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# Insurance-Accidental Means Distinguished from Accidental Result-Sunstroke

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*Insurance—Accidental Means Distinguished from Accidental Result—Sunstroke.*—Plaintiff's husband was insured under two accident policies providing for indemnity for death resulting directly and independently of all other causes from bodily injury effected solely through external, violent, and accidental means. While playing golf, according to his custom in the afternoon of the summer months, he suffered a sunstroke and died within two hours. In the action below there was a judgment for the defendant. The plaintiff secured a writ of certiorari to the United States Supreme Court. Plaintiff alleged that her husband was in his usual good health and was doing as others were then doing, playing golf, at the time he was stricken. The plaintiff further alleged that at the time of her husband's injury and unknown to him there was a temporary condition in his body which rendered him susceptible to sunstroke, and that this temporary and unknown condition intervened between his intentional act of playing golf, which he intended to perform safely as others did at the time, and his injury. Held, under an insurance policy providing indemnity for death caused solely by accidental means, death resulting from sunstroke suffered while intentionally playing golf under the existing weather conditions, although it is an accidental death, is not death by accidental means.<sup>1</sup>

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<sup>12</sup> Walker v. Sauvinet (1875), 92 U. S. 90, 23 L. ed. 678; Pearson v. Yewdall (1877), 95 U. S. 294, 24 L. ed. 436; Edwards v. Elliott (1874), 21 Wall. 532, 22 L. ed. 489.

<sup>1</sup> Landress v. Phoenix Mut. Life Ins. Co. (1934), 291 U. S. S. C. 491, 78 L. ed. 619 (Tenn.).

There is undoubtedly a sharp conflict in the decisions of the courts of the United States as to whether death by sunstroke is covered by policies insuring only against death caused by accidental means.<sup>2</sup> This conflict seems to be of importance only as a focus of the greater conflict as to whether there is or should be a distinction between "accidental means" and "accidental result." The principal case affords not only a clear illustration, but also an authoritative solution of the problem.<sup>3</sup> The opinion of the court as delivered by Stone, J., justifies and defends the distinction between "accidental means" and "accidental result." The essential and fundamental fact that cause and effect are inherently and necessarily distinct<sup>4</sup> is recognized by the court.<sup>5</sup> That fact is the major premise in the reasoning of the court, and from that basis it concludes:

1. The terms of the contract, not the view of the average man or the policyholder, are controlling in determining whether or not there is liability under "accidental means" clauses. The court says that the fact that the average man may consider the injury or death as accidental, or that the result of the exposure was something unforeseen, unexpected, extraordinary, an unlooked for mishap and so an accident, is not enough to establish liability under "accidental means" clauses.

2. The distinction between "accidental means" and "accidental result" is incorporated in the policy and such incorporation (a) places a limitation on the liability of the insurance company and (b) determines the basis for assessing premiums.<sup>6</sup> The insured is not protected against any kind of accidental death; he is protected only against that restricted kind of accidental death which is brought about by accidental means.

By recognizing the clear distinction between "accidental means" and "accidental result" the court rejects and refutes the idea that such clauses are ambiguous and misleading and should be construed against the insurer. To bring the case within the terms of the policy there must be shown some mistake, some slip, or some accident in an act or event immediately preceding

<sup>2</sup> T. S. M., *Insurance—Death by Accidental Means—Sunstroke* (1934), 19 St. Louis Law Review 256.

<sup>3</sup> *Lewis v. Ocean Acc. & G. Corp.* (1918), 224 N. Y. 18, 21, 120 N. E. 56; *Aetna Life Ins. Co. v. Portland Gas & Coke Co.* (1916), 229 F. 552 (Ore.); *Pope v. Prudential Ins. Co.* (1928), 29 F. (2d) 185 (Ohio); *United States Mut. Acc. Assn. v. Barry* (1889), 131 U. S. 100 (Wis.); *Aetna Life Ins. Co. v. Brand* (1920), 265 F. 6 (N. Y.); *Lincoln Nat. Life Ins. Co. v. Erickson* (1930), 42 F. (2d) 997 (Minn.); *Jensma v. Sun Life Assur. Co.* (1933), 64 F. (2d) 457 (Idaho); *Ismay, Imrie & Co. v. Williamson* (1908), A. C. 437 (Eng.); *Nickman v. N. Y. Life Ins. Co.* (1930), 39 F. (2d) 763 (Ohio); *Paist v. Aetna Life Ins. Co.* (1931), 54 F. (2d) 393 (Pa.); *Harloe v. Cal. State Life Ins. Co.* (1928), 206 Cal. 141, 273 P. 560; *Continental Casualty Co. v. Pittman* (1916), 145 Ga. 641, 89 S. E. 716.

