pac. 1018, 21 Am. St. Rep. 33 (1890); *Continental Life Insurance Co. v. Houser*, 111 Ind. 266, 12 N. E. 479 (1887); *Crouch v. Southern Surety Co.*, 131 Tenn. 260, 174 S. W. 1116, L. R. A. 1915D, 966, Ann. Cas. 1916C, 112 (1915). See also *New York Life Ins. Co. v. Statham et al.*, 93 U. S. 24, 23 L. Ed. 789 (1876); *Metropolitan Life Ins. Co. v. McCormick*, 19 Ind. 49, 49 N. E. 44, 65 Am. St. Rep. 392 (1898); *Mutual Reserve Fund Life Association v. Ferrenback*, 144 F. 342 at 346 (1906); *Mailhoit v. Metropolitan Life Ins. Co.*, 87 Me. 374, 32 A. 989, 47 Am. St. Rep. 336 (1895); *Ebert v. Mutual Reserve Fund Life Association*, 81 Minn. 116, 83 N. W. 506, affirmed, on reargument, 84 N. W. 457 (1900); *Provident Savings Life Assurance Society*

is at the instance of the insurer, or such return is required by statute, a different rule is obviously applicable.<sup>261</sup>

Consistent with the constant variations in the language employed in expressing the aeronautical exceptions from accidental death and disability provisions, were the variations in the aviation riders subsequent to the numerous judicial interpretations of the more commonly used exceptions. The general practice of limiting the scope of such riders to the time period of the incontestable clause continued, however, until the 1930 decision of the New York court in the now famous *Conway v. Metropolitan Life Insurance Company* case<sup>262</sup> distinguishing between an exclusion from coverage and a condition, and holding an aviation rider, unlimited in its scope as to time, to be valid and not inconsistent with the statutory two year incontestable clause.<sup>263</sup> Almost verbatim adoption of the rider approved in the *Conway* case immediately followed, though numerous companies varied it to the extent of inserting provisions granting coverage to fare paying passengers on regular air lines.<sup>264</sup>

**Present Status**—A comprehensive survey of aviation exclusions used at the present time by one hundred and seventy-one companies throughout the United States and Canada, reveals that 121 of this number exclude aviation risks either by rider, policy provisions, or stamp, while 8 refuse to accept the applicant subjected to aviation hazards under any condition, and 42 are very careful as to the acceptance of such risk, but give full coverage in the policy issued if the applicant is granted insurance.<sup>265</sup>

Riders appear to be by far the most commonly used form of aviation exclusion,<sup>266</sup> as the tabulations reveal that 93 of the 121 com-

of *N. Y., et al. v. Ellinger*, 164 S. W. 1027 (Tex. Civ. App. 1913). *Vance*, Insurance, note 10, at 318.

261. *Cal. Civil Code*, §2617, as quoted in *Vance*, Insurance, note 10, at 320 is illustrative of such statutes: "Where the insurance is made for a definite period of time and the insured surrenders his policy, he is entitled to a return of such proportion of the premium as corresponds with the unexpired time after deducting from the whole premium any claim for loss or damage under the policy which had previously accrued."

262. Note 190.

263. Note 191.

264. See Appendix "B".

265. See Appendix "A".

266. *J. E. Hoskins*, "Aviation and Life Insurance," *op. cit. supra* note 217, at 569: "Companies which have only one scale of premiums, therefore, use this *exclusion rider* in order to give partial coverage to applicants whom their agents meet in the ordinary course of business and who turn out to be interested in aviation. Other companies use it in cases where the hazard is too great to be covered by any reasonable extra premium or where there are unexpected difficulties in assessing the proper rate or where the applicant thinks the rate quoted is excessive and requests a restricted policy at standard rate. Some companies feel that the applicant should have the right to choose between *full coverage* and *restricted coverage*, and will issue the *exclusion rider* freely on request. Other companies take the attitude that the interests of the beneficiary should be protected against the bad judgment of the policy holder. These latter companies confine the use of the rider to applicants who have discontinued flying but where the permanence of the change is in doubt. Under

panies employing either riders, policy provisions or stamps, use this mode of exclusion, while 24 use policy provisions, 3 use stamps, and 1 employs both riders and policy provisions. As the sum to be returned to the beneficiary in case of the death of the insured within the terms of these aviation exclusions, 87 companies provide for the return of the reserve, 26 for the premiums paid,<sup>267</sup> 3 use both, varying according to the individual risk, and 5 of the policy forms examined failed to specifically state the sum to be returned.

