"Accident" and "Accidental Means" in Indiana

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj

Part of the Insurance Law Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ilj/vol36/iss3/6
"ACCIDENT" AND "ACCIDENTAL MEANS" IN INDIANA

In a recent Indiana case the deceased insured had taken out an insurance policy containing a double indemnity provision which was payable if "... the death of the insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental means. ..." The insured had voluntarily submitted to an injection of an anaesthetic in preparation to having his appendix removed. He had an unknown hypersensitivity to the anaesthetic and died as a result of the injection. The Indiana Appellate Court denied recovery under the double indemnity clause holding that Indiana, in accordance with the majority of states, makes a distinction between policies which contain the phrase "accidental means" and those which contain the phrase "accidental injury, result or death." The attempted distinction between these phrases has resulted in considerable litigation and comment by legal writers. The interpretation put on the phrases also has resulted in a conflict of opinion between the states.

It is generally agreed that the words "accidental" and "accident" have no technical, legal meaning and that they are to be defined according to the understanding of the average man. "Accidental" denotes happening by chance, or not as expected. "Accident" denotes an event which takes place without foresight or expectation. Both terms refer to the unusual.

An accident insurance policy phrased in terms of making an insurance company liable for "death or injury from external, violent and accidental means" (cause) as opposed to a policy which imposes liability on the insurance company for "accidental injury, result or death" (ef-

2. See Kisch, Accidental Means, 1953 Ins. L.J. 545, which reports that there have been over three hundred cases on the subject.
7. Supreme Council of the Order of Chosen Friends v. Garrigus, 104 Ind. 133, 3 N.E. 818 (1885).
fect) may or may not preclude recovery in a given fact situation depending on a court's interpretation of the word "means." Insurance contracts phrased in the latter phraseology (effect) are generally understood to include injuries sustained as a consequence of a voluntary act, the result being undesigned and unexpected, and the courts are generally in agreement in the application of the law to a given fact situation. Contracts in the former phraseology (cause) have led some courts to follow a "classical" position and to deny recovery if a person is injured as a result of his intentional act, even though the result of the act is unexpected, unforeseen and unanticipated. The theory these courts have adopted is that the means as well as the result must be accidental, and the words "accidental means" limit recovery to those situations where the result is a consequence of an unintentional act. However, other courts treat the term "accidental means" as being synonymous with the term "accidental result," following a "liberal" view, and if the result is unexpected, unforeseen and unanticipated, even though the act is intentional, recovery is granted under insurance contracts phrased in terms of accidental means. The theory in these cases is that an insurance policy should be construed according to the understanding of the average insurance policyholder, and further, that there can be no logical distinction between cause and effect in the accident situation. The situation under litigation is permeated by "accident" throughout, or there is no "accident" involved at all.

Indiana courts in professing to follow the classical position interpret that position to mean that in the doing of an intentional act, there must be a mischance, slip or mishap occurring in the doing of the act itself in order for a beneficiary to recover under an insurance contract phrased

