**PICASSO CAFETERIA** and **SPANISH GALLERY**, by and thru their General Manager, MADAM MANUELLA PADILLA VARGAS, Petitioner/Appellee, v**. MANO INSURANCE CORPORATION**, Respondent/Appellant

PETITION FOR REARGUMENT

Heard: March 18, 1996. Decided: September 27, 1996

1. A petition for reargument of a case before the Supreme Court is governed by Rule IX of the Supreme Court Rules; and all that is required is that the petitioner must file a petition, approved by a concurring Justice, within three days as of the date of rendition of the opinion and judgment in the case sought to be reargued.

2.Where it is shown by petition that the Supreme Court made palpable error by overlooking material facts or law in deciding a case, a reargument will be entertained, the previous opinion and judgment recalled, and a new opinion and judgment substituted therefor as would take into consideration those material facts and law.

3. The Supreme Court does not interpret statutes or rules of court in the absence of contested cases or disputes. The Supreme Court reviews a statute or rule of court or interprets it only based upon the complaint of a party and a hearing.

4. Judicial Order Number 1, which purports to interpret Rule IX of the Supreme Court Rules, without the complaint of any party and without a hearing, is invalid and ineffective.

5. Judicial Order Number 1, being directed at cases already determined by the Supreme Court and at petitions for reargument already approved and filed in keeping with Rule IX of the Supreme Court Rules, and being inconsistent with said Rule IX of the Supreme Court Rules, is an ex post facto law in violation of Article 21(a) of the Constitution. It cannot therefore be effective to negate and set aside petitions for reargument filed consistent with the procedures of Rule IX of the Supreme Court Rules.

6. The fact alone that violent hostilities, including war, may have been engaged in or conducted in the city in which the insured properties are located is not enough for the insurer to disclaim liability for the loss or destruction of properties insured by it for reason of the war risk exclusion clause of the insurance policy.

7. A disclaimer of liability for an insurance claim for reason of the war risk exclusion clause of the insurance policy must show that the losses which occurred were a direct result of a war, and that the war was not just a remote cause of the losses.

8. An actual military offensive and defensive operation must be the direct cause of the loss or destruction of property insured by an insurer in order for the insurer to successfully disclaim liability. It is not enough for the insurer to merely show that violent hostilities, including military operations, took place at the time of the loss or destruction.

9. An insurance policy with an automatic renewal clause continues in full force and effect until such time that the insured actually cancels it or the insurer cancels it for failure to pay premiums or any other breach or default.

Petitioner obtained four insurance policies from respondent to secure its properties against certain risks. In December, 1989, a civil conflict started in Liberia; and in June, 1990, petitioner's properties, subject of the insurance policies, were burglarized. Petitioner filed claims with respondent; but the claims were denied on the basis that they fall under the war risk exclusion clauses of the insurance policies. Petitioner then filed a suit against respondent at the Civil Law Court for the Sixth Judicial Circuit and obtained a judgment against respondent. Respondent appealed to the Supreme Court for a review of that judgment.

Upon review of the trial court's judgment during its March 1995 Term, the Supreme Court reversed it for several reasons, among which was that the violent hostilities which occurred in Liberia was a civil war and as such, where the insurance policy has a war risk exclusion clause, the property was not covered. The Supreme Court also found that the insurance policies had lapsed by the time of the burglaries and as such the lost and destroyed properties were not covered by the insurance policies at the time of the incident.

Petitioner filed a petition for re-argument, which was approved by one of the concurring justice; but the case was not redocketed. Instead the Supreme Court issued Judicial Order No. 1, which provides that the mere approval of the petition for reargument does not ipso facto cause a re-docketing of the case that had already been disposed of by the Supreme Court; instead the Supreme Court en banc must order the re-docketing of the case before a rehearing can be held. On that basis, Judicial Order No. 1 denied four out of five petitions for re-argument and ordered the Clerk to send the mandates to the trial court even though one of the concurring justices had already approved of the petitions and ordered the case re-docketed. In response, petitioner filed a bill of information praying the Supreme Court to relieve it of the mandates of Judicial Order No. 1 since to do otherwise would be subjecting petitioner to an ex post facto law in violation of Article 21(a) of the Constitution.