Though variations are to be found in the exclusions of some companies,<sup>268</sup> three general types of exclusions are issued by insurance companies at the present time:

(1) Death as a result of service, travel or flight in any species of aircraft, except as a fare-paying passenger, is a risk not assumed under this policy during the two years following the date of issue; but if within that period the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy.

(2) Death as a result, directly or indirectly, of service, travel or flight in any species of aircraft, except as a fare-paying passenger on a licensed aircraft piloted by a licensed passenger pilot on a scheduled passenger air service regularly offered between specified airports, is a risk not assumed under the policy; but, if the insured shall die as a result, directly or indirectly, of such travel or flight, the company will pay to the beneficiary the reserve on this policy, less any indebtedness thereon.

(3) Death as a result, directly or indirectly, of service, travel or flight in or on any species of aircraft is a risk not assumed under this policy; but, if the insured shall die as a result, directly or indirectly of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy.

As illustrated in the more detailed tabulation of the investigation, contained in Appendix "A" to this discussion,<sup>269</sup> provision (2) granting coverage to air line passengers, is used exclusively by 49 companies; provision (3), excluding coverage of every kind, is used exclusively by 32, while 36 more employ both, varying according to the particular circumstances of the risk involved. Only 3 companies still use (1) exclusively while a single company employs both (1) and (3).

#### V. 1936 SPECIFIC AVIATION RISK COVERAGE.

The close of the year 1935 saw conclusive indications of widespread recognition on the part of insurers of the rapidly increasing

these conditions, if the policy holder carries out his intention, there is in effect no exclusion." (Italics are the author's.)

267. Companies vary as to whether or not these premiums are *with* or *without* interest. However, the great majority of companies at the present time *do not* include interest.

268. See Appendix "B".

269. See p. 584.

degree of aeronautical safety, to the extent of marked liberalization of aviation risk coverage.<sup>270</sup> Typical of such liberalization<sup>271</sup> is the present aviation coverage offered by Aero Insurance Underwriters,<sup>272</sup> Equitable Life Assurance Society, and Prudential Insurance Company of America.

Characterizing the coverage as "a tribute which we are glad to pay to the safety of American Aviation" the Aero Insurance Underwriters offer a business policy for \$50,000 for a \$50 per year premium; \$10,000 of which would follow each individual whenever flying the airlines and also when at airports and places of forced landings.<sup>273</sup> Granting full coverage up to a maximum of \$100,000 to applicants with 21 to 50 takeoffs or 41 to 100 hours of flying a year, and proportionately scaling the rates for coverage of applicants with takeoffs and hours of flying of more or less degree,<sup>274</sup> the Prudential Insurance Company, in formally announcing such liberalized coverage,<sup>275</sup> attributed the step to "continued improvement in the safety record of air transportation." Similar announcements by Equitable Life Assurance Society of United States in November, 1935, were to the effect that the Society would thereafter accept with greater freedom applicants flying as fare-paying passengers over established air-routes, attributing such policy liberalization to

270. Figures of the Bureau of Air Commerce of the United States Department of Commerce show that for the two years ending June 30, 1935, only 27 passenger fatalities occurred during that period out of over a million passenger flights. The statistics of this same Bureau, released in 1936, show that from July to December, 1935, commercial airlines flew 1,054,882 miles per accident, and 17,973,688 passenger miles per passenger fatality.

271. *J. E. Hoskins*, "Aviation and Life Insurance," *op. cit.* note 217 at 569: "A few companies are absorbing this (aviation) loss (\$1.60 per \$1,000) and offering standard insurance to men who use the airways in the ordinary course of business, regardless of the amount of flying. This must be regarded as a voluntary contribution toward the advancement of business progress, and a company which does not choose to make such a contribution, and instead believes that each class of policyholder should pay its own cost, cannot fairly be criticized."

