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CIA Study Note

AD&D cases

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1. Interpreting accidental death policies

Original acknowledged public source

Accidental death policies in Canada have traditionally contained a death benefit provision which falls into one of two categories. First, there are those that ensure death caused by an accident, or as some policies are worded, death resulting from accidental means. Second, there are those policies that say that the benefit is payable in the event of an accidental death.

There has been much litigation dealing with the interpretation of these provisions. Many cases have previously concluded that there is a distinction between the two, finding that in the first instance the means of death must be accidental, whereas in the latter instance the result must be an accident. Some courts have referred to this as a means/result distinction. The use of this distinction has led to inconsistent results, causing one American judge to warn that, "The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog."

On March 21, 2003, there was a significant change in the law. In a 9-0 ruling, the Supreme Court of Canada in the case Martin v. American International Assurance Life Co. concluded that the means/result distinction no longer exists. The effect has been to broaden coverage afforded by accidental death policies.

The law prior to Martin

An early case that highlighted the distinction between accidental means as opposed to accidental result was Columbia Cellulose Co. v. Continental Casualty Co. In that case, Eugene Barrett died of a heart attack following several days of strenuous work while he toured and inspected his company's US plants. The beneficiary argued that, unbeknownst to Barrett, he was suffering from fatty deposits in his arteries and that the over exertion of the trip caused a hemorrhage in the tissue of the arteries which led to the formation of a clot, stopping blood flow and causing death. The policy in question insured against "injury caused by an accident… and resulting directly and independently of all other causes." The court ultimately held that since the death was caused by over-exertion, it was not accidental and there was no coverage. In reaching this decision, the court emphasized the difference between the cause of death (i.e., the means) being accidental, as opposed to the consequence (i.e., the result) being accidental. In the B.C. Court of Appeal decision, which was later affirmed by the Supreme Court of Canada, Justice Sheppard wrote:

The difficulty arises in applying the definition, that is, to determine whether "accident" under a particular policy relates to the cause or to the consequence. Under this policy the event insured against, namely "a bodily injury caused by an accident" consists of three parts: (1) a bodily injury, (2) an accident, and (3) that the accident cause the bodily injury. Under the policy there must be an accident that caused the bodily injury and therefore the accident must be distinct and separate from that bodily injury so as to be the cause thereof. On the literal meaning of the policy the accident must be the cause of the injury: it is not sufficient that the injury, that is the consequence, be an accident.

The means/result distinction appeared to be entrenched when the above passage from Columbia Cellulose was relied upon by the Supreme Court of Canada in Smith v. British Pacific Life Insurance Co. Smith also involved a policy that insured loss of life arising from "injury caused by an accident…"

Daniel Smith suffered a heart attack in 1961. After recovering, he returned to work with instructions from his doctor not to do any heavy lifting and not to climb stairs, except one at a time slowly with a rest between each step. A few months later, Smith and a friend went on a duck hunting expedition. Their vehicle encountered a snow drift and became stuck. After some shovelling efforts by the friend, Smith was able to drive the vehicle out of the snow drift. The two then stopped for tea, and upon proceeding, the vehicle became stuck in another drift. While the friend once again shovelled, Smith tried to help by repeatedly shifting the car into forward and then reverse, during which Smith moved his body back and forth in unison with the car. While doing this, he suffered another heart attack and died. The court held that the actions of Smith were deliberate and therefore his death was not caused by an accident and there was no coverage.

A case that added to the confusion about whether the means/result distinction still existed was the 1978 Supreme Court of Canada decision in Mutual of Omaha Insurance Co v. Stats. This case involved a travel accident insurance policy that provided coverage if the insured sustained accidental bodily injury while riding in an automobile. The insured died when she drove her vehicle into a building. The court found that she was grossly impaired by alcohol at the time. The court did not conduct a means/result analysis and did not refer to its previous decisions in Columbia

Celluloseor Smith, but rather focused on whether the insured's conduct had been negligent or whether she deliberately assumed the risk of dying. The court concluded the death was an accident and there was coverage.

The inconsistency in the law brought about by the means/result distinction is perhaps most evident in those cases in which alcohol was a contributing factor to the insured's death. For instance, in the Alberta Court of Appeal case Leontowicz v. Seaboard Life Insurance Co., after leaving a party the insured was found dead in the passenger seat of an automobile. She had a blood alcohol level of 0.39%. The policy provided coverage for "bodily injury caused by an accident." The court agreed that the result was accidental; however, the cause of death was from the voluntary consumption of alcohol. In the court's view, the death was not caused by an accident and there was no coverage.

