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## Physician's Opinion Based on Unsupported Influences

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## EVIDENCE

### PHYSICIAN'S OPINION BASED ON UNSUPPORTED INFERENCES

Plaintiff sued to recover double indemnity under a life and accident policy. The body of the insured was found floating on the surface of a lake after she had gone out in a boat. Nothing was known concerning the cause of the accident. The judge admitted testimony of a doctor for defendant that death could or might have been due to a chronic illness suffered by the insured. After verdict for the defendant, plaintiff moved for, and obtained, a judgment notwithstanding the verdict. Defendant appealed. *Held*, judgment affirmed. There was no evidence submitted by defendant which could lawfully be considered by the jury. *Kanne v. Metropolitan Life Insurance Co.*, 310 Ill. App. 524, 54 N.E. (2d) 732 (1941).

The court is authorized under Illinois statutes to determine, on a motion for judgment notwithstanding the verdict, whether or not there was evidence which could be considered by the jury. ILL. REV. STAT. (1937) c. 110, § 192 (3) a, *Malewski v. Machewich*, 282 Ill. App. 593 (1936). When a person is found dead in the water and nothing more is known concerning the cause of death, a *prima facie* case of death by accidental means within the meaning of the insurance policy is established. *Supreme Council of C. B. L. v. Boyle*, 10 Ind. App. 301, 37 N.E. 1105 (1894). There was no evidence presented to show that the insured had ever suffered from any illness. Expert opinion cannot be based on facts which have not been presented. *Souza v. United Electric Rys. Co.*, 51 R.I. 124, 152 Atl.419 (1913). The doctor based his opinion upon the fact that the body was found floating on the surface of the water, an indication that death occurred before the body entered the water. It has been held, however, that the failure of a body to sink, although not normal in cases of drowning, does not necessarily raise a presumption of death from disease. *Burnham v. Interstate Casualty Co.*, 117 Mich. 142, 75 N.W. 445 (1898). Furthermore, an expert's opinion cannot be admitted for the consideration of the jury when it is a mere surmise, guess or conjecture. *Wallace v. Yudelson*, 244 Del.App. 320 (1927).