---

13. See, e.g., Western Commercial Travelers' Ass'n v. Smith, 85 Fed. 401 (8th Cir. 1898); Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W.2d 576 (1942).
14. United States Mut. Acc. Ass'n v. Barry, 131 U.S. 100 (1889), seems to be one of the earliest cases on the interpretation of "accidental means." It is interesting to note that a case widely cited for the classical approach, Landress v. Phoenix Mut. Life Ins. Co., 291 U.S. 491 (1934), quotes the Barry case with approval, while Western Commercial Travelers' Ass'n v. Smith, 85 Fed. 401 (8th Cir. 1898), the case most widely cited for the liberal approach, also refers to the Barry case with approval. This contradiction may perhaps be explained on the ground that the Landress case looks only to the language of the court instruction to the jury in the Barry case, while the Smith case looks to both the instruction and how the jury applied it.
in terms of accidental means. While this may seem to be a departure from the classical position, and has been treated as being a modification of the classical rule,\textsuperscript{16} this seems to be an unnecessary refinement. If the slip or mishap causes the injury, any intentional conduct preceding the slip or mishap becomes immaterial. "Means" in accident policies must be vigorously confined to proximate and not remote causes of injury.\textsuperscript{17} Therefore, when slip or mishap is involved and is the proximate cause of injury, recovery under a policy phrased in terms of accidental means would be granted under either the classical or the liberal approach. The Indiana courts, however, continue to assert that in these situations they follow the classical approach in allowing recovery. Therefore, in the Indiana cases, it is not surprising to find that recovery is granted under insurance policies covering bodily injury or death from accidental means where the insured has fallen and broken his leg which resulted in a decline in health, pneumonia and death,\textsuperscript{18} or fallen and injured his skull which resulted in apoplexy.\textsuperscript{19} Under the same contractual provisions, recovery has been granted in a situation where the insured slipped against the end of a bathtub he was carrying and punctured a gastric ulcer which necessitated surgery, the insured dying from post-operative pneumonia.\textsuperscript{20} Other clearly non-volitional and thus non-controversial acts as far as the Indiana courts are concerned, for which recovery has been granted, include situations such as the following: the insured, while walking down the sidewalk, stubbed his toe on a water box protruding two inches above the sidewalk, fell to the ground, and died;\textsuperscript{21} the insured, while sleeping, moved his hand to a position so that it was between his head and the edge of the bed rail, the pressure on the hand resulting in an inflammation of the periosteum of the metacarpal bones;\textsuperscript{22} and where the insured choked to death on regurgitated food lodged in his windpipe.\textsuperscript{23} In many of these cases, the main issue litigated is that of proximate cause; but these cases

\textsuperscript{16} See 10 Ark. L. Rev. 226 (1956).
\textsuperscript{19} National Benefit Ass'n v. Grauman, 107 Ind. 288, 7 N.E. 233 (1886).
\textsuperscript{21} Continental Cas. Co. v. Lloyd, 165 Ind. 52, 73 N.E. 824 (1905).
\textsuperscript{22} Aetna Life Ins. Co. v. Fitzgerald, 165 Ind. 517, 75 N.E. 262 (1905).
\textsuperscript{23} See Peoples Life Ins. Co. v. Menard, 124 Ind. App. 606, 117 N.E.2d 376 (1954), where the policy imposed liability for death due to external, violent and accidental means. Compare McCallum v. Mutual Life Ins. Co., 175 F. Supp. 3 (E.D. Va. 1959), criticizing the Menard position that it makes no difference whether mechanical (i.e., non-volitional) action occurred after taking food internally for the first time and resulting in asphyxiation or whether mechanical action precipitated lodging of food substance in the windpipe after regurgitation. McCallum holds that in the case of regurgitation, there are no external means.
also stand for the proposition that given a mischance, slip or mishap accompanying the intentional act, the Indiana courts will hold the means to be accidental. On the same general hypothesis, Indiana courts allow recovery for unprovoked injurious attack by a third person on an insured, holding that the means are accidental. Recovery also is granted in the same situation when the policy is phrased in terms of accidental result.

Where the proximate cause of the injury is an intentional act of the insured, however, there is a line of Indiana cases in which the classical doctrine is applied and recovery is denied, the courts holding the means not to be accidental. In Schmid v. Indiana Travelers Acc. Ass'n, the insured, a person who normally resided in Indiana, carried a bag up one hundred steps in the rarified atmosphere of Colorado and suffered a heart attack on the top step. Circulatory failure and a fall resulting in a head injury, along with paralysis of the heart occasioned by muscular exertion were alleged to have caused death. The trial court sustained a demurrer to the complaint which was affirmed by the appellate court. As no question of pre-existing heart disease was presented, the court affirmed solely on the ground that there was nothing accidental about the rarified air of Colorado and that climbing the steps was intentional; the means, therefore, were not accidental and recovery was denied.