After a hearing, the Supreme Court ruled that to warrant denial of an insurance claim on the basis of the war risk insurance clause in an insurance policy, the insurer must show that the loss was a direct result of the war; that it was the direct effect of actual military offensive or defensive operations, and not just some remote effect of the war. The Supreme Court therefore ruled that an insurer could not escape liability on the generalized declaration that the violent hostilities in Liberia constitute war. Moreover, the Supreme Court not only found that the respondent did not present any evidence at the trial to show that the loss occurred as a direct result of war, but also that at the time of the losses, the hostilities between the contending parties to the conflict had not reached Monrovia, the city where the insured properties were located. The Supreme Court further held that assuming that the hostilities

had reached Monrovia at the time the losses occurred, that fact, of itself, was insufficient to warrant the respondent disclaiming liability for the insured properties.

The Court, noting that the insurance policies had an automatic renewal clause and that the petitioner had paid premiums for a period beyond the date of the losses, held that when an insurance policy has such automatic renewal clause, it remains in full force and effect unless canceled by the insured or unless the insurer cancels it for failure to pay premium when due and payable. In this case, there was no cancellation by either of the parties as the premiums were paid beyond the date on which the losses occurred.

As to Judicial Order Number 1, the Supreme Court held that it conducts a hearing or reviews a statute or rule of court and renders a ruling or judgment only based on a complaint and that there was no complaint before it to warrant an interpretation of Rule IX of the Supreme Court governing reargument of cases. It therefore concluded that the manner of promulgation of Judicial Order Number 1 was improper, invalid, tantamount to an ex post facto law in violation of Article 21(a) of the Constitution, and inconsistent with the actual language of Rule IX of the Supreme Court Rules. Accordingly, Judicial Order Number 1 was overruled and set aside, the petition for reargument granted, the previous opinion in the case recalled, and the trial court's judgment affirmed.

R. Flaawgaa McFarlandand Isaac Wiles appeared for petitioner. Cyril Jones appeared for respondent.

MR. JUSTICE SUPUWOOD delivered the opinion of the Court.

During its March Term, A. D. 1995 this Court entered a judgment reversing the decision of the Civil Law Court for the Sixth Judicial Circuit sitting in its March Term, A. D. 1996 in the case Mano Insurance Corporation v. Picasso Cafeteria and Spanish Gallery, 38 LLR 474 (1995). The effect of that reversal was a denial of the claims of petitioner herein (plaintiff in the trial court) arising from four insurance contracts executed between petitioner and respondent to secure petitioner's properties against certain risks.

In our opinion delivered by Mr. Justice Victor D. Hne, this Court held that there was insufficient evidence produced at the trial to support the finding of a verdict in favour of petitioner; that the evidence failed to show the pecuniary value of the injury suffered by petitioner; that the policies did not cover war risk; and that whatever injury petitioner might have suffered resulted from what the Court regarded as "general effects" of the civil war.

The Court went further to declare that the Liberian civil crisis, which started in December, 1989, is a civil war, and that insurance policies which carried a war risk exclusion clause, do not cover properties destroyed during the course of said civil war. The Court also concluded that the policies covering the petitioner's properties were canceled; that is to say, at the time

of the incident, subject of the claims, petitioner's insurance contracts with respondent had lapsed.

After the rendition of this Court's opinion and final judgment, petitioner filed this petition for reargument on the basis essentially that this Court overlooked points of law and facts that would have affected the outcome of this case. The petition was approved as filed and the case ordered re-docketed by the Late Mr. Justice Boimah K. Morris pursuant to Rule IX, Parts 1 & 2 of the Rules of this Court, which provides, as follows:

"IX – REARGUMENT

1.Permission For - For good cause shown to the Court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact, or point of law.

2.Time Of - A petition for rehearing shall be presented within three days after the filing of the opinion, unless in cases of special leave granted by the Court".

