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Accident Insurance - Distinction Between Accidental Results and Accidental Means

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Notes

ACCIDENT INSURANCE — DISTINCTION BETWEEN ACCIDENTAL RESULTS AND ACCIDENTAL MEANS

Insured died during surgery from shock produced by a very rare blood transfusion reaction. Beneficiaries brought an action for double indmenity benefits under a policy provision which applied when death was caused by an injury effected through external, violent, and accidental means. Defendant conceded that the death of the insured was an accidental result but contended that the *means* by which death occurred was intentional and therefore could not be classified as an *"accidental means."* The lower court dismissed the suit and on appeal to the Louisiana Supreme Court, *held,* reversed. The technical distinction between *"accidental means"* and *"accidental result"* is no longer recognized in Louisiana. Death was produced by accidental means within the meaning of the policy. *Gaskins v. New York Life Insurance Company,* 104 So.2d 171 (La. 1958).

Insurance coverage[1] for loss of life or bodily injury is frequently restricted by policy provisions requiring that death or injury be effected through *"external, violent and accidental means."* Courts have treated this phrase as conjunctive and all three qualifications must therefore be met before coverage is afforded.[2] The meanings of the terms *"external"* and *"violent"* are fairly well settled.[3] There is disagreement, however, as to the meaning and application of the term *"accidental means."* In a number of jurisdictions, a distinction is drawn between insurance provisions using the term *"accidental means"* and those using terms such as *"accident," "accidental,"* and *"accidental injuries."*[4] In other jurisdictions, the distinction has been rejected

1. The broad term "insurance coverage" is used so as to incorporate various types of insurance policies to which the phrase has been adapted, i.e., accident, life, health, etc.

2. Travelers' Ins. Co. v. McConkey, 127 U.S. 661 (1888); 2 RICHARDS, INSURANCE § 217 (5th ed. 1952).

3. Aetna Life Ins. Co. v. Fitzgerald, 165 Ind. 317, 75 N.E. 262 (1905); Peele v. Provident Fund Soc., 147 Ind. 543, 44 N.E. 661 (1896); Paul v. Travelers Ins. Co., 112 N.Y. 472, 20 N.E. 347 (1889); VANCE, INSURANCE § 181 (3d ed. 1951). In general, the term "external" refers to the force or cause of the injury, and it is necessary only that it be external to the person, though it acts internally. "Violent" refers to the efficient cause which produces the harmful result, and may be fulfilled by any force, however slight.

4. Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934); Thomason v. United States Fidelity & Guaranty Co., 248 F.2d 417 (5th Cir. 1957)

or repudiated and the terms are regarded as legally synonymous.[5] There is no disagreement as to the meaning of *"accident," "accidental,"* and *"accidental injuries." "Accident"* and *"accidental"* both mean that which happens by chance, without intention or design, and which is unexpected, unusual and unforeseen.[6] The words *"accidental injuries"* are construed to include injuries caused by voluntary or intentional acts of the insured though undesigned and unanticipated.[7] The jurisdictions which distinguish between the terms base their distinction on the idea that the term *"means"* is synonymous with *cause* or the *very act* which produces the harmful result.[8] This distinction narrows the scope of the term *"accidental means"* to include only those acts or causes which produce the harmful result and which are in themselves accidental, undesigned, or unexpected. Thus, under this