The Indiana cases on lifting and resulting strain, hernia or dislocation of a bone are confusing. In Puritan Bed Spring Co. v. Wolfe, an employee in the course of employment lifted a bale of wire weighing one hundred and fifty pounds and suffered a rupture. In granting recovery under the Workmen's Compensation Act, the court held that the accident as opposed to disease was the proximate cause of injury on which com-

24. Phoenix Acc. Ass'n v. Stiver, 42 Ind. App. 636, 84 N.E. 772 (1908). See Hessler v. Federal Cas. Co., 190 Ind. 78, 129 N.E. 325 (1921); Travelers' Protective Ass'n of America v. Fawcett, 56 Ind. App. 111, 104 N.E. 99 (1914), where the insurance policies involved were claimed to have clauses in them, the effect of which was to exempt the insurer from liability if injury to the insured was intentionally inflicted by third persons. In reaching the desired result of recovery in the Hessler case, the court held that such an excluding clause conflicted with other more prominent provisions of the contract, and resolved the ambiguity in favor of the insured. In the Fawcett case, the insured, while standing with a group of men, was shot by a bank robber and the court by a process of highly refined reasoning held that assuming just for the purpose of that case that there was exemption from liability in the case of intentional injuries inflicted by third persons, that the trial court found that the shooting was indiscriminate and that the robber in shooting had not specifically singled out the insured; therefore, recovery was granted. It is interesting to note that in the Stiver case, the court said that if the injury was unforeseen by the insured, the means were accidental.

27. 68 Ind. App. 330, 120 N.E. 417 (1918).
pensation was to be based and that "accident" in compensation cases was to be given its popular meaning of being an unlooked-for mishap or an untoward event which is unexpected and undesigned. In *Seipel v. Equitable Life Ins. Co.*, an action was brought against the insurer on the ground that death, which resulted from pneumonia following an operation on a hernia sustained from lifting a heavy wheel, was covered by an insurance policy phrased in terms of accidental means. A verdict was directed for the defendant insurance company, the court holding that the means employed were intentional. The conclusion to be drawn from a comparison of the *Wolfe* and the *Seipel* cases is that once the court leaves the area of workmen's compensation and enters into the realm of insurance law, the rights of parties in analogous situations are considerably different. The presence of the word "means," which the court "understood" to have been put into the insurance contract with the full understanding and intent of both parties, was outcome determinative. In *American Income Ins. Co. v. Kindlesparker*, the trial court had made a "special" finding that the insured railroad section foreman "... received personal injuries as a result of an accident while engaged in lifting a handcar ..." The appellate court affirmed a judgment for the insured, holding that this finding would support the conclusion that the means were accidental, although the court did not indicate whether slip or strain was the basis on which it rested its finding. The case law was settled three years later, however, in *Orey v. Mutual Life Ins. Co.* The circumstantial evidence was such that expert opinion was necessary on the question of whether the hernia sustained by the deceased insured while cranking his truck was caused by strain, a fall, or a blow. The experts differed as to whether such an injury could be caused by strain. However, the court said that only if the jury found that the hernia was caused by a slip or a blow could the means be held accidental and recovery be granted. Injury from strain would not constitute accidental means.

In *Husbands v. Indiana Travelers' Acc. Ass'n*, the insured, while shaking down the ashes in a furnace, ruptured a blood vessel in his lung and died. At the time of the injury he had tuberculosis and his lungs were weak from the disease. The court denied recovery under the policy on the ground that the means were not accidental; the act was habitual.

28. 59 F.2d 544 (7th Cir. 1932).
29. See Standard Acc. Ins. Co. v. Van Altena, 67 F.2d 836 (7th Cir. 1933), where the court observed that in the *Seipel* case the insured failed to show that means other than those intentionally employed were the efficient cause of injury.
32. 194 Ind. 586, 133 N.E. 130 (1923).
intentional, and done in the usual way; there was no evidence of a slip or stumble; there was no evidence that he met with an accident of any kind except that he ruptured a vessel weakened by disease which he did not intend to rupture. The court did not address itself to the rather pressing issue of proximate cause, on which it also would seem that recovery should be denied.

In *Pearlman v. Massachusetts Bonding & Ins. Co.*, a dentist had taken out an accident insurance policy with an accidental means clause. He had used an X-ray machine almost daily for a period of twenty years in his dental practice. Due to overexposure to X-rays, his thumbs and index fingers became ulcerated and malignant. He was unable to give any date or specific dates on which such exposure had occurred. The Indiana court denied recovery saying that since the intentional acts of the insured exposing him to the X-rays were not accompanied by mischance, slip or mishap, the injury was not caused by accidental means; even though the result was unusual, unexpected or unforeseen and therefore accidental, the means were not accidental. The classical doctrine was followed again in 1958.