A similar decision was reached by the B.C. Supreme Court in Tamelin v. Pioneer Life Assurance Co. By contrast, two Nova Scotia Court of Appeal decisions involving similar facts and similar policy language held that death caused by the over consumption of alcohol did constitute death caused by an accident.

More recently, the means/result distinction came under further attack in a series of three B.C. Court of Appeal cases. The first of these was Martin, which was then appealed to the Supreme Court of Canada and is discussed in greater detail below. The other two cases were Bertalan Estate v. American Home Assurance Co. and CJA v. American Home Assurance Co. All three cases involved elements of intentional conduct on the part of the insured which ultimately led to their deaths.

In Martin, the insured doctor died from an overdose of self-injected demerol. In Bertalan the insured dentist died from the voluntary inhalation of nitrous oxide. In CJA the insured died from asphyxiation due to a plastic bag he put over his head during sexual activities. In all three cases, the policies provided coverage either for death caused by accident or by accidental means. Notwithstanding the intentional conduct of the insureds, in each case the B.C. Court of Appeal found coverage.

The Martin decision

The Supreme Court of Canada's decision in Martin has brought an abrupt end to the debate over whether there exists a distinction between policies that cover death by accidental means, and those that cover accidental death. To put it simply, the court concluded that the two phrases mean the same thing. The court has now adopted what it refers to as an "expectation test" to determine if a death is accidental.

The circumstances in Martin were as follows. After the death of Dr. Edward Easingwood, his beneficiary, Dorothy Martin, sought payment of the death benefit under a policy of accidental death insurance. The insurer denied coverage on the basis that Dr. Easingwood's death did not result directly from accidental means. The death benefit provision in the policy stated: "Subject to this provision's terms, the Company will pay the amount of the Accidental Death Benefit … upon receipt of due proof that the Life Insured's death resulted directly, and independently of all other causes, from bodily injury effected solely through external, violent and accidental means …"

Dr. Easingwood was a family doctor who developed an addiction to opiate medication. He initially started taking demerol to treat a peptic ulcer. In 1994, he entered a residential treatment program and later returned to practice in 1995. In the spring of 1996, he suffered an orthopedic injury that caused him to stop work. He started taking both morphine and demerol for pain management and became physiologically dependent on them. His doctor placed him on a program of gradual withdrawal from the drugs, and by mid-October 1996 he returned to work. On the night of October 29, 1996, Dr. Easingwood told his spouse that he was going for a drive. He went to his office and injected demerol intravenously. The next morning, he was found dead in his office, lying prone, with his broken glasses on the floor, a bloody tissue in one hand and his pants partially pulled down.

The coroner concluded that Dr. Easingwood died from a lethal injection of demerol. A lethal dose can range from 1 to 8 mg/L, and he had a level of 2.4 mg/L. There was also phenobarbital present in Dr. Easingwood's blood, which has an additive effect on demerol; however, there was no evidence to explain how the phenobarbital entered his system. The source of the drugs was unknown as Dr. Easingwood's office had previously been cleared of all mood-altering medications. However, the trial judge noted that Dr. Easingwood's lungs revealed evidence of "junkie's lung," a condition resulting from chronic intravenous abuse of drugs purchased on the street.

The trial judge found that Dr. Easingwood's death was not caused by accidental means, and thus there was no coverage under the accidental death policy. The B.C. Court of Appeal reversed this decision and, adopting what it called a "holistic approach," concluded that Dr. Easingwood's death was accidental and thus there was coverage. The insurer appealed the decision to the Supreme Court of Canada.

At the outset of the Supreme Court of Canada's decision, Chief Justice McLachlin dispensed with the traditional distinction in accidental death policies between "accidental means" and "accidental death," concluding that the two phrases have the same meaning. In so doing, she rejected the argument that accidental means is a narrower subset of the broader category of accidental deaths. The Chief Justice wrote: "Almost all accidents have some deliberate actions among their immediate causes. To insist that these actions, too, must be accidental would result in the insured rarely, if ever, obtaining coverage. Consequently, this cannot be the meaning of the phrase "accidental means" in the policy…"

In my view, the phrase "accidental means" conveys the idea that the consequences of the actions and events that produced death were unexpected. Reference to a set of consequences is therefore implicit in the word "means." "Means" refers to one or more actions or events seen under the aspect of their causal relation to the events they bring about. It follows that to ascertain whether a given means of death is "accidental," we must consider whether the consequences were expected. We cannot usefully separate off the "means" from the rest of the causal chain and ask whether they were deliberate.