<sup>4</sup> *Maryland Casualty Co. v. Spitz* (1917), 246 F. 817 (Pa.); *United States Fidelity & Guaranty Co. v. Blum* (1921), 270 F. 946 (Wash.); *Olinsky v. Railway Mail Assn.* (1920), 182 Cal. 669, 189 P. 835; *Horton v. Travelers' Ins. Co.* (1920), 45 Cal. App. 462, 187 P. 1070; *Fulton v. Metropolitan Casualty Ins. Co. of N. Y.* (1917), 19 Ga. App. 127, 91 S. E. 228; *Johnson v. Aetna Life Ins. Co.* (1919), 24 Ga. App. 431, 101 S. E. 134; *Caldwell v. Travelers' Ins. Co.* (1924), 305 Mo. 619, 267 S. W. 907; *Tuttle v. Pacific Mutual Life Ins. Co.* (1920), 58 Mont. 121, 190 P. 993; *Parker v. Provident Life and Acc. Ins. Co.* (1934), 178 La. 977, 152 So. 583; *Mehaffey v. Provident Life & Acc. Ins. Co.* (1934), 205 N. C. 701, 172 S. E. 331; *Paist v. Aetna Life Ins. Co.* (1932), 60 F. (2d) 476 (Pa.); *Nickman v. N. Y. Life Ins. Co.* (1930), 39 F. (2d) 763 (Ohio).

<sup>5</sup> 291 U. S. S. C. 495-497.

<sup>6</sup> 291 U. S. S. C. 496, " \* \* \* the carefully chosen words (of the policy) defining liability distinguish between the result and the external means which produces it. The insurance is not against an accidental result. The stipulated payments are to be made only if the bodily injury, though unforeseen, is effected by means which are external and accidental."

the death of the insured, or some element of his physical environment which was unknown to him but which, had it been known to him, would have induced him to act otherwise than he did.<sup>7</sup> The act of the insured which immediately preceded his death was his playing golf. This he performed intentionally and as he intended, even though he did not intend the consequences. The warm temperature and the sunshine were constant and known by him to be as they were. He knew that the sun would beat down upon him as it did. However the plaintiff alleged that unknown to the insured there was a temporary condition in the body of the insured which rendered him susceptible to sunstroke and which intervened between his intended acts and his death. There is, in law, a condition of mind of body not amounting to a disease which renders the insured unusually sensitive to normal and ordinary circumstances. This condition is called an idiosyncrasy or a hyper-susceptibility. When such a condition is involved and is unknown to the insured it is considered by the weight of authority as "accidental means." But it seems that such condition is constant, and not temporary, as alleged in the principal case. Thus there was nothing in the act of the deceased immediately preceding his death or in the physical environment which could in any way be construed as an accident. The sole aspect of the whole case which could be considered as an accident or accidental, that is, unexpected, unforeseen, extraordinary, or unintentional, is the death of the insured.

Cardozo, J., dissenting, defends and bases his conclusions on the doctrine that there is and should be no distinction between "accidental means" and "accidental result." Cases following this theory allow the insured to recover whenever his misfortune (the "result," in terms of cause and effect) is in any way unexpected, unintended, or unusual.<sup>9</sup> In upholding this line of decisions Cardozo declares, "The attempted distinction between accidental means and accidental results will plunge this branch of the law into a Serbonian Bog." He contends:<sup>10</sup>

1. The insured's reading of the policy (although it is not at all improbable that he may never read it), and the view of the average man as to whether the death is accidental or not is controlling in determining liability under "accidental means" policies.
2. "Accidental means" clauses are ambiguous and therefore come within the rule of construction that ambiguities in the policy shall be construed against the insurer.
3. Cause and effect are inseparable. "The opinion of the court concedes that death 'from sunstroke, when resulting from voluntary exposure to the sun's rays,' is 'an accident.' \* \* \* If there was no accident in the means,

<sup>7</sup> William Marshall Bullit, *Accidental Means* (1927), 3 Papers Before The Association of Life Insurance Counsel, Supplement 38.

<sup>8</sup> *Silverstein v. Metropolitan Life Ins. Co.* (1930), 254 N. Y. 81, 171 N. E. 914; *Leland v. Order of U. C. Travelers* (1919), 224 Mass. 558, 564, 124 N. E. 517; *Taylor v. N. Y. Life Ins. Co.* (1929), 176 Minn. 171, 222 N. W. 912.