While the previously discussed cases present examples of the application of the classical doctrine by Indiana courts, there is another line of Indiana cases which present examples of somewhat erratic exceptions to its application. In *United States Cas. Co. v. Griffis*, the insured died from eating mushrooms in a restaurant which, unknown to him, were tainted with ptomaine poison. The court, relying heavily on an early New York decision, held that although the insured intended to eat the mushrooms, he did not intend to eat the poison.

In *James v. State Life Ins. Co.*, a barber opened a small pimple or

---

33. 126 Ind. App. 294, 130 N.E.2d 54 (1956).
35. But it should be noted that the latest Indiana case on the subject applied the classical doctrine. New York Life Ins. Co. v. Bruner, *supra* note 34.
37. 186 Ind. 126, 129, 114 N.E. 83, 84 (1916), where the court says: "Appellant vigorously assails the New York case, and those of other jurisdictions following it, and earnestly contends that, while the death may have been accidental and violent, it was not effected by accidental and violent means; that Mr. Griffis voluntarily ate the mushrooms, and the mere fact that an unexpected result followed in nowise makes the means accidental within the meaning of the language of the policy." An Indiana court in a workmen's compensation case has cited the *Griffis* case for the proposition that "an injury may be the result of accidental means though the act involving the accident was intentional." General American Tank Car Corp. v. Weirick, 77 Ind. App. 242, 245, 133 N.E. 391, 392 (1921).
38. 83 Ind. App. 344, 147 N.E. 533 (1925).
boil on the chin of the insured with a blackhead eradicator which was infected with streptococci. The streptococci spread through the system of the insured and caused his death. The court rejected the argument of the insurance company that the act of the barber was intentional and consented to by the insured and said that the instrument involved was not merely an eradicator, but an infected eradicator. Since there was no consent to the use of an infected eradicator, the court allowed recovery. The court, in holding that there was something unforeseen and unexpected in the means and that therefore the value of the policy should accrue to the beneficiary, cited the Griffis case as having applied the same principle.

In Hoosier Cas. Co. v. Royster, the complaint alleged that the insured, while giving himself a treatment for hemorrhoids, was using a tube to introduce medicine into the lower bowels and accidentally and unintentionally punctured the lower bowels which resulted in his death three days later. The court held that the cause was accidental on the basis of evidence that he had unintentionally inserted the tube in the wrong place. The court did not seem to address itself directly to specific questions of evidence, but merely said that:

A fair consideration of the evidence in this case would indicate that when the assured used this instrument, which he had used before to medicate his hemorrhoids, something accidental and unexpected did occur, that is, that the instrument was, on account of some unexpected occurrence, while he was using it, unintentionally inserted beyond the place where the medicine was intended to be used, and the injury thus produced.

Following the classical rule, a slip in such circumstances would be the only situation under which the means would be accidental.

In Police & Firemen's Ins. Ass'n v. Blunk, the insured fireman, in the line of duty, went into a burning building filled with smoke, and died from the effects. The issue litigated was one of proximate cause, the insurer contending that coronary occlusion was a disease. The company did not contend that the means were not accidental. It seems that this was an oversight, as under the classical rationale, a fireman might reasonably be said to be aware of the noxious quality inherent in the smoke. The latent, pernicious quality, such as the poison in the mushrooms in the Griffis case or the germs on the blackhead eradicator in the James case, was not considered.

39. 196 Ind. 629, 149 N.E. 164 (1925).
40. Id. at 631, 149 N.E. at 165.
In Metropolitan Life Ins. Co. v. Glassman, the deceased was found dead on a garage floor. The evidence tended to prove that death was due to carbon monoxide poisoning from fumes from the exhaust of the automobile in the closed garage. The issue litigated was suicide, the insurance company admitting that if death was caused by fumes from the exhaust and the insured fell as a result and was overcome while lying on the floor, there would be liability. From the language of the opinion, it is difficult to ascertain how much weight the court put on the fall in holding that there were two possible inferences that could be drawn when the jury considered the question of accidental means: death due to suicide and death due to accident. Further, any weight given to the slip would seem to be damaging to the classical rule as, once suicide is ruled out, it may be said that the fall is not the point on which the case should turn, but that the intentional act of remaining in the garage and breathing the fumes would be the question to be considered.