Upon filing of this petition, as aforesaid, the Clerk failed and refused to have the case re-docketed and the Court sua sponte issued what it called Judicial Order Number 1, to wit:

"August 4, 1995
Ms. Martha Bryant
Clerk of Court
Supreme Court of Liberia
Temple of Justice,
Monrovia, Liberia
Re: Reargument of Cases Decided by the Supreme Court During the March Term. A. D. 1995 SUPREME COURT ORDER NO. 1. A. D. 1995

Madam Clerk:

The Court has observed that a Justice of this Court has ordered the hearing of five petitions filed by several counsellors for the reargument of five cases, which were decided by the Supreme Court at the end of the March Term A. D. 1995.

In view of the above the Chief Justice and Associate Justices convened an urgent meeting on Thursday, August 3,1995 at 1:00 P. M. to ascertain whether the hearing of the petitions filed for reargument fully comply with Rule IX of the Rules of the Supreme Court. We regret that His Honour Mr. Justice Morris was not present at this meeting due to illness. After carefully discussing Rule IX of the Rules of the Supreme Court, the Court agreed that this Rule needs to be interpreted.

"The Court says that whilst reargument of decided cases is permitted under Rule IX of the Rules of the Supreme Court, the order issued to the Clerk by a Justice, who has concurred in the judgment of said case, to re-docket the said case for reargument is not by itself sufficient to permit the reargument of the case.

Further, this Court, in its interpretation of Rule IX says that a concurring Justice may only order the filing of a petition for reargument, but it is only the Court sitting en bane that must grant the reargument of the case sought to be reargued. Even so, this reargument will be granted only if the Court agrees that the petition has shown good cause to warrant the granting of a reargument. Good cause is a showing in the petition that some fact or point of law has been inadvertently overlooked by the Court in deciding the case which, if the Court considers, would change the opinion of the Court.

In all of the five (5) petitions filed for reargument, which were approved by one of the Justices, the Court has discovered that four (4) of such petitions show no good cause for this Court to grant a reargument. Therefore, we shall not allow these cases to be redocketed for consideration by this Court. The cases are:

1. Ruth Perry versus LIBTRACO

2. Haider versus Haider

3. Picasso Cafeteria & Spanish Gallery versus Mano Insurance Corporation

4. M.S. Bhatti versus C. Alexander Zoe

In view of the foregoing, the Clerk of this Court is hereby ordered to proceed to send down the mandates to the respective trial court, commanding the judges therein presiding to give effect to the judgments handed down by this Court in the above listed cases. The Clerk is further ordered to send a copy of this order together with the mandate to each of the trial courts. AND IT IS HEREBY SO ORDERED.

Given under our hands this 4th day
of August, A.D. 1995.
His Honour James G. Bull
Chief Justice, Supreme Court of Liberia
His Honour Victor D. Hne
Associate Justice Supreme Court
His Honour Frank W. Smith
Associate Justice, Supreme Court"

This order was issued without a hearing and without the complaint of any party.

The petitioner subsequently filed an application for a special leave of this Court pursuant to Part 2, Rule IX, of the Rules of this Court, essentially on the basis that Judicial Order Number 1 violated Article 21(a) of the Constitution of Liberia, to wit:

"(a) No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the Legislature enact any bill of attainder or expost facto law".

By this submission, petitioner conceded the power of this Court to promulgate rules to regulate proceedings in the courts of Liberia, but submitted that Judicial Order Number 1 should not apply to this case retroactively.

In resisting petitioner's application, however, respondent maintained in counts five (5) and eight (8) of its resistance that the petition should not be entertained because Judicial Order Number 1, as issued by this Court, operates as a final judgment on the issues raised therein. Hence, res judicata should attach.

Whether Judicial Order Number 1, as issued by this Court, is a rule that should apply to this case is a preliminary question that must first be disposed of in this case. As stated supra, a party appearing before this Court may petition it for a reargument of a cause. If said petition is approved by a justice concurring in the subject opinion, the procedure and practice in this jurisdiction is that the Clerk of this Court will automatically re-docket the case and have a copy of the said petition served on the opposing party. The Court will then entertain hearing on the petition and make a determination as to the questions raised. Nothing else is required except that the petition must be filed within three (3) days as of the rendition of the judgment.