As a result of the court eliminating the distinction between accidental means and accidental death, the new approach to interpreting most accidental death benefit provisions is now to look at the whole chain of events leading to the insured's death and consider the question of whether or not the insured expected to die. This is consistent with the approach taken in some US cases, such as Landress v. Phoenix Mutual Life Insurance Co. in which Justice Cardozo wrote that either, "There was an accident throughout, or there was no accident at all." As for the meaning of "accident," while this has previously been the source of much litigation, the court in Martin readily adopted the definition from the court's earlier decision in Stats in which it held that accident means "an unlooked-for mishap or an untoward event which is not expected or designed."

In determining whether Dr. Easingwood died from accidental means, the pivotal question was whether the insured expected to die. The court described this as the "expectation test." This test comprises the following: The first step in all cases is to ask what the insured, in fact, expected. This may become known from the circumstances of the insured's death, such as what the insured said, did or did not do. If the insured's actual expectation cannot be determined, only then does one proceed to step two.

The second step is to ask, from the perspective of a reasonable person standing in the shoes of the insured, what the insured expected. The insured's subjective beliefs, such as whether certain conduct was or was not risky, are therefore considered.

The court emphasized that the expectation test is intended to apply to all cases where a person is believed to have died accidentally. Two categories were identified by the court in which, at first blush, it may seem inappropriate to apply the expectation test, but on closer scrutiny, the expectation test is still expected to hold up. The first category involves those deaths resulting from high-risk activities. Simply because a person engages in a high-risk activity does not mean the person expects to die. However, at some point the decision to court the risk becomes equivalent to the intention to die. One example of a high-risk activity cited by the court in Martin was that of an insured playing Russian roulette. In such a circumstance, from the standpoint of the insured, they likely do not intend to die; however, a reasonable person standing in the insured's shoes likely would expect that death is certainly in the realm of possibility.

The expectation test is also intended to apply in the case of rescuers. The example cited by the court was that of a rescuer diving into the ocean to save another person, knowing that there are strong currents which pose great risk. Looked at in isolation, the rescuer in this instance has intentionally put themself in harm's way. However, viewed in a larger context, the rescue effort is part of a chain of accidental events. Further, the court noted that because the role of a rescuer has high socially redeeming value, it is acceptable to demand less caution from the rescuer when they consider the question of whether death is expected from their actions.

Lessons to be learned from Martin

Clear policy language is essential

The Supreme Court of Canada concluded that the phrase "death by accidental means" and "accidental death" have the same meaning. In reaching this conclusion, the court focused on the reasonable expectations of the parties. The court was of the view that the ordinary insured would not see a distinction between the two phrases. Further, the court felt it was not clear that most insurers would expect there to be a distinction. However, even in the case of those insurers who did expect "accidental means" to have a narrower meaning than "accidental death," the court held that it was necessary to strike a balance between the interests of the insured and insurer, and in this instance, the interests of the insured prevailed. On this point, Chief Justice McLachlin wrote: "Any adequate interpretation of 'accidental

means' must attempt to strike a balance between these two sets of expectations, and the two sets of interests that underlie them. Insurers cannot reasonably expect the court to adopt an interpretation that gives more protection to their interests than to those of the insured."

The court's emphasis on the insured's expectation should not be surprising, particularly given that the key phrase, accidental means, is found within the insuring provision. As with all policies of insurance, ensuring provisions are to be interpreted broadly and exclusions are to be interpreted narrowly.

The Supreme Court of Canada has not shut the door on accidental death policies excluding coverage for death that has been caused by the intentional conduct of the insured. What the court has done is emphasize that clear policy language will be required in order for an insurer to achieve this result. For instance, in the Martin case, had the policy contained a term that excluded coverage for death caused by or resulting from the consumption or injection of drugs, Dr. Easingwood's death may have fallen within such an exclusion and there may not have been coverage. Regarding the need for clear policy language, the Chief Justice wrote:

> It remains open to the insurer, as the party that drafts the insurance contract, to narrow coverage by means of explicit exclusion clauses. If an insurer wishes not to offer coverage for deaths that occur in certain circumstances — or, for that matter, for any death that results from a deliberate or voluntary action — then an explicit exclusion clause to this effect can simply be added to the contract. Insurers remain free to limit accidental death coverage in any way they wish, provided they do so clearly, explicitly, and in a manner that does not unfairly leave the insured uncertain or unaware of the extent of the coverage.