Perhaps the most significant Indiana case on accidental means is Elsey v. Fidelity & Cas. Co. The plaintiff, who was insured against bodily injury sustained through accidental means and specifically for sunstroke sustained through accidental means, was riding on an open streetcar which left the shaded portion of a street, exposing him to the rays of the sun. As he was about to alight from the streetcar at an unshaded place, he suffered a sunstroke. The court rejected the argument of the insurer that the means were not accidental as the exposure to the sun's rays was intentionally brought about by the insured in his ordinary course of life and occupation, as opposed to a situation of shipwreck where a person is left, against his will, exposed to the heat of the sun. In refusing to follow this view of older cases, the court said:

The purpose of accident insurance is to protect the insured against accidents that occur while he is going about his business in the usual way, without any thought of being injured or killed, and when there is no probability, in the ordinary course of events, that he will suffer injury or death. The reason men secure accident insurance is to protect them from the unforeseen, unusual, and unexpected injury that might happen to them while pursuing the usual and ordinary routine of their

42. 224 Ind. 641, 70 N.E.2d 24 (1946).
43. 187 Ind. 447, 120 N.E. 42 (1918).
daily vocation, or the doing of things that men do in the common everyday affairs of life.

We are of opinion that the better reasoning points out, and the weight of authority holds, the true test to be that, if in the act which precedes the injury, though an intentional act, something unusual, unforeseen, and unexpected occurs which produces the injury, it is accidental; but, if in the act which precedes the injury something usual, foreseen and expected occurs which produces the injury, it is not accidentally effected. . . .

The court therefore based its opinion on the broad ground of the purpose of accident insurance followed by what is substantially a paraphrase of the opinion of the court in United States Mut. Acc. Ass'n v. Barry. The court held the means to be accidental, but it did not point out exactly what was the unforeseen occurrence which accompanied the intentional act. In the extensive comment which has been made on the Elsey case, jurisdictions which have repudiated the distinction between accidental means and accidental result, injury or death have cited it for the proposition that the distinction between accidental injury and accidental means cannot be maintained and injury from overexposure to the sun therefore has been held to have occurred by accidental means. This view is evidently based on the portion of the opinion of the court concerning the purposes of accident insurance, since no distinction between intentional and unintentional exposure was mentioned. Jurisdictions which profess an adherence to the strict rule of interpretation of accidental means, however, have cited the Elsey case, in granting recovery, carving out what seems to be an exception to the general rule of strict construction. Some of these jurisdictions have relied upon Elsey in denying recovery on the ground that the means were not accidental, thereby tending to overlook the Indiana court's stand on the purposes of insurance policies. These courts say in effect that teleological causation is the determinant which makes the means accidental. That is, the argument proceeds on the

46. 131 U.S. 100 (1889). See note 14 supra.
48. Hammer v. Mutual Benefit Health & Acc. Ass'n, 158 Ohio St. 394, 109 N.E.2d 649 (1952), where the court held that it is not necessary for the means to be accidental for the exposure to the sun to be the result of an accident.
tenuous basis that exposure was not voluntary in the *Elsey* case since the streetcar pulled from the shade into the sun and thus the situation is analogous to the shipwreck situation. Indiana cases subsequent to the *Elsey* case, however, show that in Indiana the argument based on teleological causation is repudiated, and the present impact of the case is that the means are accidental when the injury is sunstroke, regardless of whether the exposure to the sun is “voluntary.” In *Benefit Ass’n of Ry. Employees v. Hulet,* an insured brakeman working on a train suffered a sunstroke; the court held the injury to have been caused by accidental means. In *Wiecking v. Phoenix Mut. Life Ins. Co.*, the insured died from a sunstroke while playing golf; the means were held to be accidental and recovery was granted, the *Elsey* case being cited as controlling authority in Indiana for the proposition that sunstroke is caused by accidental means. The *Elsey* case has also been cited as support for the theories used to hold the means accidental in the previously discussed cases of *James v. State Life Ins. Co.*, *Hoosier Cas. Co. v. Royster,* and *Peoples Life Ins. Co. v. Menard.*

