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The Effect of Provisions for Accidental Injuries in Insurance Policies

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NOTES AND COMMENTS

The Effect of Provisions for Accidental Injuries in Insurance Policies

The term "accident" may give rise to various concepts ranging from its etymological sense that "anything that happens"[1] can be thus construed to the statement that "in the strictest sense and dealing with the region of physical nature there is no such thing as an accident."[2] While the legal concept is much narrower, yet there has been much difficulty in giving a satisfactory definition. The Supreme Court of our state acknowledges that "no legal definition has been given or can be given which is both exact and comprehensive as applied to all circumstances."[3] However, in all of the cases which have been recognized as accidents there is the element of the unusual, the unexpected, and the unforeseen. Even greater difficulty is experienced in fitting a given set of facts either within or without any definition. In the last analysis that is the problem which is reflected in the many cases which have been taken to the higher courts, most of which involve different factual situations.

Insurance contracts have usually been construed with a somewhat more liberal attitude toward the part of the insured than ordinary contracts. This is a recognition of the fact that the contracting parties are not on an equal footing. The contract is already prepared, having been carefully drawn by legal experts for the protection of the company, and the placing of the insurance is really an act of bargain and sale of an existing commodity rather than of the entering into of a contract. As the Supreme Court of Illinois in an early case said, "a policy of accidental insurance is issued and accepted for the purpose of furnishing indemnity against accidents and death caused by accidental means, and the language of the policy must be construed with reference to the subject to which it is applied."[4]

Most of the early policies designed to indemnify against accidental injury or death merely specified that the coverage was against such hazard caused by "accident." As the evolution of

[1] See 1 C. J. S. 426.

[2] So mentioned by Justice Cardozo in his dissenting opinion in the case of Landress v. Phoenix Mut. L. Ins. Co., 291 U. S. 491, 54 S. Ct. 461, 78 L. Ed. 934 (1934).

[3] The Peru Plow and Wheel Company v. The Industrial Commission et al., 311 Ill. 216, 142 N. E. 546 (1924).

[4] Emma T. Healey v. The Mutual Accident Association of the Northwest, 133 Ill. 556, 25 N. E. 52 (1890).

the decided cases brought more and more of the factual situations within this coverage, the Insurance Companies made an attempt to narrow the scope of the risk by insuring against injury or death caused by "accidental means." The intention was to limit their liability so as to exclude those cases where the act causing the injury was intended but the result only unintended and to include only those cases where the means or instrument causing the death or injury was unintended and therefore the result unforeseen. Some courts have followed this distinction but the majority seem to have preferred the more liberal doctrine.[5] In a recent case[6] Supreme Court Justice Cardozo, dissenting, said, "When a man has died in such a way that his death is spoken of as an accident, he has died because of an accident, and hence by accidental means." He pointed out that "the attempted distinctions between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog," and he concluded that "if there was no accident in the means, there was none in the result, for the two were inseparable."

The growing popularity of policies of insurance against injury through accidents and of double indemnity coverage against death caused by accident may make it well worth while to call attention to several recent cases illustrating the extreme liberality in construction to which most modern decisions adhere. A recent case illustrative of this tendency is that of *Spence et al.*, v. *Equitable Life Assurance Society of the United States.*[7] The action was brought upon a life insurance policy with a double indemnity clause furnishing protection against death resulting "solely from bodily injury caused directly, exclusively and independently of all other causes by external, violent and purely accidental means...." The facts which were agreed upon indicated that the insured died by taking an accidental overdose of barbital or paraldehyde. He had previously taken the drug, and in the instance in question, the facts indicate he took only such an amount as he intended to take, but he did not intend to take such an amount as to do him injury. The defendant contended that even if the insured took what he intended to do and that his death, even if it was unanticipated, was not death by "accidental means." The court, however, after quoting liberally from several

[5] Excellent annotations on various phases of the problem appear in 71 A. L. R. 1437, 90 A. L. R. 1381 and previous ones mentioned therein.

[6] Landress v. Phoenix Mut. L. Ins. Co., 291 U. S. 491, 54 S. Ct. 461, 78 L. Ed. 934 (1934).

[7] Spence v. Equitable Life Assurance Society, 146 Kan. 216, 69 P. (2d) 713 (1937).

cases and citing many, refused to follow the distinction between accidental death, or what might be called the accidental result, and the accidental means or causes; but on the other hand held that the death constituted accidental means within the meaning of the policy.

That this line of decision as typified by the foregoing case is not peculiar to this country alone is indicated by another case recently decided by the District Court of Alberta, Canada, entitled *Semkow* v. *Merchants Casualty Insurance Co.*[8] The action was based upon a policy of accident insurance affording protection "against loss caused by bodily injury sustained . . . solely and independently of all other causes through sudden, external, violent and accidental means." The plaintiff, while intentionally bending over and attempting to lift a heavy jack from the ground, strained the muscles of his back. This was one of his ordinary and necessary duties and one which he had performed upon many previous occasions. It was agreed by the parties that the heavy weight of the jack caused the injury and that the only question at issue was whether or not it was sustained through "accidental means." In this case there was also an attempt to distinguish accidental means from accident, which the court, in holding that the injury came within the protection of the policy, disposed of in the following language: "I confess to a difficulty in seeing how an occurrence can be an accident if the means or cause which produced it, especially the proximate cause, was not an accident in the same sense of being unforeseen and undesigned. If I intend and deliberately do a certain definite act and from it there comes a result which I did not design or even dream of, I certainly did not foresee or intend my act in its nature and capacity as a cause effecting that result; nor can such foresight and intention be imputed to me unless the result was the natural and probable consequence of my act which I should have foreseen. If, on the other hand, I did foresee and intend the causal efficiency of the act, the event would not be an accident.

"But whether in this I am right or wrong, the objection is, I think, answered by Lord Robertson in his judgment[9] just referred to at p. 452. Speaking of the contention that there was nothing accidental in the matter since the man did what he intended to do, he says: 'The fallacy of the argument lies in leav-

[8] 2 W. W. R. 669 (1937).

[9] Referring to the case of Fenton v. Thorley & Co., Ltd., [1903] A. C. 443.

ing out of account the miscalculation of forces, or inadvertence to them, which is the element of mischance, mishap or misadventure.' ''

After distinguishing several cases and citing others it refers to the Pennsylvania case of the *North American Life and Accident Insurance Co.*, v. *Burroughs*,[10] in which the insured was pitching hay and while doing so his pitchfork slipped through his hands and struck him over the bowels causing peritoneal inflammation, from which he died; in which Justice Williams to an objection that the injury caused from a strain would not be an accident, replied, ''Why not, if he accidentally strained himself? Why is not death resulting from an accidental strain as much within the meaning of the policy as death produced by any other accidental cause? If the injury be accidental and the result of it death, what matters it whether the injury was caused by a strain or a blow? . . . And there is no more reason for regarding an injury of the abdominal muscles, caused by an unexpected blow, an accident, than an injury caused by a casual and unlooked for strain.''

From these decisions it would seem that the popular idea of ''accident'' held by the man on the street, and now being followed by most courts, is in the construction of insurance policies gradually replacing the strict legal interpretation usually followed in contracts generally.

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[10] 69 Pa. St. 43 (1871).