Applying the Martin expectation test in future cases

While Martin has eliminated the debate over the means/result distinction, the case raises new questions as to how the expectation test will be applied in future. As noted by the court, the biggest challenge in applying the expectation test will likely come from those cases involving high risk activities. The difficulty is that no clear line has been drawn to determine precisely when "courting the risk" will move a death out of the category of being accidental, and into the category of being expected, and thus non-accidental.

The new expectation test also casts doubt on whether the outcomes of certain previous court decisions will be followed in future. Consider the following situations:

a) A person went for a walk wearing shoes that rubbed, causing a blister. The blister became infected, and the infection ultimately caused death. In this prior case, the court held that the insured intended to walk, and thus the death was not caused by accidental means. In the post-Martin era, a court may determine that going for a walk and developing a blister is not expected to cause death, and therefore the death may be an accident.

b) A person drinks excessive amounts of alcohol to the point that respiration stops, and the person dies. Some courts have previously found that death from drinking does not constitute accidental means, and thus no coverage was found. However, in the absence of other indicators to suggest that suicide was intended, the expectation test renders it much more likely that a court will find that death from the voluntary consumption of alcohol is accidental.

c) A person with a known heart condition overexerts themself and dies suddenly. The Supreme Court of Canada previously held there was no accident in this situation. While this result is consistent with the principle that death caused by disease is not an accident, the possibility remains that in choosing to exert themself, the insured likely did not expect to die. Applying the expectation test, it is open to a court to find that the death was an accident.

2. West Nile victim wins $130,000 insurance payout

Original acknowledged public source

A man who was left paralyzed by West Nile virus is entitled to receive an insurance payout, Ontario's highest court ruled in 2007. The decision means Ryszard Kolbuc can receive the $130,000 insurance payout he was denied years ago, said Chris Paliere, one of Kolbuc's appeal lawyers. "He's ecstatic," Paliere said of his client. Kolbuc, a plasterer, was bitten in 2002 by a mosquito carrying the virus while working in downtown Toronto. Three weeks later, the then-52-year-old was a paraplegic – becoming one of the first identified West Nile victims in Canada, Paliere said.

Kolbuc applied for $130,000 in accident coverage under his insurance plan, but the company refused to pay, saying the illness was due to natural causes, said Paliere.

Kolbuc took his insurer, Ace Ina Insurance, to court, but a trial judge ruled in January 2006 that a mosquito bite is not an accident that merited an insurance payout.

However, the Ontario Court of Appeal ruled Monday that the cause of Kolbuc's illness was an accidental event, and that he could not have reasonably foreseen or expected to contract the virus from the type of work he was doing.

"At that time, while mosquito bites were common to a person in this occupation, there had been no reported cases of the West Nile virus in Ontario," the Appeal Court stated in its decision released Monday.

"It was an unforeseen, unexpected event that was caused by an external source - a mosquito - and falls within the ordinary definition of an accident. The cause of the illness was an accidental event."

The insurance company has also been ordered to pay more than $42,000 in court costs.

During the appeal, the insurer had argued that a disease is not an accident. However, the Appeal Court ruled that an accident can still cause a disease.

3. Supreme Court revisits the meaning of “accident”

Original source

In a released Supreme Court of Canada (SCC) decision in Co-Operators Life Insurance Co. v. Gibbens, Justice Binnie used this obscure metaphor to describe the difficulty of interpreting the term “accident” within an insurance policy.

The metaphor is appropriate. The Serbonian Bog is a reference to the lake of Serbonis in Egypt. Legend has it that because sand blew onto it, the lake had a deceptive appearance of being solid. The word “accident” likewise gives a false impression of having a simple and solid meaning. On further examination, it is revealed to be a quagmire. To explain the term, Mr. Justice Binnie relied heavily on the insurance interpretation doctrine of reasonable expectations, using this to:

- analyze insurance policy terms according to the type of policy containing them;
- compel consideration of both accidental means and accidental results;
- establish accidents as a subset of unexpected events; and
- distinguish accidental disease from disease arising in the ordinary course of events.