<sup>9</sup> *Lower v. Metropolitan Life Ins. Co.* (1933), 111 N. J. L. 426, 168 A. 593; *Gallagher v. Fidelity & Casualty Co.* (1917), 163 App. Div. 556, 221 N. Y. 664, 117 N. E. 1067; *Mutual Life Ins. Co. v. Dodge* (1926), 11 F. (2d) 486 (Md.); *Bryant v. Continental Casualty Co.* (1916), 107 Tex. 582, 182 S. W. 673; *Pack v. Prudential Casualty Co.* (1916), 170 Ky. 47, 185 S. W. 496.

<sup>10</sup> 291 U. S. S. C. 499, "\* \* \* the average man is convinced that there is, (such a thing as an accident) and so certainly is the man who takes out a policy of accident insurance. It is his reading of the policy that is to be accepted as our guide, with the help of the established rule that ambiguities and uncertainties are to be resolved against the company. \* \* \* 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."

there was none in the result, for the two are inseparable. \* \* \* The process of causation was unbroken from exposure up to death. There was an accident throughout, or there was no accident at all."<sup>11</sup>

This doctrine omits altogether the essential and fundamental fact that cause and effect are inherently and necessarily distinct. The omission of this basic principle as the major premise leads to the postulate that the ambiguity rule is the major premise. This erroneous assumption culminates in the annihilation of the right of insurance companies to contract, at least in so far as the right to limit liability by the insurance contract is concerned.

The weight of authority, in Indiana as well as throughout the United States, recognizes the distinction between "accidental means" and "accidental result."<sup>12</sup> The principal case is thus in accord with the general body of law on the subject. From the question whether or not death from sunstroke under ordinary circumstances falls within the category of death by accidental means arises most of the conflict in the principal case and most of the apparent conflict in decisions. The conflict is apparent only and not real, because as a whole the cases relied upon as authority for holding "accidental means" and "accidental result" indistinguishable can be distinguished from the cases holding otherwise by, (1) certain material differences in the factual situations,<sup>13</sup> (2) misinterpretation of authority,<sup>14</sup> (3) failure to follow the weight of authority,<sup>15</sup> (4) failure of the policy to exclude accidental results,<sup>16</sup> or (5) a provision in the policy for "sunstroke by accidental means" which raised valid doubts as to the clearness of such provision in the mind of the insured, in view of which doubts the court applied the ambiguity rule instead of the rule distinguishing between means and result.<sup>17</sup>

The Indiana decisions, as indicated above, are consistent with the weight of authority in the United States in acknowledging the distinction between "accidental means" and "accidental result." They recognize the fact that in the chain of causation preceding the injury or death there must be some factor which is accidental, that is, unforeseen, unexpected, unusual, or unintended. The fact that the injury itself (the result) is so characterized is insufficient; there must be something in the act or relative to the act immediately preceding the injury that can be so characterized in order to constitute "accidental means."<sup>18</sup> In the only Indiana case in which death by sunstroke under an accidental means policy was involved<sup>19</sup> the court refused to apply the distinction although it recognized the fact that there was one. In that case the policy provided for death from "sunstroke by accidental means." That fact may have caused the court to apply the ambiguity rule as suggested in the preceding paragraph. Thus it seems safe to conclude that the principal case is in harmony with the law in Indiana and is valid and reasonable authority for future decisions of cases wherein "accidental means" clauses or "sunstroke by accidental means" are involved. H. P. C.

<sup>11</sup> 291 U. S. S. C. 501.

<sup>12</sup> *Husbands v. Indiana Travelers' Acc. Assn.* (1921), 194 Ind. 586, 133 N. E. 130; *Schmid v. Indiana Travelers' Acc. Assn.* (1908), 42 Ind. App. 483, 85 N. E. 1032.

<sup>13</sup> *Richards v. Standard Acc. Ins. Co.* (1921), 200 P. 1017 (Utah).

<sup>14</sup> *Ismay, Imrie & Co. v. Williamson* (1908), A. C. 437 (Eng.).

<sup>15</sup> *Bryant v. Continental Casualty Co.* (1916), 107 Tex. 582, 182 S. W. 673.

<sup>16</sup> *Lewis v. Ocean Acc. Corp.* (1918), 224 N. Y. 18, 21, 120 N. E. 56.

<sup>17</sup> *Pack v. Prudential Casualty Co.* (1916), 170 Ky. 47, 185 S. W. 496; *Elsley v. Fidelity & Casualty Co.* (1918), 187 Ind. 447, 120 N. E. 42.

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<sup>19</sup> *Elsley v. Fidelity & Casualty Co.* (1918), 187 Ind. 447, 120 N. E. 42.