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Death by Accidental Means

INSURANCE

DEATH BY ACCIDENTAL MEANS

Beneficiaries sued on the double indemnity clause of a policy insuring their mother. The clause covered a death occurring "as a result directly and independently of all other causes, of bodily injuries, effected solely through external, violent, and accidental means." Decedent fell while entering a bathroom, suffered a broken hip, hydrostatic pneumonia developed, and death resulted. Prior to her fall, the insured had been bedfast because of chronic nephritis, hypertension, and coronary sclerosis. Decedent's physician testified that death could have been independent of her physical illness and except for a broken hip and resulting pneumonia, she might have lived for several years. Judgments of the trial and appellate courts[1] for plaintiffs reversed and remanded because beneficiaries failed to prove that death occurred as a result of bodily injuries effected solely through accidental means. *Prudential Insurance Co. of America v. Van Wey et al.*, —— Ind. ——, 59 N.E. (2d) 421 (1945).

Indiana is in accord with the majority rule that burden of proof is on the plaintiff to show not only that injury or death was caused by accidental means, but also that it was not caused by pre-existing disease or bodily infirmity.[2]

The introduction of the phrase "accidental means" in the double

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24. Indiana legislators appear to have realized the possibility of intervention by the federal court and therefore established no basis for the exercise of equitable jurisdiction by the federal court when they enacted Ind. Stat. Ann. (Burns, 1943 Replacement) 64-2614. As suggested by Warren, "Federal and State Court Interference" 43 Harv. L. Rev. 345, 377, it lies with each state itself to eliminate this source of friction with the federal authority. Justice Frankfurter, "The Federal Court" (1929) 58 New Republic 273, 275, is in accord. Statutory construction of the statute in question finds that Indiana has followed this well-guided approach to the problem.

25. Of course, final recourse to federal courts is not foreclosed. " . . . the construction given the Indiana statute leaves open the road to review in this court on constitutional grounds after the issues have been passed upon by state courts." Principal case at 353.

1. Prudential Ins. Co. of America v. Van Wey et al., —— Ind. App. ——, 56 N.E. (2) 509 (1944). Lower courts found pneumonia resulting from the fall was the proximate cause of death. Dissent in principal case concurs in that proximate cause of death determines liability. The cause was transferred from the Appellate Court under Ind. Stat. Ann. (Burns, 1933) §4-215.

2. Orey v. Mutual Life Insurance Company of New York, 215 Ind. 305, 307, 19 N.E. (2d) 547, 548 (1939); Police & Fireman's Ins. Asso. v. Blunk, 107 Ind. App. 279, 285, 20 N.E. (2d) 660, 663 (1939); Note (1943) 144 A.L.R. 1416.

indemnity clause of a life insurance policy has been employed to limit the liability of the insurance companies.[3] In construing the term "accidental means," it must be realized that an insurance policy is in fact a contract between insurer and insured.[4] As such, the expressed intent of the parties must be regarded,[5] subject to the well-recognized rule of construction that an insurance policy is to be interpreted most strictly against the insurer.[6] A distinction has been drawn between "accidental death" and "death by accidental means." The majority of the courts maintain that where the act resulting in death or injury is such that nothing foreseen and unintended occurs in the doing of such act and the sole unforeseen element is the effect or consequence of the act, that is, the death or injury—such death or injury is "accidental";[7] where something unforeseen and unintended occurs in the very performance of the act itself, then the resulting death or injury is caused by accidental means.[8] A cursory examination of the cases shows that there is much confusion in the application of this doctrine even by the courts which purport to adhere strictly to the distinction.[9]

Another serious problem arises when an accident befalls an insured who has a pre-existing condition of disease or bodily weakness, when neither the condition nor the accident alone would have caused the death. A slight majority hold no recovery.[10] Some states allow