272. Aero Insurance Underwriters (not a life company) issue policies on aviation hazards for the Eagle Indemnity Co., Globe Indemnity Company, Phoenix Indemnity Company, Great American Indemnity Company, Royal Indemnity Company, and London Guarantee and Accident Company.

273. The policy covers all named employees and additional employees are added automatically from the time their names are mailed or telegraphed to the Underwriters. (Coverage announced Dec. 19, 1935.)

274. The formal Prudential Life Ins. Co. statement follows (in part): "Applicants with not more than 20 take-offs nor more than 40 hours of flying a year will be accepted at regular rates with a maximum limit of \$200,000 of old and new insurance combined. Applicants with 21 to 50 take-offs or 41 to 100 hours of flying a year will also be accepted at regular rates, but the Accidental Benefit, if applied for, will be rated. The maximum limit will be \$100,000 of old and new insurance combined."

"Applicants with more than 50 take-offs or more than 100 hours of flying a year, may in exceptional cases, be accepted at regular rates, but as a rule, will be rated. The Accidental Death Benefit, if applied for, will be rated or refused depending on the merits of the case. The maximum limit will be \$50,000 for old and new insurance combined."

"It should be emphasized that the Accidental Death Benefit, when granted, covers the risk of flying as a fare-paying passenger on a scheduled flight over a regularly established line, but no other flying. An executive or employee of an air transport company flying on a pass would not be considered as a fare-paying passenger."

275. James F. Little, Vice-president and Actuary of the Prudential Ins. Co. of America. *Eastern Underwriter*, Dec. 6, 1935, p. 40.

"studies of recent developments in commercial aviation."<sup>276</sup> Standard rates are applicable to a greatly increased number of cases, with corresponding adjustments in extra premiums due to large amounts of flying.<sup>277</sup>

General acceptance of applicants whose use of airlines does not exceed 15 or 20 trips a year, provided such trips are made on regular airways, on scheduled trips, with licensed pilots, and for business purposes was also recently announced by Massachusetts Mutual Life,<sup>278</sup> while in 1935 Connecticut General Life Insurance Company, in addition to the issuance of a Private Flier's Accident Policy,<sup>279</sup> voluntarily extended coverage while flying as a fare-paying passenger on regular commercial lines, to fifty-six holders of accident and disability policies of that company.<sup>280</sup>

## VI. PREDICTED EFFICACY OF 1936 EXCLUSIONS.

### General Importance:

Though this revolutionary liberalization indicates even more widespread acceptance of aviation risks in the future and consequent abandonment of such stringent exclusion clauses, nevertheless

276. Vice-president W. W. Klingman in letter addressed to the Managerial Staff of the Society, Nov. 21, 1935. *Eastern Underwriter*, *ibid.*

277. The formal announcement stated (in part): "Where the aviation hazard is ratable on the basis of liberalized rules for passengers or the current rules for other types of aviation risks, the Equitable Society will continue as heretofore to assess an extra premium where such can be satisfactorily determined and will not offer the applicant the choice of a policy without the aviation coverage in lieu of the extra premium. This is in keeping with current opinion against the issuance of insurance which does not insure. In appropriate cases, however, the Society is now prepared to issue a policy with a permanent exclusion clause against death resulting from an aviation accident. The new clause is intended only to permit the insuring of aviation risks which the Society has formerly been obliged to decline because of the impossibility of determining a satisfactory extra charge or because of the hazard was too great to insure at the higher rating. Test pilots and student pilots are among the risks in this group. The Society announces that because of special considerations, it is not in a position to use the aviation exclusion clause in the following sixteen states: Idaho, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee and Wyoming." (See note 215.)

278. This is recognized as a general rule by the company, and where investigation indicates that there is a use of private airplanes, or trips which do not come within the rule, or where the terrain over which most of the flying is done is extra hazardous, or where the type of business the applicant is engaged in would demand constant and rapid travel, the insurance is either declined or an exclusion is attached, depending on what the company feels is the extra hazard involved, and whether or not an exclusion rider would be valid in the state where the contract is delivered.