(where the court stated that the cause itself must have been unexpected and accidental and that it was insufficient that the injury be unusual and unexpected); Ritchie v. Anchor Casualty Co., 135 Cal.2d 245, 286 P.2d 1000 (1955) (the policy herein provided for coverage against death or injury when due to "accidental means"; the court held that in order to recover, it was not sufficient that the death or the injury be unexpected but that the very means must be proven unexpected); Prudential Ins. Co. v. Gutowske, 49 Del. 233, 113 A.2d 579 (1955) (court held that death by "accidental means" required the immediate and proximate cause of the death to be accidental); Johnson v. National Life & Accident Ins. Co., 92 Ga. App. 818, 90 S.E.2d 36 (1955) (court held that the act which precedes the injury must itself be accidental for the injury to result from accidental means); Peoples Life Ins. Co. v. Menard, 124 Ind. App. 606, 117 N.E.2d 376 (1954) (which held that the means must be accidental); Groves v. World Ins. Co., 124 N.E.2d 199 (Ind. App. 1952); Travelers Ins. Co. v. Witt, 260 S.W.2d 641 (Ky. App. 1953); Home Beneficial Life Ins. Co. v. Partain, 205 Md. 60, 106 A.2d 79 (1954); Reeves v. John Hancock Mutual Life Ins. Co., 333 Mass. 314, 130 N.E.2d 541 (1955); Turner v. Mutual Ben. Health & Accident Ass'n, 316 Mich. 6, 24 N.W.2d 534 (1946); Daibey v. Equitable Life Assur. Soc., 105 Mt. 587, 74 P.2d 432 (1937); Shields v. Prudential Ins. Co., 6 N.J. 517, 79 A.2d 297 (1951); Buckles v. Continental Cas. Co., 197 Ore. 128, 251 P.2d 476 (1952); McDonnell v. Metropolitan Life Ins. Co., 151 Pa. Super. 241, 30 A.2d 199 (1943); Kimball v. Massachusetts Acc. Co., 44 R.I. 264, 117 Atl. 228 (1922); International Travelers Assoc. v. Marshall, 131 Tex. 258, 114 S.W.2d 851 (1938).

5. Wilson v. New York Life Ins. Co., 82 F. Supp. 292 (E.D. Idaho 1949) (where the court held that accidental means was synonymous with accidental results); Travelers Ins. Co. v. Johnston, 204 Ark. 307, 162 S.W.2d 480 (1942) (wherein the court held that the contention that there is a technical distinction between the terms "accidental means" and "accidental" was without merit); Equitable Life Assur. Soc. v. Hemenover, 100 Colo. 231, 67 P.2d 80 (1937); Raley v. Life & Casualty Insurance Co., 117 A.2d 110 (D.C. App. 1955); Comfort v. Continental Casualty Co., 239 Iowa 1206, 34 N.W.2d 588 (1948); Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 58 N.W.2d 855 (1953); Byrd v. Reserve Life Ins. Co., 217 Miss. 761, 65 So.2d 249 (1953); Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W.2d 576 (1942); Sample v. Reserve Life Ins. Co., 227 S.C. 206, 87 S.E.2d 476 (1955) (instruction requested that where action is voluntary, any resulting injury is not accidental, though unforeseen, was held properly overruled); Lynchburg Foundry Co. v. Irwin, 178 Va. 265, 16 S.E.2d 646 (1941); Griswold v. Metropolitan Life Ins. Co., 107 Vt. 367, 180 Atl. 649 (1935); O'Connell v. New York Life Ins. Co., 220 Wis. 61, 264 N.W. 253 (1936).

6. 2 RICHARDS, INSURANCE § 215 (5th ed. 1952).

7. *Ibid.*

8. Annot., 166 A.L.R. 471 (1947).

line of authority, death or injury is not incurred by *"accidental means"* merely because the effect or the result is accidental. This then precludes recovery under such a provision when the intentional or voluntary acts of the insured cause undesigned or unexpected death or injury.[9] It should be noted that many courts, although adhering to the view that coverage is not afforded where only the result and not the means is accidental, have developed exceptions which allow recovery. The most common exception is to hold the distinction inapplicable when the act, though voluntary or intentional, is accompanied by the occurrence of some mischance, slip, or mishap in doing the act itself.[10] Those jurisdictions which reject or repudiate the distinction reason that if there is an accidental result, there necessarily must have been an accidental means — the two cannot logically be separated, for either there is no accident at all or there is an accident throughout.[11] Thus, they conclude that the term *"accidental means"* should not be construed in a technical sense, but should be given its popular meaning according to common usage and the understanding of the average man. In other words, the guide of the courts should be the average expectation and purposes of the average ordinary person when making an insurance purchase.[12]

The Louisiana Supreme Court seemed to align itself with the view that there was a distinction between the term *"accidental means"* and the terms *"accident," "accidental,"* and *"accidental injuries"* in the early case of *Brown v. Continental Casualty Company.*[13] Under the facts of that case, a physician caused his own death by inhalation of an excess amount of chloroform which he used frequently for relief from headache pains. The decedent intended to inhale the chloroform. Under a strict application of the distinction, the *means* could be said to have been intentional

9. It should be noted that this is restricted to intentional acts of the *insured*, for where the insured is injured by the intentional act of another and the injury is not the result of misconduct or an aggression on the part of the injured, the injury is accidental within the meaning of the usual accident policy provision. See 2 RICHARDS, INSURANCE § 231 (5th ed. 1952).