That confusion results from an attempt to apply the classical doctrine becomes apparent from a comparison of the Indiana cases. It is difficult to understand why the rarified air of Colorado which was noxious to the deceased was considered to be non-accidental means, or why overexposure to X-rays or hypersensitivity to a drug was treated as non-accidental means, when one considers other Indiana decisions. Eating poisonous mushrooms, contact with an infected blackhead eradicator, entering a building known to be filled with physically harmful smoke, and remaining in a closed garage with exhaust fumes of an automobile filling the space with carbon monoxide would seem to be instances which would require application of the same principle. An unknown or ignored pernicious quality was present in all of these cases and that quality harmed the insured.

The unreliability of application of the classical doctrine is not con-

---

51. 116 F.2d 90 (7th Cir. 1940). It is interesting to note that Huss v. Prudential Ins. Co. of America, 37 F. Supp. 364 (D. Conn. 1941), cites *Wiecking* as a case upholding the Cardozo dissent in *Landress v. Phoenix Mut. Life Ins. Co.*, 291 U.S. 491, 501 (1934), which argues complete abrogation of any attempted distinction between accidental result, injury or death and accidental means. The *Wiecking* case also rejects the view put forth in 10 Ind. L.J. 262 (1935), that the *Elsey* result may be attributed to the insurance policy insuring, specifically, for “sunstroke suffered through accidental means” and that this created an ambiguity to be resolved in favor of the insured, sunstroke normally being considered out of the area of accidental means in Indiana.
52. 33 Ind. App. 344, 147 N.E. 533 (1925).
53. 196 Ind. 629, 149 N.E. 164 (1925).
fined to the borders of Indiana. While the Indiana court has considered death to have occurred through accidental means where the insured ate poisonous mushrooms, a North Carolina court has held that there were no accidental means and thus no recovery of benefits of an insurance policy where the insured drank a large amount of liquor and died, and an autopsy showed that there was a poisonous substance in the stomach. The North Carolina court held that it did not appear that the deceased took the poison by "mistake." The Indiana court has allowed recovery where the insured died from streptococci on a blackhead eradicator. The Alabama Supreme Court, however, has held that where the insured took tweezers which he knew to be unsterilized and removed a hair from a pimple and the pimple became infected, the means causing the infection were not accidental. The court held that while other jurisdictions might not recognize the distinction between accidental means and accidental results, there is such a distinction and a contract must be enforced according to its clear terms. Using the tweezers was an intentional act and an insurance contract phrased in terms of accidental means does not impose liability for accidental results of intended means.

Indiana seems to have made an exception to the classical doctrine in the sunstroke cases and allows recovery. Other jurisdictions maintaining the classical doctrine have held the means to be non-accidental and have denied recovery where the insured in loading cross-ties on a railroad suffered injury from exposure to the sun's rays, or where the insured suffered sunstroke while playing golf.

The Indiana court has held the means to be non-accidental where the insured died from a drug to which he was hypersensitive. The Supreme Court of Michigan has held the means to be accidental in a similar situation while still professing to follow the strict rule. The Michigan court in holding that the means were "clearly" accidental said that as a result of the act preceding the death of the insured (administration of the anaesthetic) due to the insured's hypersusceptibility, there was an unforeseen, unexpected and unusual occurrence (death) which followed. The conclusion is that there is substantial disagreement among jurisdictions professing to follow the classical rule as to what constitutes accidental means.