279. Appendix "D," of original thesis not included in printing.

280. The extended coverage read: "Under the accident and disability forms listed herewith, and subject otherwise to the conditions and provisions in the policy, the Company will pay indemnity to the extent of the minimum amount (single indemnity) provided in the policy, for any loss specified therein which shall result from injuries sustained while the insured is fare paying passenger in a passenger aircraft owned and provided by an incorporated passenger carrier, and operated by a licensed pilot on a scheduled trip over an established passenger route of such carrier, and between definitely established airports, and provided such aircraft is not being used for a flight in excess of three hundred continuous nautical miles over water. This extension shall not apply to any other form of aviation travel, hazard or exposure. Nothing herein contained shall render the company liable for the double, triple, or quadruple indemnity, if any, specified in the policy."

the constant necessity of expressing with exactness the specific extent of risk excluded and coverage granted<sup>281</sup> suffices to evidence the present necessity of phrasing such clause so as to clearly convey the unequivocal intent of the insurer to the insured, the beneficiary, and the court.

#### Ten Representative Companies:

**Connecticut General Life Insurance Company**—The influence of judicial authority is evident in the phraseology of currently used exception clauses; though, as illustrated in those employed by the ten representative companies involved in this discussion,<sup>282</sup> the efficacy of such exceptions in extending to all aviation risks, is, to say the least, very doubtful. The *being or having been in, on or about, operating or handling or falling with or from any vehicle or mechanical device for aerial navigation* clause of Connecticut General Life Insurance Company<sup>283</sup> is by far the most technical and all-inclusive exception of the group; though Massachusetts Mutual Life Insurance Company, Penn Mutual Life Insurance Company, and Travelers Insurance Company, the former two employing *aviation casualty*,<sup>284</sup> and the latter *aviation hazard*, attempt the same degree of coverage by means of all-inclusive words rather than technical expression.

**Penn Mutual Life Insurance Company, Massachusetts Mutual Life Insurance Company, Travelers Insurance Company**—A complete absence of litigation involving either *aviation hazard* or *aeronautic casualty* makes any conclusion as to the general efficacy of such language, in the light of judicial interpretation of analogous aeronautical exclusions, mere conjecture, though the present existence of thousands of policies<sup>285</sup> and the continued issuance of

281. *Joseph B. McLean*, *Life Insurance* (3rd Ed. 1932) p. 329: "While death from accident may seem a well-defined contingency, experience has shown the companies that, if they wish to avoid liability under the clause for many claims never intended to be covered and not believed to be covered, they must be very explicit in defining exactly what is meant by accidental death and in stating what, if any, restriction or limitations are imposed."

282. Note 224.

283. Adopted 1935. (Changed from 1932 exceptions: "while in or on any vehicle or mechanical device for aerial navigation, or in falling or otherwise descending therefrom or therewith, or while operating, or handling any such vehicle or device.")

284. Penn Mutual Life Ins. Co.: "The double indemnity benefit shall not be payable if death of the insured resulted directly or indirectly from . . . aeronautic or submarine casualty."

Massachusetts Mutual Life Ins. Co.: "The benefits under this provision shall not be payable if the death of the insured resulted directly or indirectly . . . from aeronautic or submarine casualty."

285. See petition for certiorari to United States Supreme Court, *Gregory v. Mutual Life Ins. Co. of New York*. Cert. denied, 56 S. Ct. 157, 80 L. Ed. 126 (1935).

policies involving the specific exceptions by this trio of insurers<sup>286</sup> warrant their consideration.

Defined as a "risk, danger or peril"<sup>287</sup> and judicially construed as "meaning and covering a risk or peril assumed or involved,"<sup>288</sup> it would seem that *hazard* might truly be an all-inclusive choice, though the strict literal interpretations placed on analogous exceptions,<sup>289</sup> suggest a note of uncertainty as to this use of the word. *Casualty* likewise has been defined as "accident; that which comes by chance or without design, or without being foreseen,"<sup>290</sup> and legally construed as "inevitable accident, unforeseen circumstances *not to be guarded against by human agency* and in which man takes no part,"<sup>291</sup> suggesting that the classifications of death in an aeronautical crash as a casualty might possibly be averted by proof of negligence or, in rare cases, intent on the part of the pilot. However, the refutation of such negligence or intent contention, and the establishment of the efficacy of such exception in all deaths resulting from actual flight, will in all likelihood result from the general recognition of such word as being synonymous with *accident*, and thus bringing the clause within the ambit of consistent judicial construction of *accident*, as "not to be taken too literally, because a person may suffer injury accidental to him, under circumstances which include the design of another."<sup>292</sup> Death of the insured as the result of being struck by spinning propellers, or other moving parts of the machine, either before or after the flight, due to his own inadvertence, is clearly, under the import of the above authorities, covered by the exception.