3. Vance, Insurance (2d ed. 1930) 871.
4. Burnett v. Mutual Life Ins. Co., 66 Ind. App 280, 284, 290, 114 N.E. 232, 234 (1917).
5. F. S. Royster Guano Co. v. Globe & Rutgers Fire Ins. Co., 252 N.Y. 75, 84, 168 N.E. 834, 837 (1929).
6. Comm'l Union Assur. Co., Ltd. v. Joss, 36 F. (2d) 9, 10 (C.C.A. 5th 1929); Fidelity Health & Acc. Co. v. Holbrook, 96 Ind. App. 457, 462, 169 N.E. 57, 59 (1929).
7. Landress v. Phoenix Mutual Life Insurance Co. et al, 291 U.S. 491, 496 (1934) (death by sunstroke while playing golf) (strong dissent by Justice Cardoza who advocated "average man" conception of "accidental means"); Husbands v. Indiana Travelers' Acc. Assn., 194 Ind. 586, 589, 593, 133 N.E. 130, 131, 132 (1921) (rupture of blood vessel caused by shaking furnace in usual manner); Schmid, Guardian v. Indiana Travelers Accid. Assoc., 42 Ind. App. 483, 495, 85 N.E. 1032, 1036, 1038 (1908) (death from heart paralysis, caused by carrying bag up a long flight of stairs).
8. U.S. Mutual Acc. Assn. v. Barry, 131 U.S. 100, 121, 9 Sup. Ct. 755, 762 (1889) (stricture of duodenum due to involuntary turn of body in jumping, causing insured to land on heels instead of toes); Orey v. Mutual Life Insurance Co. of New York, 215 Ind. 305, 308, 310, 19 N.E. (2d) 547, 548 (1939) (death from scrotal strangulated hernia developed while cranking car).
9. See cases cited supra notes 7 and 8. Note (1930) 78 U. of Pa. L. Rev. 762 (advocates true solution lies in placing emphasis upon whether there is an unknown and unforeseen element which is sufficiently connected with the voluntary act of insured to constitute a part of it and therefore render the act the accidental means of the injury or death).
10. Ryan v. Continental Casualty Co., 47 F. (2d) 472, 473 (C.C.A. 5th 1931); National Masonic Accident Ass'n v. Shryock, 73 F. 774, 776 (C.C.A. 8th 1896); Stanton v. Travelers' Ins. Co., 83 Conn. 708, 78 Atl. 317, 318 (1910).

full recovery on the theory that if the accident accelerates death, which otherwise might have been delayed for a considerable time, then it must be held to be the sole and exclusive cause of the death despite the concurrence of the disease in causing the fatality.[11] A sizable number of states, Indiana included, permit recovery so long as the accident was the proximate cause of the death and the disease was no more than the remote cause.[12] However, a rule has been developed which seems to effect a compromise betwen the too strict majority doctrine and the proximate cause theory which is difficult to apply, with the result that the intent of the parties is frequently ignored. Courts following this ameliorating rule allow recovery where the pre-existing condition was simply a normal incident of advancing age or when the insured has pre-existing tendency to disease, but deny recovery if disease was abnormal or malignant in its nature.[13] Thus, cognizance is taken of the intent of the contracting parties and yet deserving beneficiaries are not denied recovery. Although Indiana is generally a disciple of the proximate cause doctrine,[14] it followed the theory of distinguishing between minor frailties or the normal infirmities of age and significant diseases in two well-reasoned appellate court cases.[15]

Rationally the principal case on the theory that the nature and extent of the pre-existing diseases were of the character to prevent recovery by a reasonable construction of the terms of the policy, the decision can be sustained.

LABOR LAW

ORGANIZER'S RIGHT TO SPEAK

Appellant, a labor union president, in violation of a restraining order issued by a Texas District Court pursuant to a Texas statute[1] requiring labor union organizers to file a written request for an organizer's card before soliciting members for the union, addressed an audience of oil workers. The meeting was part of a campaign to organize the employees of an oil plant under the Oil Workers Indus-

11. Benefit Assn. of Ry. Employees v. Armbruster, 217 Ala. 282, 116 So. 164, 166 (1928); Standard Acc. Ins. Co. v. Hoehn, 215 Ala. 109, 110 So. 7, 9 (1926); Note (1927) 25 Mich. L. Rev. 803.
12. Continental Casualty Co. v. Lloyd, 165 Ind. 52, 59, 60, 73 N.E. 824, 826 (1905); Inter-Ocean Cas. Co. v. Wilkins, 96 Ind. App. 231, 249, 250, 182 N.E. 252, 258 (1932); Kokomo Life and Accident Co. v. Walford, 90 Ind. App. 395, 400, 167 N.E. 156, 157, 158 (1929); Note (1930) 5 Ind. Law J. 298.
13. Leland v. Order of United Commercial Travelers of America, 233 Mass 558, 564, 124 N.E. 517, 520 (1919); Silverstein v. Metropolitan Life Ins. Co., 254 N.Y. 81, 84, 85, 171 N.E. 914, 915 (1930).
14. See note 12 supra.
15. Policeman & Fireman's Ins. Assoc. v. Blunk, 107 Ind. App. 279, 287, 288, 20 N.E. (2d) 660 (1939); Railway Mail Assn. v. Schrader, 107 Ind. App. 235, 242, 19 N.E. (2d) 887, 889, 890 (1939).
1. Tex. Stat. (Vernon Supp. 1943) Art. 5154, Sec. 5.