It is difficult to say what the majority rule on the interpretation of accidental means is today. There are, however, indications of a trend away from the classical rule. New York and Louisiana have overruled former decisions following the classical position and now hold the term “accidental means” to be synonymous with “accidental result.” Many states have expressly repudiated the allegation that a distinction can be or should be made between accidental injury, death or result and accidental means. Other states still profess to maintain a distinction between accidental means and accidental injury, result or death. In these latter jurisdictions, it is necessary to emphasize that there may be considerable vacillation in the application of the rule of strict construc-

tion within a given jurisdiction, as is seen by examination of the Indiana cases. The case law in those jurisdictions which have expressed adherence to the liberal rule seems to be fairly well settled and consistent, although there are instances where jurisdictions have followed the liberal rule only to repudiate it in later cases.\(^65\) It would seem, however, that until there is such repudiation, it is possible to ascertain the law and predict its course to a meaningful degree.

It is suggested that Indiana should abandon the classical position and follow the liberal view. Indiana case law abounds with the legal maxims that insurance policies are to be construed strictly against the insurer and that vague and ambiguous terms are to be resolved in favor of the insured.\(^66\) That the term "accidental means" is both ambiguous and vague is seen by a study of the cases. The older insurance policies use the noun "assured" rather than "insured." Under the present law of Indiana, a person may buy considerably less than the assurance as he understands the words printed on a multi-page policy to mean. He may be buying only peace of mind, except in the case of sunstroke.\(^67\) If increased rates are necessary to provide the protection which the potential accident insurance policyholder desires, obviously the rates must be increased.

The reasons that the case law in jurisdictions abolishing the distinction and following the liberal view seems predictable as to given fact situations are not complex. The standards employed are clear and predictable. There must be an "accident" involved,\(^68\) using the word in its normal and common meaning.\(^69\) There must be evidence that the injury was accidental.\(^70\) As disease is often intertwined with accidental injury in the situations under which insurance contracts have been litigated, the question of proximate cause may, in a close situation, have to go to the

---


67. See note 57 supra.


If the pre-existing disease is only a secondary cause of disability, disease is immaterial and recovery should be granted. The law need look only to see if the efficient and procuring cause of the injury is a natural and probable consequence in consideration of the existing circumstances and conditions in each case. An accident insurance policy should be construed to give the insured the protection which he may reasonably assume the language of the policy provides, ambiguous and vague terms being construed in favor of the insured.

Applying these standards to specific fact situations, the results seem clear. If the rarified air of Colorado is the cause of death of a person not used to that climate, recovery should be granted. A defendant insurance company will be quick to present the obviously pressing issue of pre-existing disease which may well be present in such a situation. If a person's lungs are so weakened by disease that ordinary activity causes rupture of a blood vessel, recovery should be denied. Disease, not accident, is the cause of death in this situation. Recovery for dentists' overexposure to X-rays should be granted. In those jurisdictions following the liberal view, recovery has been allowed either on the theory that an insurance policy is to be construed so as to give the language of the policy the ordinary and natural meaning as understood by the average policyholder, or under the theory that there can be no logical distinction between the two phrases and either there is accident throughout the cause

71. See, e.g., New York Life Ins. Co. v. Wise, 207 Okla, 622, 251 P.2d 1058 (1952). Cf. Sharpe v. Commercial Travelers' Mut. Acc. Ass'n of America, 139 Ind. 92, 37 N.E. 353 (1894), where the insured while standing, threw up his hands and fell to the floor, an autopsy showing a substantially diseased heart and brain and a tumor at the base of the brain to have caused the fall. The court affirmed a directed verdict for the insurance company under a policy covering accidental injuries. See generally Jones v. General Acc., Fire & Life Assur. Corp., 118 Fla. 648, 159 So. 804 (1935).

72. Preston v. Aetna Life Ins. Co., 174 F.2d 10 (7th Cir. 1949); Union Life Ins. Co. v. Epperson, 221 Ark. 522, 254 S.W.2d 311 (1953), where the insured sustained a perforation of an existing ulcer in lifting a shaft and the court held that if the accidental injury is the primary or proximate cause of the disability, existence of disease contributing to the disability does not preclude recovery.


and its concomitant result or there is no accident at all. The injury resulting from the intentional act was unanticipated, unexpected and unforeseen, and therefore it was accidental.