**Equitable Life Assurance Society of the United States, Mutual Life of New York, Connecticut Mutual Life Insurance Company, and Prudential Life Insurance Company of America—**  
The *resulting from or caused directly or indirectly by riding in an airplane or in other type of aircraft* exception of Equitable Life Assurance Society<sup>293</sup> would, in all probability, protect the company in the great majority of aviation fatalities, though under the pre-

286. Penn Mutual Life Ins. Co. 1922-1936; Massachusetts Mutual Life Ins. Co., 1928-1936; Travelers Insurance Co., 1929-1936.

287. Webster's New International Dictionary.

288. *State ex rel. Amerland v. Hagan, Commissioner of Agriculture and Labor, et al.*, 44 N. D. 306, 175 N. W. 372 at 277 (1919): "In ordinary acceptance or comprehension, a 'hazard,' whether applied to contract relation, personal relation or to golf or gambling, means and covers a risk or peril, assumed or involved."

289. *Supra* pages 309 to 311, inclusive.

290. Webster's Imperial Dictionary.

291. Bouvier's Law Dictionary; Words and Phrases, 3rd Series.

292. *Spreacher v. Ensminger*, 167 Iowa 118, 149 N. W. 97 at 99 (1914); *Klopfenstein v. Union Traction Co.*, 112 Kan. 770, 212 P. 1097 at 1098 (1923); *Gilliland et al. v. Ash Grove and Portland Cement Co.*, 104 Kan. 773, 180 P. 793 at 794 (1919).

293. Note 251.

cedent of strict construction of aeronautical clauses,<sup>294</sup> the efficacy of the clause in all likelihood would not be extended to include death of an insured as the result of aviation hazards while not in actual flight. Particularly would this be true if the fatal accident occurred prior to the actual take-off.<sup>295</sup> For the same reasons, the *operating or riding in any kind of aircraft* exclusion of Mutual Life of New York,<sup>296</sup> the *aeronautic flight* of Connecticut Mutual Life Insurance Company,<sup>297</sup> and the *operating or riding in any kind of submarine or aircraft* exclusion of Prudential Life Insurance Company of America,<sup>298</sup> would be effective as to all aviation risks with the likely exception of those while insured is not actually in flight—either immediately prior to the takeoff or subsequent to landing.

**Lincoln National Life Insurance Company, and Continental Life Assurance Company**—The inclusion of the *as passenger or otherwise* phrase in the *participate* exclusion of Continental Assurance Company,<sup>299</sup> and the *engage* exception of Lincoln National Life Insurance Company<sup>300</sup> apparently assures the judicial efficacy of such exceptions insofar as the point has been directly determined by the courts.<sup>301</sup> However, the unequivocal rejection of *as passenger or otherwise* as making an *aeronautic expeditions* exception all-inclusive,<sup>302</sup> combined with judicial renunciation of *participate*<sup>303</sup> and *engage*<sup>304</sup> as including casual passengers, would, to say the least, seem to demand the classification of these exclusions as being unsatisfactory.

## VII. CONCLUSION.

Though the absolute unpredictability of judicial interpretation of any aviation exception clause is manifestly concluded by widely divergent precedent, the following is offered as affording, insofar as

294. Note 21.

295. See *Tierney v. Occidental Life Ins. Co.*, notes 104 and 106; *Blonski v. Banker's Life Ins. Co.*, notes 104 and 107; *Murphy v. Union Indemnity Co.*, note 108.

296. Note 251.

297. Conn. Mutual Life Ins. Co. (1936): "The company shall not be liable for any payment hereunder if such death shall directly or indirectly result from an aeronautic flight or submarine descent."

