

Mr. Allan L. Dell, Deputy Comptroller (cont'd)

Railway Company has regularly provided, and now has in force, fire insurance coverage, but that the policies contain a war risk exclusion clause which relieves the insurance company from liability in event of damage from fire caused directly or indirectly by act of war. Mr. Williams concludes:

"Considering it possible that you might desire to obtain insurance protection beyond that provided by this Company under the contract, as above mentioned, the matter is brought to your attention for such action as you might deem appropriate."

You request to be advised (1) "as to liability for replacement of premises in case of destruction by enemy forces", and (2) whether "the City or the Railway Company is responsible in carrying insurance for this protection".

Paragraph 6 of the contract contains the answer to your first question:

"The Railway Company will, at its own expense, after it takes over the operation of the structures, facilities, tracks and equipment aforesaid, maintain them during the continuance of this contract or any renewal thereof, and return them in good operating condition."

In Child, et al. vs. Washed Sand & Gravel Co., 181 Minn. 559, it is said:

"To maintain means to continue in existence."

Tennessee Electric Co. vs. White County, 52 F. (2d) 1065, involved the construction of a contract which obligated the Power Company to bear the cost of continued maintenance of some bridges which were damaged by an unprecedented flood. The Court said:

"A further contention of the appellant (Power Company) is that even though the contracts are valid, they have not been breached, because 'Maintenance' means, at most, maintenance under ordinary conditions, and not