Gibbens is a British Columbia resident who had a group accident and critical illness insurance policy with Co-Operators (the “Policy”). The Policy paid a $200,000 benefit for paraplegia “sustained as a direct result of a Critical Disease or resulting directly and independently of all other causes from bodily injuries occasioned solely through external, violent and accidental means, without negligence” on the part of the insured. Over the course of two months, Mr. Gibbens had unprotected sex with three women and contracted genital herpes which, in turn, caused a rare complication known as transverse myelitis. This condition paralyzed him from the abdomen down. Neither herpes nor transverse myelitis was among the critical diseases enumerated in the Policy. Mr. Gibbens instead claimed against the Policy on the basis that his condition resulted from “accidental means.” Co-Operators disagreed and Mr. Gibbens sued. He won at trial and Co-Operator’s appealed. He won again at the B.C. Court of Appeal and Co-Operators appealed to the SCC. Co-Operators prevailed at the highest court.

Mr. Justice Binnie wrote the SCC judgment, noting at the outset that a century and a half of insurance litigation has failed to produce a clear definition of the word “accident.” Although, generally speaking, “bodily infirmity caused by disease in the ordinary course of events” is not considered to be an accident in insurance case law, the reasoning behind this has been unclear.

In his quest for clarity, Mr. Justice Binnie started with Canadian Indemnity Co. v. Walkem Machinery & Equipment Ltd. (1976 SCC) where “accident” was defined as “any unlooked-for mishap or occurrence.” While this definition was useful, additional guidance was required because, as Mr. Justice Binnie observed, “The acquisition of a disease can frequently be considered ‘and unlooked for mishap,’ broadly speaking. The challenge in this appeal is to relate different types of insurance and coverage in a way that makes sense in the commercial atmosphere in which the insurance was contracted.”

In recognition of the commercial atmosphere, there had to be some limitations on the generous meaning typically applied to the word “accident.” He wrote, “Care should be taken not to convert, for example, an accident policy into a general health, disability, or life insurance policy. Accident insurance is relatively cheap compared to the more comprehensive forms of insurance.” To avoid converting accident policies into comprehensive insurance, he ruled that judges should look at the entire chain of events from cause to effect instead of examining one end of the chain or the other. Despite the Policy’s specific requirement that the paraplegia result from “accidental means,” Mr. Justice Binnie refused to restrict himself to the question of whether the cause – unprotected sex – was an intentional act. It seems therefore that express policy language on accidental means or results will not remove from consideration any link in the chain of events.

Focusing only on results was also problematic since, as noted, acquiring a disease is generally unexpected. To make accident insurance workable, the unexpected cannot be the equivalent of an accident. Accidents must instead be a smaller subset of unexpected events. The key is to look to the reasonable expectations of the parties, governed both by the wording of the policy and the parties’ common sense perception of the world around them.

In this case, the written text of the Policy would indicate to any customer that they were not buying comprehensive health or life insurance. Therefore, the insurer and the insured would understand there were restrictions on the types of bodily illness (results) or types of causes (means) covered or both.

Regarding the parties’ common sense expectations, Mr. Justice Binnie concluded that the average person did not consider a disease arising in the natural and ordinary course of events to be an accident. For example, if an insured’s job involved working outdoors in hot weather and this caused him to suffer a heatstroke, the stroke would not be considered an accident. On the other hand, if the insured’s exposure to the weather was due something outside the natural and ordinary course of events, a shipwreck for instance, a resulting heatstroke would be an accident. Mr. Justice Binnie seemed to recognize that this approach would have led to a different result in Kolbuc v. ACE INA Insurance, a 2007 decision of the Ontario Court of Appeal. In that case, the insured was bitten by a mosquito carrying the West Nile virus and was rendered a paraplegic. The Court of Appeal ruled this was an accident. Mr. Binnie said he would make no comments on the merits of that case, but he effectively overruled it, stating, “In my view, with respect, such a conclusion would stretch the boundaries of an accident policy beyond the snapping point and convert it into a comprehensive insurance policy for infectious diseases contrary to the expressed intent of the parties and their reasonable expectations.”

The cause of Mr. Gibbens’ disease and paraplegia was consensual and unprotected sex, a natural and ordinary event. Therefore, Mr. Justice Binnie ruled the resulting condition was not accidental within the meaning of the Policy.

The Gibbens case provides badly needed clarification on coverage for disease accident insurance policies and establishes that accidental means and results will not be considered in isolation from each other. It will be interesting to see if Mr. Justice Binnie’s “natural course of events” qualifier will be used outside of diseases cases to distinguish the accidental from the merely unexpected.