298. Note 251.

299. Continental Assurance Co. (1936): "participating in aeronautics in any form as a passenger or otherwise."

300. Lincoln National Life Ins. Co. (1936): "engaging as a passenger, or otherwise, in an aerial flight or submarine descent."

301. *Head v. New York Life Ins. Co.*, note 34; *Goldsmith v. New York Life Ins. Co.*, note 72; *Mayer v. New York Life Ins. Co.*, note 72.

302. *Provident Trust Company of Philadelphia v. Equitable Life Assur. Soc. of U. S.*, note 79; *Day v. Equitable Life Assur. Soc. of U. S.*, note 79.

303. *Gregory v. Mutual Life Ins. Co. of N. Y.*, note 35; *Missouri State Life Ins. Co. v. Martin*, note 66.

304. *Benefit Ass'n. of Ry. Employees v. Hayden*, note 53; *Masonic Accident Ins. Co. v. Jackson*, notes 55 and 57; *Peters v. Prudential Life Ins. Co. of America*, notes 55 and 56; *Flanders v. Benefit Ass'n. of Ry. Employees*, note 21.



possible to determine under the holdings and dictum of litigated decisions, a clear and concise aeronautical exclusion:

*Death resulting directly or indirectly from service or travel or while in, on, or near, as a passenger or otherwise, any vehicle or mechanical device for aerial flight or ascension.*<sup>305</sup>

Of obvious major importance remains the status of the insurer's future liability under any of the millions of policies containing *engage* and *participate* exception clauses issued during the past two decades.<sup>306</sup> Though the apparent inconsistency marking the great majority of past decisions involving such clauses,<sup>307</sup> in truly creating a distinction in form which did not exist in substance, and freely construing such exceptions without apparent regard to either precedent or obvious intent of the contracting parties,<sup>308</sup> demands the classification of any attempt to predict the future judicial interpretation of such exception as mere conjecture; it is nevertheless submitted that in the absence of an *as passenger or otherwise* phrase, insurers, regardless of the *activity* expression used, will be held liable in all cases involving *engage* and *participate* exceptions and arising from the death of the insured as the result of injuries sustained while riding as a casual passenger in either a private or commercial plane. Available authority demonstrating the absolute ineffectiveness of an *as passenger or otherwise* addition when the court so chooses to ignore it,<sup>309</sup> and interpreting any construction of passenger death in connection with *engage* as conclusive of ambiguity,<sup>310</sup> however, precludes the assertion of such statement, impliedly recognizing the addition of such *as passenger or otherwise* as making any exception, other than one involving aeronautic expedition, all-inclusive, with a degree of absolute finality.

305. Reasons for presenting this exception follow: "(A) The present recognized efficacy of *as passenger or otherwise*, in connection with expressions other than "aeronautic expeditions," is utilized; yet the clause will still be effective in case of reversal of courts' attitude toward such phrase.

(B) *Service or travel* includes, pilot, crew, navigator, steward, passenger, etc.

(C) *Engage* and *participate* eliminated entirely.

(D) *Mechanical device* takes in airships, balloons, gliders, planes,—either private or transport.

(E) *In, on or near* includes crash while in flight, as well as accidents before and after landings (from propellers, etc.).

(F) *Directly or indirectly* emphasizes the intent of insurer to exclude risks of insured while walking to and from plane before and after flight.

(G) *Service or travel*, combined with the *in, on or near* phrase is inclusive clearly of forced landings.

(H) If insurer desires to permit coverage of a "fare paying passenger on a regular incorporated air line" or on a "licensed aircraft" such can be easily added to the above exception, without in any way impairing its efficacy in excluding other aeronautical risks."

306. Note 285.

307. Note 21.

308. See *Bew v. Travelers Ins. Co.*, note 32 at 360: "I have no doubt that the insurance company intended to provide against liability in case of injuries to persons who navigate the air, a means of transportation still regarded as extremely hazardous. The question is whether it has used appropriate language to so provide." (Italics are the author's.)

309. *Day v. Equitable Life Assur. Soc. of U. S.*, note 79.