10. Parker v. Provident Life & Accident Ins. Co., 178 La. 977, 152 So. 583 (1934); Brown v. Continental Casualty Co., 161 La. 229, 108 So. 464 (1926). Note further that other propositions advanced by the courts are: (a) if the act is due to proceedings on the part of the injured while in ignorance of a material fact or condition which is unusual, Provident Life & Accident Ins. Co. v. Maddox, 195 S.W.2d 536 (Tenn. 1946); and (b) where the injury is not the normal expected result of the voluntary act, Brackman v. National Life & Accident Ins. Co., 5 So.2d 565 (La. App. 1942).

11. Annot., 166 A.L.R. 471, 474 (1947).

12. *Id.* at 475.

13. 161 La. 230, 108 So. 464 (1926).

and thereby non-accidental. However, though evidencing outward compliance with the distinction between accidental *means* and accidental result, the court held that the excess amount inhaled was unexpected and thus the death was classified as resulting from "*accidental means.*"[14] The case was later cited as dealing with an unintentional act or cause of death.[15] However, the court of appeal for the first circuit construed the *Brown* case as not acceding to the doctrine that to entitle the beneficiary to recover, the means must be accidental, involuntary, and unintentional.[16] Confusion as to the validity of the distinction increased[17] with the Louisiana Supreme Court's next declaration on this question. This was the case of *Parker v. Provident Life & Accident Ins. Co.*[18] The court there held that the weight of authority was to the effect that injuries are not produced by "*accidental means*" where the act or cause is intentional and voluntary.[19] In that case, a workman suffered a hernia by pulling on a jackscrew. The court held he was not entitled to disability benefits predicated upon bodily injury sustained through "*accidental means*" because he *intended* to pull on the jackscrew.[20] A the-

14. "We do not believe that the doctrine stated, making a distinction between 'accidental death or injury' and 'death or injury by accidental means' means that . . . the Insurance Company is not liable for an accidental death or injury resulting from a voluntary act in which the insured did not intend or anticipate a fatal or injurious result. . . . The ruling in the California case is well qualified. . . . In the case before us, there was this element of unexpectedness, that the insured inhaled more than he expected to inhale. . . . Means or cause of his death was not that he intentionally inhaled too much chlorophorm . . . but that he unintentionally inhaled too much." Brown v. Continental Casualty Co., 161 La. 230, 238, 108 So. 464, 466 (1926).

15. Zurich General Accident & Liability Ins. Co. v. Flickinger, 33 F.2d 853 (4th Cir. 1929).

16. Brooks v. Continental Casualty Co., 128 So. 183 (La. App. 1930).

17. The confusion and uncertainty can best be illustrated by quoting from portions of the opinion of the Court of Appeal for Orleans Parish in the case of Brackman v. National Life & Accident Ins. Co., 5 So.2d 565 (La. App. 1942), wherein it was stated by Judge Janvier: "The distinction is a very fine one, and we are not all certain that we, ourselves, clearly understand it, or that we could, under any given state of facts, determine with reasonable conviction just whether it is the means or the result which is accidental. But we are forced to recognize that there is a distinction because our Supreme Court has said so." *Id.* at 567.

Again, "we would find it hard to reconcile that result [in the *Brown* case] with the one reached in the *Parker* case, were it not for the fact that the court itself found no conflict." *Id.* at 569.

And finally, "we cheerfully, though rather confusedly, accept the doctrine of the Landress case and the Parker case, that there is a distinction — between accidental means and an accidental result . . . . [T]here is respectable authority for the view that even the distinction recognized in the Landress and the Parker cases is a spurious one." *Id.* at 570.

18. 178 La. 977, 152 So. 583 (1934).

19. The Supreme Court relied in part upon the holding of the United States Supreme Court in Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934).

20. Parker v. Provident Life & Accident Ins. Co., 178 La. 977, 152 So. 583 (1934).

oretical reconciliation with the *Brown* case was made by the court in the *Parker* case by viewing the act of the physician in the *Brown* case as intentional to induce relief but unintentional as to the actual result — death.[21] As pointed out in the dissent,[22] and in the instant case,[23] this reconciliation was without merit.