4. Employee insurance plan must pay for medical marijuana, human rights board rules

Original acknowledged public source

Gordon "Wayne" Skinner argued his own case after being denied coverage three times. A human rights board has determined a Nova Scotia man's prescribed medical marijuana must be covered by his employee insurance plan, a ruling advocates say will likely have impact nationwide.

Gordon "Wayne" Skinner, of Head of Chezzetcook, suffers from chronic pain following an on-the-job motor vehicle accident and argued that he faced discrimination when he was denied coverage.

In a decision Thursday, inquiry board chair Benjamin Perryman concluded that since medical marijuana requires a prescription by law, it doesn't fall within the exclusions of Skinner's insurance plan.

Perryman ruled the Canadian Elevator Industry Welfare Trust Plan contravened the province's Human Rights Act and must now cover his medical marijuana expenses "up to and including the full amount of his most recent prescription."

"Denial of his request for coverage of medical marijuana ... amounts to a prima facie case of discrimination," the ruling states. "The discrimination was non-direct and unintentional."

Canada-wide significance

Deepak Anand, executive director of the Canadian National Medical Marijuana Association, said the ruling is significant and could see a number of people apply for coverage through their provincial human rights commissions.

"If they could start to use this avenue to try to get their employers or insurance providers to start covering it, I think that's going to be significant and we are going to see more of that," said Anand.

Anand said he knew of one other instance where an insurance company agreed to cover medical marijuana – for University of Waterloo student Jonathan Zaid in 2015.

In the Nova Scotia decision, Perryman said the marijuana was medically necessary for Skinner.

"Since the medical marijuana in this case was prescribed pain management, it seems there is prima facie support for its medical necessity, owing to the fact that conventional prescription pain-management drugs are normally eligible for coverage."

Anand said the reasoning is "significant on its own" because many private and public insurers don't recognize cannabis and marijuana as a medicine.

"They [the inquiry board] are finally recognizing that prescription has some value, which so far the Canadian Medical Association and others have decided not to look at," he said.

“I'm elated. I'm still in shock.”

The ruling states the medical marijuana must be purchased from a producer licensed by Health Canada or a person legally authorized to produce for Skinner under the Access to Cannabis for Medical Purposes Regulations. The claim must also be supported by an official receipt.

Skinner, a former elevator mechanic with ThyssenKrupp Elevator Canada, has been unable to work since the August 2010 accident.

"I'm elated. I'm still in shock; it's really still sinking in to be honest with you," Skinner said in a telephone interview from his home outside Halifax.

He argued his own case before the board last October after being denied coverage three times, and said he hoped the inquiry board's ruling would set a precedent.

"Hopefully this will help other people in similar situations and eliminate the fight that myself and my family have had to endure and the hardship that this has resulted in."

Denial of coverage hurt Skinner and family

Perryman found that Skinner's chronic pain has been under-managed as a result of the denial of coverage, resulting in "profoundly negative effects on the complainant and his family."

He also found that the plan's justification for non-coverage was "wholly inadequate."

"There was no evidence presented to suggest that premiums would have to be increased or that the financial viability of the plan would be threatened," he wrote.

The Canadian Life and Health Insurance Association wouldn't comment on Skinner's case but said in general it's up to employers to decide if they want to cover medical marijuana under their group medical plan.

"We do not anticipate any impact on group benefit plans as each plan is unique, but will be reviewing the ruling," the association said in an email.

For his part, Skinner said the human rights ruling has lifted a large weight from his shoulders.

"Just to have that security of knowing that these medications that are absolutely necessary for me to have any functionality are going to be provided for, just alleviates so much stress and hardship on my family," he said.

5. Accidental death benefits – what makes an accident an accident?

Original acknowledged source

In an etymological sense, anything that happens may be said to be an accident.

The challenge of an accidental death is determining whether the death is an accident according to the terms of an insurance policy. For more than a century, courts and underwriters have struggled to answer what was recently described as “one of the more philosophically complex simple questions,” what makes an accident an accident? The lack of a commonly accepted definition has given the courts plenty of occasions to deal with the duty of defining an accident.

