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Accident Insurance–Death by Accidental Means

J. P. R.
West Virginia University College of Law

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RECENT CASE COMMENTS

ACCIDENT INSURANCE—DEATH BY ACCIDENTAL MEANS.—Preparatory to an operation, patient voluntarily submitted to an injection of novocaine from which her death resulted due to an unknown hypersensitivity to the drug. *Held,* that such death did not result from accidental means within the provisions of an insurance policy stipulating for the payment of benefits for death resulting from "external, violent and accidental means". *Otey v. John Hancock Mutual Life Insurance Company.*[1]

There is a sharp division of authority as to the interpretation of the term "accidental means" as used in such insurance policies, a distinction being drawn between accidental cause and accidental result.[2] One line of decisions, probably the weight of authority, sustains the principal case and declares that if the means which cause an injury are voluntarily employed in the usual and expected way, the resulting injury is not produced by accidental means, even though the resulting injury was entirely unusual, unexpected, and unforeseen.[3]

The other line of decisions says that a result which is not the natural and probable consequence of the means which produced it and which the actor did not reasonably anticipate or intend to produce, is produced by accidental means, even though no mischance, slip, or mishap occurred in the doing of the act.[4] This line of authority is followed by the Virginia Supreme Court of Appeals.[5]

If a literal interpretation is to be used in construing the effect of the phrase "accidental means", then the West Virginia court

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[1] 199 S. E. 596 (W. Va. 1938).

[2] "The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog." Cardozo, J., dissenting, in Landress v. Phoenix Mut. Life Ins. Co., 291 U. S. 491, 499, 54 S. Ct. 461, 78 L. Ed. 934, 90 A. L. R. 1382 (1933).

[3] Landress v. Phoenix Mut. Life Ins. Co., 291 U. S. 491, 54 S. Ct. 461, 78 L. Ed. 934, 90 A. L. R. 1382 (1933); Caldwell v. Travelers' Ins. Co., 305 Mo. 619, 267 S. W. 907, 39 A. L. R. 56 (1924).

[4] Wheeler v. Title Guaranty & Casualty Co., 265 Mich. 296, 251 N. W. 408 (1933); Taylor v. New York Life Ins. Co., 176 Minn. 171, 222 N. W. 912, 50 A. L. R. 959 (1929). This theory grows out of the holding in United States Mut. Accident Ass'n v. Barry, 131 U. S. 100, 9 S. Ct. 755, 33 L. Ed. 60 (1889).

[5] Ocean Accident & Guarantee Corp. v. Glover, 165 Va. 283, 182, S. E. 221 (1935). Recently, a federal circuit court had before it an accident insurance case from Virginia, American Nat. Ins. Co. of Galveston, Tex. v. Belch, 100 F. (2d) 48 (C. C. A. 4th, 1938). At the first hearing, finding no controlling decision or statute from that state and applying the entire body of substantive law on the point, the court sided with the line of thought adopted by the West Virginia court. But, on a rehearing, the court found and followed the Glover case, *supra,* which definitely lays down the other rule.

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seems to have decided this case rightly, because death was an accidental result and not a result of accidental means.[6] If, however, in construing the terms of an accident insurance policy the interpretation should be that of the average man,[7] and if the rule that ambiguities and uncertainties in an insurance policy must be construed against the insurer should apply,[8] then the decision seems to be wrong, because the insured's death was accidental in the popular sense.

J. P. R.

ATTORNEY AND CLIENT — CONTINGENT FEE AGREEMENT AS EQUITABLE ASSIGNMENT—ATTORNEY'S INTEREST IN CLAIM UNDER SUCH AGREEMENT.—*C*, the payee of a note of which *B* was the payor delivered the note to *A*, an attorney, and entered into an agreement with *A* whereby *A* was to have fifty *per centum* of the amount collected on the note. *A* notified *B* of the terms of his conract with *C*. While *A* was making investigations preliminary to instituting suit, *B* and *C*, without consulting *A*, completed a secret and collusive compromise of the note for less than its face value, to the exclusion of *A*. *A* intervened in a creditors' suit begun by *X* against *C* for an alleged fraudulent conveyance and filed a petition praying for protection of his interest in the note. *Held*, one judge dissenting, that the agreement between *A* and *C* created an immediate equitable assignment *pro tanto* to *A* of the portion specified and that *A's* interest could not be extinguished by a collusive settlement between *B* and *C*. *Mirasola v. Rodgers*.[1]

The doctrine of equitable assignment, as defined by courts and writers, is applicable where there is an unequivocal intent to transfer immediate interest in an existing or potential fund. This intent may be manifested either orally or in writing and may be expressed or arise by necessary implication from an agreement construed with

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[6] The West Virginia court considered and rejected the argument that the death was by accidental means, even under the strict construction of the phrase, because the surgeon did not intend to inject the novocaine into a body which was hypersensitive to the drug.

[7] "The term 'accidental' was used in the policy in its ordinary, popular sense, and in that sense it means 'happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected'." United States Mut. Accident Ass'n v. Barry, 131 U. S. 100, 9 S. Ct. 755, 33 L. Ed. 60 (1889).

[8] Mutual Life Ins. Co. v. Hurni Packing Co., 263 U. S. 167, 44 S. Ct. 90, 68 L. Ed. 235, 31 A. L. R. 102 (1923); United States Mut. Accident Ass'n v. Newman, 84 Va. 52, 3 S. E. 805 (1887). Especially true as to accident policies, VANCE, INSURANCE (1930) § 257.

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[1] 200 S. E. 30 (W. Va. 1938), Kenna, J., dissenting.