The instant case clearly repudiates the confusing distinction which had plunged this branch of the law into a "Serbonian bog."[24] The court, reiterating the criticisms of the dissenters in leading cases adhering to the distinction, stated that doubts as to the validity of the distinction had caused an increasing number of jurisdictions to construe the terms *"accidental means"* as that which in the ordinary language of laymen is considered to be an accident.[25] The court found this approach in harmony with the Louisiana jurisprudence interpreting other types of insuring clauses.[26] Rather than perpetuate the technical distinction of the *Parker* case which was so at variance with the usual rules on interpretation, the present clause was construed by the court in accordance with the common and usual significance attached by general and popular use of the language in question.[27] Thus, recovery under the term *"accidental means"* is no longer precluded merely because the precipitating act producing the accidental result is in itself voluntary and intentional. The test in Louisiana now seems to be "whether the average man, under the existing facts and circumstances, would regard the loss as so unforeseen, unexpected, and extraordinary that he would say it was an accident."[28]

The repudiation of the technical distinction is to be lauded for dissipating the "Serbonian bog" of semantical confusion which has engulfed this branch of the law. It should be pointed out that the test adopted by the court lacks precision and certainty.

21. *Ibid.*
22. *Ibid.*
23. Gaskins v. New York Life Insurance Co., 104 So.2d 171, 175 (La. 1958).
24. See dissenting opinion of Justice Cardoza in Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491-499 (1934), where the eminent jurist stated: "The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian bog." From Milton's Paradise Lost, Book 2, Line 392:

> "A gulf profound as that Serbonian bog
> Betwixt Damiata and Mount Casius old,
> Where armies whole have sunk . . . ."

25. 104 So.2d 171, 176 (La. 1958).
26. *Id.* at 177.
27. *Ibid.*
28. *Ibid.*

Due to its broadness, it fails to provide certainty in the determination of whether particular incidents are "accidental." However, it is submitted that a general test is the only practical one that could be adopted in view of the variety and complexity of factual situations which arise in this branch of the law.

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CONSTITUTIONAL LAW — COURT-MARTIAL JURISDICTION OVER CIVILIAN MILITARY DEPENDENTS IN FOREIGN COUNTRIES

Defendant, a civilian, was tried and convicted for the murder of her Air Force husband by a general court-martial.[1] The military court predicated its jurisdiction upon Article 2(11) of the Uniform Code of Military Justice,[2] and an executive agreement between England and the United States.[3] The conviction was affirmed by the Air Force Board of Review, but reversed by the Court of Military Appeals, because of prejudicial errors concerning the defense of insanity. After she was transferred to this country, and while awaiting a proposed retrial by court-martial, the defendant petitioned a federal district court for a writ of habeas corpus to release her on the ground that the Constitution did not permit her trial by military authorities. The district court granted the writ and ordered her released. The government appealed directly to the United States Supreme Court, which reversed the district court. On rehearing, the decision of the district court was *held,* affirmed. Justice Black, in an opinion in which three Justices joined, held that criminal action by the United States against a service man's overseas civilian depend-

1. Of course, jury trial is not within the scheme of courts-martial. Instead, the Uniform Code of Military Justice, art. 16, c. 169, 64 STAT. 113 (1950), 10 U.S.C. § 816 (Supp. V, 1958) provides that: "The three kinds of courts-martial in each of the armed forces are — (1) general courts-martial, consisting of a law officer and not less than five members; (2) special courts-martial, consisting of not less than three members; and (3) summary courts-martial, consisting of one commissioned officer."

2. Uniform Code of Military Justice, art. 2(11), c. 169, 64 STAT. 109 (1950), 10 U.S.C. § 802(11) (Supp. V, 1958): "The following persons are subject to this chapter:

". . .

"(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States."

3. 57 STAT. 1193, E.A.S. No. 355 (July 27, 1942). The appropriate forum for trying an accused dependent in England, as well as the other North Atlantic Treaty Nations, is provided for in the NATO Status of Forces Agreement, 4 U.S. U.S.T. & O.I.A. 1792, T.I.A.S. No. 2846, June 19, 1951 (effective August 23, 1953).