Historical background

Accidental death benefits originated and were first marketed as a stand-alone product. Professor Adam F. Scales provided a historical and social background for the development of accidental death coverage. On one end, in the face of the new and dangerous inventions that emerged during the first half of the nineteenth century, e.g., automobile, mechanized equipment, the law failed to evolve quickly enough. Instead, it fell in the hands of the still developing insurance industry to provide meaningful compensation for the many who were killed and injured in the dawn of industrialization. To the discredit of certain insurers, some accident policies were written so as to frustrate, rather than fulfil, the legitimate expectations of the unschooled policyholders. In early years, these policies rarely fulfilled their initial promise of quick and hassle-free compensation. As a response to the mortality experience due to train accidents, the insurance industry introduced a series of limitations on the duration and amount of benefits, including an increasing number of policy exclusions. Yet, Scales points out that over time, courts applied interpretations distancing from the more “odious features” in order to honor the consumers’ reasonable expectations.

Policy structure

There are two main components in accidental death coverage: the insuring clause and the exclusionary clauses. Whereas the burden to prove that death was accidental rests upon the claimant, it is up to the insurers or plan administrators to prove exclusions that bar coverage. The following considerations have given the courts guidance in interpreting a death in the context of an accidental death policy: the policy language; the insured’s subjective expectation; and causation.

Policy language

Many courts have agreed that the term “accidental” should be defined in its ordinary, popular sense. It should be applied from the point of view of the insured. Moreover, undefined terms in an insurance policy are to be construed strictly in favour of the insured; and if the undefined term is in an exclusionary clause, an even stricter standard must be applied.

Subjective expectation

The accidental death definition incorporates what happens without intention or design, and which is unexpected, unusual and unforeseen. However, the question comes down to what level of expectation is necessary for an act to constitute an accident; whether an intentional act proximately resulting in injury or only the ultimate injury itself must be accidental.

In considering this question, Massachusetts concluded that if the insured had climbed over a guardrail 40-50 feet above railroad tracks and evidence demonstrated that he either jumped or fell to his death; death should not be considered accidental. The court opined that the insured knew or should have known that serious bodily injury or death was a [probable] consequence substantially likely to occur as a result of his volitional act of placing himself on the outside of the guardrail and hanging on with one hand. A reasonable person would have expected this result. In Mississippi, a loss resulting from an overdose of medicine prescribed by a physician may constitute an accident if the overdose was taken without suicidal intent. Likewise, the death or injury of an insured who mistakenly consumes

poison may also be an accident. If the policy broadly excludes loss by the ingestion of poison that was taken in a "voluntary or otherwise" manner, the insurer may not be liable.

In Rhode Island, an insured who suffered a heart attack while driving and was killed in the resulting collision was ruled as accidental since the insured did not have any subjective expectation that he would suffer a heart attack while driving. In order to properly adjudicate an accidental death benefit, having a clear understanding of policy language and the relevant case law is key.

Causation

Accidental means v. results

Death by accidental means is where the result arises from acts done unintentionally. It provides that the mechanism or action causing the injury or death is accidental producing effects, which are not their natural and probable consequence. Death by accidental results means that death was the unintended result arising from acts done, even where the acts are done voluntarily. Some courts make a distinction between death by accidental means versus accidental results while others view accidental means and results as inseparable. In Huff v. Aetna Life Ins. Co., a driver suffered a heart attack and lost control of his vehicle. Upon impact, the insured broke a rib, which then perforated his heart and caused him to die instantly.

This was a case of first impression for the Arizona court, and the court held the insured's beneficiary was barred from recovering any additional accidental means benefits. In California, courts differentiate between insurance policies covering accidental death and death by accidental means; however, when the policy does not specify means, courts apply the beneficiary-friendly accidental death standard. In that sense, an insured voluntarily taking prescribed medication and dying of complications of toxicity may be able to recover from the accidental death policy if no other exclusionary provision applies. An illness is not accidental. However, the presence of a pre-existing illness will not relieve the insurer from liability if an accident itself (in this case, drug toxicity) is the proximate cause of death, even though the pre-existing disease actually contributed to the cause of death.

Proximate or efficient cause

A proximate or efficient cause is the primary cause of an injury; not necessarily the closest cause in time or space nor the first event that sets in motion a sequence of events leading to an injury. For instance, an insured suffered from a recent spell of dizziness and weakness and sustained a fall; and, as a result, broke his hip. During his hospitalization, he developed pneumonia and died. Some courts would determine that the injury from the fall was the proximate cause of death, as it set in motion the events culminating in his death. However, others would factor in his recent spells of dizziness; reasoning that it could not be said that the insured died solely from accidental means. In applying this consideration, California explains, where an accident is the proximate cause of death and illness is merely one link in the causal chain, a beneficiary may recover under the insurance policy. Medical mishaps may be excluded when the insured voluntarily undergoes surgery and death is a foreseeable outcome. However, death may be considered accidental for insurance purposes or the result of "accidental means" when the death is not foreseeable, or death proximately results from other accidental means.