310. *Charette v. Prudential Life Ins. Co. of Amer.*, notes 91 and 94.

## Appendix "A"

Policies and/or rider forms of the following American and Canadian life insurance companies were examined as to the provisions relating to the coverage of aeronautic risks:

Acacia Mutual Life	Franklin Life
Aetna Life	General American Life
American Bankers Life	George Washington Life
American Central Life	Girard Life
American Life & Accident (Ky.)	Globe Life
American Life (Ala.)	Great American Life (Kan.)
American National Life	Great American Life (Tex.)
American Reserve Life	Great National Life
American Savings Life (Ind.)	Great Northern Life
American Savings Life (Mo.)	Great Southern Life
American Union Life	Great Western Life
Amicable Life	Great-West Life (Can.)
Atlanta Life	Guarantee Mutual Life
Atlantic Life	Guaranty Life
Atlas Life	Guardian Life
Baltimore Life	Gulf Life (Fla.)
Bankers Life Co.	Gulf States Life
Bankers National Life	Hercules Life
Bankers Life of Neb.	Home Life—N. Y.
Beneficial Life	Home Life (Pa.)
Berkshire Life	Home State Life
Buffalo Mutual Life	Imperial Life
Business Men's Assurance Co.	Indianapolis Life
California-Western States Life	Interstate Life & Accident
Canada Life Assurance	Jefferson Standard Life
Capitol Life	John Hancock Mutual Life
Cedar Rapids Life	Kansas City Life
Central Life Assurance	Lafayette Life
Central Life of Ill.	Lamar Life
Central Life (Kan.)	Liberty Life (Kan.)
Central States Life	Liberty National Life
Church Life	Life & Casualty
Colorado Life	Life of Virginia
Columbian Mutual Life	Maryland Life
Columbian National Life	Massachusetts Protective Life
Columbus Mutual Life	Massachusetts Mutual Life
Commonwealth Life	Metropolitan Life
Confederation Life Assur.	Michigan Life
Connecticut General Life	Mid-Continent Life
Connecticut Mutual Life	Midland Life
Conservative Life (Ind.)	Midland Mutual Life
Conservative Life (W. Va.)	Midwest Life
Continental American Life	Minnesota Mutual Life
Continental Assurance	Modern Life
Country Life	Monarch Life
Crown Life	Montana Life
Durham Life	Monumental Life
Equitable Life (Ia.)	Mutual Benefit Life
Equitable Life (D. C.)	Mutual Life (Can.)
Equitable Life Assurance (N. Y.)	Mutual Life (N. Y.)
Eureka-Maryland Assurance	Mutual Trust Life
Farmers and Bankers Life	National Life & Accident
Farmers and Traders Life	National Life Assur. of Canada
Federal Life	National Life (Ia.)
Fidelity Mutual Life	National Life (Vt.)
Fidelity Union Life	National Reserve Life

New England Mutual Life	Rockford Life
New World Life	St. Louis Mutual Life
New York Life	Scranton Life
North American Life (Ill.)	Seaboard Life
North American Reassurance	Security Life & Trust
Northwestern National Life	Security Mutual (Neb.)
Northwestern Mutual Life	Security Mutual (N. Y.)
Occidental Life (Cal.)	Service Life
Occidental Life (N. C.)	Shenandoah Life
Ohio National Life	Southland Life
Ohio State Life	Southwestern Life
Old Line Life	State Farm Life
Old Republic Credit Life	State Mutual Life
Oregon Mutual Life	State Reserve Life
Pacific Mutual Life	Sun Life (Can.)
Pan-American Life	Travelers Ins. Co.
Penn Mutual Life	Union Central Life
Philadelphia Life	Union Cooperative
Phoenix Mutual Life	Union Labor Life
Pilot Life	United Benefit Life
Postal Life	United Fidelity Life
Protective Life	United Mutual Life
Provident Mutual	United States Life
Provident Life & Accident	Volunteer Life
Prudential Insurance	Washington National Life
Puritan Life	West Coast Life
Pyramid Life (Ark.)	Western & Southern Life
Pyramid Life (N. C.)	Western Reserve Life (Tex.)
Reliance Life	Wisconsin Life
Republic Life (Tex.)	Wisconsin National Life
Reserve Loan Life	

As indicated in the text of this discussion, three general types of exclusions are issued by companies at the present time, though variations are to be found in the policies of some companies. The three general types of exclusions now in use follow:

(1) Death as a result of service, travel or flight, in any species of aircraft, except as a fare-paying passenger, is a risk not assumed under this policy during the two years following the date of issue; but if within that period the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy.