The petitioner in this case met the requirements and there is no question raised with respect thereto. Hence, we concede the legal soundness of petitioner's argument that its petition should have been heard by this Court.

On the validity of Judicial Order Number 1, our search found no precedent in this jurisdiction and we find no basis in law to support the form and manner in which Judicial Order Number 1 was issued. This Court does not interpret statutes or rules of court in the absence of contested cases or disputes.

Moreover, Judicial Order Number 1, as promulgated, was tailored to apply specifically to four cases, to wit:

1. Ruth Perry v. LIBTRACO

2. Haider v. Haider

3. Picasso Cafeteria & Spanish Gallery v. Mano Insurance Corporation

4. M. S. Bhatti v. C. Alexander Zoe.

It is not a rule that was made to appear generally to proceedings in the courts of this jurisdiction. To that extent, we find ourselves again compelled to concede the legal soundness of petitioner's argument that same is ex post facto in clear violation of Article 21(a) of the Constitution.

As to the substantive issues raised in the petition, a recourse to the records shows that the incident in question occurred on June 24, 1990; this fact was confirmed by police report dated June 4, 1991 over the signature of Col. Rudolph Flowers, Sr., then Acting Director of Police. On that day no violent hostility of any kind between the contending parties to the civil crisis had entered Monrovia, the city in which petitioner's insured premises were located. In fact, it was during the second half of July, 1990 that the crisis entered Monrovia. Hence, it was both erroneous and unfair to have concluded that the subject claim resulted from the "general effects" of a war.

Assuming, however, that the crisis had entered Monrovia on or before the date in question, that fact alone would not be sufficient to warrant a denial of petitioner's claim. As a matter of law, to warrant a denial of insurance claims on the basis of a war risk exclusion clause of the insurance policy, it is a settled principle that the injury subject of the claim must have been a direct result of the war. See United States v. Standard Oil Company, 178 F.2d 488. An actual military offensive or defensive operation, the direct effect of which gave rise to the claim, is required, and not just a remote effect. See Queens Insurance Company v. Globe and Rutgers Fire Insurance 282 F.2d 976.

In the instant case, respondent mainly set forth in the pleadings a generalized allegation that the burglary which occurred at the petitioner's premises resulted from what it termed "civil war"; for which there was no coverage. No effort was made by respondent during the trial in the court below to introduce evidence tending to prove this point. In the absence of such evidence, this Court finds untenable the basis of respondent's argument.

Petitioner argued further that this Court overlooked points of facts when it concluded that the insurance policies, under which she asserts her claim, had expired prior to the date in question; and in support of this argument, petitioner submitted that the policies did contain an automatic renewal clause. Petitioner offered receipts and supporting documents which showed that as late as February 18, 1990 respondent received premium payments which covered a period beyond the date of the incident - subject of the claims. The attempt here by petitioner, on the basis of evidence found in the record, is to support the argument that the said policies had not expired up to and including the date of the incident in dispute. We are persuaded by this argument.

Moreover, an automatic renewal clause requires respondent to extend the life of the policy unless cancellation was specifically requested by petitioner. There is no evidence in the record that petitioner requested cancellation of any the policies.

What is to be highlighted here is that respondent has not denied the fact that petitioner's premises were burglarized, except that some general effects of the civil crisis led to the burglary. That alone, as we have said, is insufficient in law to warrant denial of a valid claim as in this case.

Respondent further maintained in the resistance that petitioner filed an amended bill of information, which information preceded the petition for reargument. Respondent submitted that said amended bill of information must be disposed of before the hearing of this petition for reargument.

However, recourse to the records again reveals that the petition for reargument was filed on August 1, 1995, while the amended bill of information was filed in November 1995. Hence, that argument must crumble.

Wherefore and in view of the facts and laws controlling, the petition for reargument is and the same is hereby granted, our previous opinion and judgment in this case recalled, and the judgment of the trial court is hereby affirmed and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs disallowed. And it is hereby so ordered.

*Reargument granted.*