Injury caused by hypersensitivity to a drug was held by the Indiana court not to be covered by the accident policy there in question. Jurisdictions repudiating the distinction have allowed recovery under policies phrased in terms of accidental means where the insured has died from anaphylactic shock produced by what expert medical testimony termed to be a "very rare" blood transfusion reaction, where novocaine used as an anesthetic in a tonsillectomy has killed the insured, he being hypersensitive to that drug, and where morphine used to relieve pain has produced systemic disturbances and subsequent death of the insured. The theory of recovery in these cases is that hypersusceptibility is a peculiarity but not an infirmity (thus solving the proximate causes issue) and that the result is accidental because the effect of the injections of the drugs was expected to be salubrious but was, in fact, fatal to the insured.

The Indiana position on situations involving lifting and resulting strain, hernia and dislocation of bones seems to be that unless there is a slip or blow accompanying the behavior of the insured, recovery is denied, the means being held not to be accidental. In jurisdictions which make no distinction between accidental means and accidental result, injury or death, where the insured perforated an existing gastric ulcer or ruptured veins while pushing an automobile stuck in the snow, liability for accidental means has been im-

80. Murphy v. Travelers Ins. Co., 141 Neb. 41, 44, 2 N.W.2d 576, 578 (1942), where the court said: "The accident was not the casual exposure of the fingers to the X-ray, but the cumulative overdose of it which was unexpected and unanticipated, and which resulted from almost daily exposure too long continued. The breakdown of the tissues evidenced by the breaking of the skin and the subsequent cancerous condition clearly marks the date of the accident."

85. But cf. Johnson v. National Life & Acc. Ins. Co., 92 Ga. App. 818, 820, 90 S.E.2d 36, 37 (1955), where the insured died from an injection of penicillin. Two of four insurance policies involved imposed liability for death from accidental means and recovery was denied. The other two policies provided for benefits "... for death of the insured resulting directly from bodily injury which was effected accidentally and through external and violent means." (Emphasis added.) The court held the petition alleged facts showing the insured's death was accidental and through external and violent means. The court held the petition alleged facts showing the insured's death was accidental and through external and violent means. The court held the petition alleged facts showing the insured's death was accidental and through external and violent means. (Emphasis added.) The court held the petition alleged facts showing the insured's death was accidental and through external and violent means.

posed—the proximate cause being held to be the exertion, rather than a pre-existing infirmity. While Indiana allows recovery for sunstroke when other jurisdictions following the classical rule do not,9 juris-
dictions which repudiate the distinction allow recovery in sunstroke or heat-
stroke situations as in the case of working in the sun on a railroad or
firefighting or other voluntary exposure to the sun’s rays by the insured.9

The ramifications of application of the liberal rule are further seen
in the often litigated situations involving an insured taking excessive
dosages of medicine which have caused death. Jurisdictions following
the classical view hold the means are not accidental where the insured
has taken an overdose of barbiturates,91 or an overdose of paraldehyde,92
unless there is a slip or mishap in calculating the dosage, as opposed to
miscalculating the effect of the intended dosage. In jurisdictions fol-
lowing the liberal view, however, once suicidal intent has been negated
and questions of exception clauses on poison have been put aside,93 re-
cover has been granted where the insured took an overdose of luminal
for nerves,94 an overdose of veronal for an earache,95 or an overdose of
laudanum.96 Unexpected consequences may provide an accidental quality
which is necessary under the liberal view.

A study of cases under jurisdictions following the liberal view indi-
cates that there is a definite standard which is being followed; proxi-
mate cause and a reasonable interpretation of the insurance policy in
view of its purpose and its meaning to the insured are the main guide-
lines of these decisions. The harshness of what is frequently an illogical
result and its effect upon the insured are avoided when the courts refrain
from attempting to ascertain if a given injury was caused by accidental
means.

89. See notes 57, 58, 59 supra.
90. Huss v. Prudential Ins. Co. of America, 37 F. Supp. 364 (D. Conn. 1941);
93. The popular meaning of the word “poison” refers to substances which in small
doses (as opposed to overdoses) will cause loss of life. Equitable Life Assur. Soc’y v.
Hemenover, 100 Col. 231, 67 P.2d 80 (1937).
95. Mansbacher v. Prudential Ins. Co. of America, 273 N.Y. 140, 7 N.E.2d 18
(1937).