(2) Death as a result, directly or indirectly, of service, travel or flight in any species of aircraft, except as a fare-paying passenger on a licensed aircraft piloted by a licensed passenger pilot on a scheduled passenger air service regularly offered between specified airports, is a risk not assumed under this policy; but, if the insured shall die as a result, directly or indirectly, of such travel or flight, the company will pay to the beneficiary the reserve on this policy, less any indebtedness thereon.

(3) Death as a result, directly or indirectly, of service, travel, or flight in or on any species of aircraft is a risk not assumed under this policy; but, if the insured shall die as a result, directly or indirectly of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy.

Of the companies listed above, 49 use exclusively provision No. 2, granting coverage to airline passengers; 32 employ exclusively No. 3, excluding coverage of every kind; while 36 more employ both, varying according to the particular circumstance of the risk involved. No. 1, varying the coverage granted during the contestable and incontestable periods of the

policy, is used exclusively by only three companies, while both No. 1 and No. 3 are employed by a single company.

As was indicated in the text of this discussion, 42 of these companies are very careful as to the acceptance of an aeronautic hazard, but give full coverage in the policy issued if the applicant is granted insurance; 8 refuse to accept the applicant subject to aviation hazards under any condition; while 121 companies use riders, policy provisions, or stamps, in limiting or excluding aviation risks. Of this number, 93 employ riders, 24 use policy provisions, 3 employ stamps, and 1 employs both riders and policy provisions.

As the sum to be returned to the beneficiary in case of the death of the insured within the terms of these aviation exclusions, 87 companies provide for the return of the reserve, 26 for the premium paid, 3 use both, varying according to the individual risk, and 5 of the policy forms examined fail to specifically state the sum to be returned.

### Appendix "B"

#### 1936 Aviation Riders Used by the Metropolitan Life Insurance Company, New York, N. Y.

These riders are here listed as being illustrative of the present tendencies on the part of life insurance companies toward aeronautic risks. It is to be pointed out, however, that from a numerical standpoint the use of such a policy coverage restriction is negligible, the records of the Metropolitan Life Insurance Company, for example, showing that only about one in every thousand policies contains a rider restricting the life coverage.

A. "An extra . . . . premium of \$. . . . . for the hazards of aviation except such as are excluded by any supplemental agreement or supplemental contract which may be attached to this Policy is included in the premium charge for this Policy."

B. "Death as a result of service, travel or flight in any species of aircraft, except as a fare-paying passenger, is a risk not assumed under the policy during the two years following the date of issue; but if within that period the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy."

C. "Death as a result directly or indirectly, of travel or flight in any species of aircraft, except as a fare-paying passenger on a licensed aircraft piloted by a licensed passenger pilot on a scheduled passenger air service regularly offered between specified airports, is a risk not assumed under this policy, but, if the insured shall die as a result, directly or indirectly, of such travel or flight, the company will pay to the beneficiary the reserve on this policy less any indebtedness thereon."

D. "Death as a result, directly or indirectly of service, travel or flight in or on any species of aircraft is a risk not assumed under this policy; but, if the insured shall die as a result, directly or indirectly, of such service, travel or flight, the company will pay to the beneficiary the reserve on this policy."

E. (Accidental Death Benefit) ". . . that death shall not have occurred as a result, directly or indirectly, of travel or flight in any species of aircraft, except as a fare-paying passenger on a licensed aircraft piloted by a licensed passenger pilot on a scheduled air service regularly offered between specified airports; . . . ."

F. (Total and Permanent Disability) "Waiver or premium shall not be made for total and permanent disability which resulted . . . from bodily injury sustained by the insured while participating in aviation or aeronautics except as a fare-paying passenger on a licensed aircraft operated by a licensed pilot or . . . ."

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