Maryland courts determined that proof that an accident was the proximate cause of death must show that the death could have been caused by the accident, and that no other efficient cause has intervened between the accident and time of death. For example, an insured's beneficiary may be barred from recovering from an accidental death policy if the insured died from an accidental fall caused by seizure. The seizure was not accidental and was the proximate cause of the insured's fall. Contrary to this argument, Arizona explains that losses resulting from any injury caused or contributed to, by, or because of, disease or a bodily infirmity, even if proximate or precipitating cause of loss is accidental and the disease or infirmity is the remote or indirect cause, are barred from recovery.

Substantially contributed

Like proximate or efficient cause, courts may examine to what extent the pre-existing illness or condition played a role in the death or injury.

In an Arkansas case, the insured had a heart attack while at work. After accidental benefits were denied, the claimant contended that the insured's cardiac arrest was caused by mowing grass on a hot, humid afternoon which was not one of the insured's normal job duties and, because of this unusual exertion, he suffered a heart attack. The court stated that the insured's obesity, diabetes, hypertension and high cholesterol partially caused or substantially contributed to his heart attack, thus his death was not a covered loss under the insured's accident policy.

In Massachusetts, a death from a fall caused by the insured's epilepsy was not considered accidental as the insured was afflicted with the disease at the time of the accident and the epilepsy proximately caused or substantially contributed to the death.

However, in Michigan, when a policy insuring against accidental death contains exclusionary language substantially to the effect that benefits are precluded where death directly or indirectly results from or is contributed to by disease, the primary consideration is limited to determining if the accident alone was sufficient to cause death directly and independently of disease. An exclusionary clause therefore precludes recovery where death results from pre-existing disease or from a combination of accident and pre-existing disease.

In Alabama, the court held that the insured's death due to renal failure came within the disease exception of the accidental death policy, even though a fall and resulting pelvic fracture led to a chain of events that included the insured's decision to refuse hemodialysis. Pursuant to The Employee Retirement Income Security Act, the court applied the Eleventh Circuit's "substantially contributed" test and held that because the plaintiff (beneficiary) was unable to show that end stage renal failure did not substantially contribute to her demise, the insurer's decision to deny accidental death benefits was correct.

Predominant cause

Although this consideration is very similar to the review of the proximate cause; in this case, it is the insurer's duty to prove that illness was the predominant cause of death, namely, that without the injury, death would have occurred when it did due to illness or disease.

In Louisiana, a beneficiary sought to recover under an accidental death policy, which covered death by injury "resulting directly and independently of all other causes in loss covered by the policy." The insured died of endocarditis resulting from a staph infection that had entered the insured's bloodstream through a puncture caused by a spider bite. The court noted that the phrase "resulting directly and independently of all other causes" has been interpreted to mean the predominant cause of death and stated the insured's burden was to establish that an accident was the predominant cause of death. The treating physician believed a spider had bitten the insured and the staph entered the body through the bite, which ultimately caused the death. He reached this conclusion by eliminating every other reasonable source for the entry of the infection. The court concluded that the plaintiff met her burden of establishing that the death was accidental.

Montana courts have been clearer. It is required that the accident must be the proximate or predominant cause of the insured's death. Precluding benefits for deaths contributed by a pre-existing, but dormant disease that also contributes to the death will not bar from recovery.

Conclusion

It is the claim examiner's goal to review the inclusionary as well as the exclusionary provisions of an accidental death policy. In establishing paradigms that will honour consumer's expectations, a claim examiner must refrain from abusing discretionary language; rather, one must interpret the policy in its more ordinary, popular sense. Undefined terms will be construed to the benefit of the insured, especially exclusionary provisions. The fact finder must also consider the subjective expectations of the insured.

The Oregon Supreme Court has acknowledged the futility of defining an accident and instead, their approach treats the legal interpretation of accident as malleable depending on the facts of a given case. In situations where accident or accidental is not defined in the policy, it is for the court to decide the definition that is properly applicable to the factual situation. Where multiple facts played a role in an insured's death, consulting with your legal team might help to avoid the potential risks of applying an incorrect causation consideration in the specific jurisdiction of the claim.

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