CLAIM OF TOBE NAGASAKI

[No. 146–35–18383. Decided November 26, 1952]

FINDINGS OF FACT

The claim was received by the Attorney General on December 29, 1949. The claimant was apprehended on March 13, 1942, and interned as an alien enemy at Tuna Canyon, Tujuna, California, until he was released to the Manzanar Relocation Center on July 15, 1942. His entire claim was for $1,000 as a loss sustained through the termination of an insurance policy for this amount. The policy was issued by the Metropolitan Life Insurance Company on August 1, 1927, on claimant's life for a 1-year term renewable annually, as more fully set out below, and for a monthly premium for the first year of $1.49 (the insured's age then being 42), of which claimant paid 60 cents and his employer, Liberty Groves Operating Corporation, the rest. This premium increased annually and was $3.50 in the year of his internment (his age being then 57). Claimant's total contribution to the premiums paid was $102.60. The policy contained, *inter alia,* the following pertinent provisions:

> SPECIAL RENEWAL OPTION.—In consideration of the payment of the Premium by Liberty Groves Operating Corporation, the Employer of the Insured, and *while the Insured remains in the employ of such Employer*, [emphasis supplied] this Policy may be renewed on successive anniversaries of its date for consecutive terms of one year each, the amount of Insurance and the monthly premium for each renewal to be as set forth in the Schedule below for the corresponding policy year.
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> 8. REINSTATEMENT.—If this policy shall lapse in consequence of non-payment of any premium when due, it may be reinstated at any time upon the production of evidence of insurability satisfactory to the Company,

and the payment of all overdue premiums with interest at six per centum per annum.

Claimant was married at the time of his internment and his wife, Torano Nagasaki, was evacuated and entered the Poston Relocation Center on May 23, 1942. She was designated the beneficiary of the policy and although the claimant might have reserved the right to change the beneficiary under Provision 5, it is not clear that he had made such a reservation. The insured had certain conversion privileges, any divisible surplus was to be ascertained and apportioned annually, and the reserve was to be computed upon the Metropolitan Special Class Mortality Table. The application for insurance required only general answers and required no medical certification of the insured's physical condition.

The policy was not renewed and therefore expired on June 1, 1942. At that time it had no cash surrender value and no reserve. Upon claimant's return to employment by Liberty Grove Operating Corporation in June 1946, reinstatement of his policy was denied, his age being given as the reason for the denial.

Claimant and his wife had their permanent residence in California when he was interned and when she was evacuated under military orders issued pursuant to Executive Order No. 9066, dated February 19, 1942, and neither spouse was deported to Japan after December 7, 1941.

REASONS FOR DECISION

An Order of Dismissal was entered in this case on August 5, 1952, which provided that if the claimant should within 60 days after the date of the letter transmitting a copy of the adjudication, make a written request for a hearing, the order should be set aside. Claimant's counsel by letter dated August 12, 1952, and received by the Department on August 15, 1952, having timely submitted the only additional evidence which would have been offered by the claimant at such a hearing, namely, the

insurance policy itself and a letter from claimant's employer bearing on reinstatement, and having requested that this evidence be given the same consideration as if submitted at a hearing, the Order of Dismissal has been vacated and the claim will be finally disposed of hereinafter on its merits in the light of the new evidence and arguments submitted.

The loss having arisen out of action taken by a Federal agency pursuant to the Alien Enemy Statutes may not be considered by reason of Section 2 (b) (2) of the Act. *Harry Suekichi Nakagawa, ante,* p. 216. Claimant's counsel argues that the loss is not attributable to claimant's internment but to his exclusion after his release to the Relocation Center on July 15, 1942. Claimant was in fact interned when the policy expired on June 1, 1942. But notwithstanding this, the argument loses sight of the fact that the loss of the claimant's right of renewal of the policy took place when he ceased to be an employee of the Liberty Groves Corporation since his employment was a necessary condition of his being insured. He lost his employment through his being interned, therefore, and not through his later exclusion. Moreover, he had no right to reemployment by the Corporation and, consequently, after his exclusion had succeeded his internment, no right to renewal of the policy. Nor, by the same token, did he have any right to reinstatement of the policy for this, likewise, was dependent on his employment and it cannot be said that he had any right of reemployment.

Even if it were conceded *arguendo,* however, that claimant had the probability of reemployment and consequently of regaining the privilege of renewal or of reinstatement of the policy, neither privilege had any monetary value, and no determinable loss was sustained by the claimant apart from his employer's contributions which were in the nature of earnings and therefore within the proscription of Section 2 (b) (5) of the Act. Not only is the contingency of reemployment beyond evaluation, but so is the insurance right itself if the contingency be as-

sumed as happening. Claimant had received his money's worth for the portion of the premiums he had paid, in the protection afforded by the policy for 15 years, and no determinable value remained.

Claimant's counsel further contends, however, that if loss of claimant's "Special Renewal Option" must be denied because of his internment, the policy and the option contained therein constituted community property of claimant and his wife and the wife's one-half interest, at least, is therefore compensable. In view of the opinion already stated, no consideration would need to be given to this point if it were not desirable to put to rights the misconception upon which it rests. It is true that if physical property owned by both spouses as part of the marital community were here involved, the result might be different since the evacuation of the wife would be considered as the efficient cause of the loss of her share of the property by sale, abandonment, or intervening factors and the husband's internment as the cause of the loss of his share. The basic question was laid bare in *Fumiyo Kojima, ante,* p. 209. There it was held that Congress in carrying out its moral obligation to alleviate to some extent the disproportionate burden of its war measures had shown a broad general purpose to relate back the bounty bestowed by the right to claim under the Act to the property itself, that consequently the right might be treated as if it were subject to the succession provisions of local law and as if passing thereunder in the same way as the property itself; and it was held that a wife, therefore, might be compensated for the full marital estate although her husband had predeceased the Act's enactment. It was made clear that in the peculiar circumstances of the Japanese evacuation, where the whole family was removed and none could be left behind as its agent to guard the family property, surviving members of such an excluded family might invoke the remedy, provided the ancestor might have invoked it if he had lived and provided also that other conditions of the Act respecting the claimant's personal

eligibility could be met. Upon this last point particular pains were taken to indicate that Congress had no intention to bestow its bounty on certain designated classes of persons and that the derivative right, therefore, like the waters of a stream, could rise no higher than its source. In the instant case, it may be assumed that if household property had been involved, for instance, such a loss of the wife's share would be cognizable as the result of her evacuation regardless of the fact that the husband's loss resulted from his internment. In short, the normal situation envisaged in *Kojima's* case would be present here, of loss resulting from the removal of all members of the family with none who could be left to look after their property. But the claimant here lost his right of renewal, and likewise of reinstatement, with his job and he lost his job because of his internment. As already said, Section 2 (b) (5) specifically excludes any consideration of "loss of anticipated earnings" and even if claimant had been evacuated, therefore, he could claim nothing for loss of his job. His insurance policy was an incident of, and was conditioned on, his employment. His interest in the policy was not separable from his employment. His wife's evacuation, therefore, had nothing to do with his loss of the policy and, consequently, nothing to do with the loss of any interest she may have had in the policy as community property. Unlike the situation in *Kojima's* case, she could not have saved her interest in the policy if she had remained at home and had never been evacuated. It was not one of those "losses which normally might have been avoided if other members of the family had been left behind," spoken of in that case, to which Congress extended its bounty. The cause of the loss of community property must, therefore, be scrutinized in all cases and if the loss of the whole property, and not merely one-half, arises out of Federal action for which no remedy lies under the Act, the loss of the whole must be denied, regardless of whether one or both spouses were the subject of such Federal action.