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Meaning of Accident in Accident Insurance Policies

Robert M. Little

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the complaint and refuse to grant an injunction, feeling that there was good faith, and said that, because no one had warned the defendant before filing suit, his actions did not warrant punitive action, and they felt confident that he would refrain from future illegal practice.[11]

In determining whether a man is practicing law, his work for any particular client or customer should be considered as a whole.[12] An accountant may prepare tax returns and answer incidental legal questions that arise in connection with preparing tax returns, but may not be called in by a business or another accountant to do nothing other than answer a legal question. The possible added inconvenience and expense of calling in a lawyer do not warrant a lessening of this rule, for the considerations of public protection far outweigh these factors.[13]

ALLYN B. HENDERSON

MEANING OF ACCIDENT IN ACCIDENT INSURANCE POLICIES

Plaintiff carried an accident insurance policy which provided that "Injury" as used in the policy means bodily injury which is the sole cause of the loss and which is effected solely through accidental means. Suicide was expressly excluded from recovery under the policy. Plaintiff attempted to commit suicide by closing all the windows and turning on the gas of her stove. She went to sleep and awakened several hours later surprised to find herself still alive. She then turned off the gas and attempted to light the pilot light. An explosion resulted which injured her. She brought suit to recover under the insurance policy; Iowa District Court allowed recovery and defendant appealed to the Iowa Supreme Court. *Held,* affirmed, sufficient evidence that injury was the result of accidental means to go to the jury. Comfort v. Continental Casualty Co., 34 N. W. (2d) 588 (Iowa 1948).

There has long been a dispute as to the meaning of the phrase "by accidental means" as used in accident insurance policies. Two view have developed neither of which is a clearly defined majority.[1] One view takes the position that when the means that caused the death or injury are exactly as the insured intended, the means are not accidental, even though the result was unexpected and accidental.[2] The other view looks at the phrase from the layman's point of view and holds that

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11. The State of Wyoming, ex rel Wyoming State Bar v. Hardy, 61 Wyo. 172, 156 P. (2d) 309 (1944).
12. Auerbacher v. Wood, 139 N. J. Eq. 599, 53 A. (2d) 800 (Ch. 1947).
13. Application of New York County Lawyers Ass'n, 78 N. Y. Supp. (2d) 209 (1st Dept. 1948).

1. See Note, 166 A. L. R. 469 (1947).
2. Horton v. Travelers Insurance Co., 45 Cal. App. 462, 187 Pac. 1070 (1920); Travelers Insurance Co. v. Selden, 78 Fed. 285 (C. C. A. 4th 1897); Husbands v. Indiana Trav. Acc. Ass'n, 194 Ind. 586, 133 N. E. 130 (1921); Feder v. Iowa State Trav. Men's Ass'n, 107 Iowa 538, 78 N. W. 252 (1899); Kendall v. Trav. Protective Ass'n of America, 87 Ore. 179, 169 Pac. 751 1918).

if the result was something unforeseen, unexpected or without intention it occurred by accidental means.[3]

In the instant case the lower court instructed the jury that, "By 'accidental means' is meant those means, the effect of which does not ordinarily follow and cannot be reasonably anticipated from the use of these means; an effect which the actor did not intend to produce and which he can not be charged with the design of producing."[4] This instruction was not objected to and was taken as the law of the case. It accords with the second view and is an indication of the courts tendency to accept the liberal view that there is no legal difference between the terms accident and accidental means.[5] The average man thinks of accident as happening unexpectedly, a result which does not ordinarily follow and many courts feel that to change this concept and disallow recovery on a strict legal definition of accidental means would substantially impair the good of insurance.

In arriving at their decision the court had to determine if the voluntary act of the insured in causing the gas to fill the room precluded recovery. This involved a determination of the casual relationship and the application of principles dealing with causation. An English court held that the court must look at only the immediate and proximate cause of death and not go back to cause upon cause.[6] If the means are voluntary the result must be unexpected,[7] a result which the actor did not intend to produce. However, if there is a danger present the actor must know of this danger and then, in effect, assume the risk before he is barred from recovery.[8] His intentional act without knowledge is not enough to disallow his recovery.[9] Mere thoughtlessness alone has been held not to bar the actor from recovery.[10]

A wholly unintentional self-inflicted injury does not make it impossible to recover and simple negligence does not bar recovery.[11] One court said, "negligence setting in motion the chain of circumstances which cause or contribute to the result does not operate to remove such result from the category of those caused by accidental means."[12] The insured is not covered only those cases where he

3. Whatcott v. Continental Casualty Co., 85 Utah 406, 39 P. (2d) 733 (1935); Billings v. Continental Life Ins. Co., 81 Utah 572, 21 P. (2d) 103 (1933); Lewis v. Ocean Acc. & Guarantee Corp., 224 N. Y. 18, 120 N. E. 56, 7 A. L. R. 1129 (1918); McGlinchey v. Fidelity & Casualty Co., 80 Me. 251, 14 Atl. (1888).
4. Comfort v. Continental Casualty Co., 34 N. W. (2d) 588, 589 (Iowa 1948).
5. 29 Am. Jur. (Pocket Supplement) 69, sec. 933.1.
6. Lawrence v. The Accidental Ins. Co., 7 Q. B. D. 216 (1881).
7. Hanna v. Rio Grande National Life Ins. Co., 181 S. W. (2d) 908 (Tex. Civ. App. 1944).
8. Travelers' Insurance Co. v. Randolph, 78 Fed. 754 (C. C. A. 6th 1897).
9. Commercial Travelers' Mut. Acc. Ass'n v. Springsteen, 23 Ind. App. 657, 55 N. E. 973 (1900); Fidelity and Casualty Co. v. Sittig, 181 Ill. 111, 54 N. E. 903 (1899).
10. Irwin v. Phoenix Accident and Sick Benefit Assn., 127 Mich. 630, 86 N. W. 1036 (1901).
11. Edwards v. Business Men's Assur. Co. of America, 350 Mo. 666, 168 S. W. (2d) 82 (1942); Mid-Continent Life Insurance Co. v. Davis, 174 Okla. 262, 51 P. (2d) 319 (1935); Zurich General Acc. and Liability Insurance Co. v. Flickinger, 33 F. (2d) 853 (C. C. A. 4th 1929), 68 A. L. R. 161.
12. Pyramid Life Insurance Co. v. Milner, 289 Ky. 249, 158 S. W. (2d) 429, 432 (1942).

exercises great foresight and conducts himself with great caution.[13] When an accident is the result of a miscalculation of a voluntary act it may be termed accidental.[14] These rules have been applied by numerous courts in allowing recovery for voluntary acts which result in injuries.[15] However there are also many courts which restrict recovery and hold that something unexpected or unforeseen must occur in the act which precedes and causes the injury.[16] Most courts are in accord that if the injury or death is the natural result of the insured's voluntary act and the only thing unforseen is the death or injury it does not occur by accidental means.[17] One court has said it makes no difference if the insured did voluntarily set in motion the first of a series of actions which resulted in the injury or death, he can still recover.[18]

The tendency to construe an insurance policy against the insurer and to allow recovery when the accident is of such a nature that the layman would consider it an accident is apparently justified on the basis of public policy. For it would seem inequitable to allow an insurance company to escape liability by the use of a technical phrase the meaning of which has not even been determined with any degree of unanimity by the courts.

ROBERT M. LITTLE

DAMAGES AND THE EMINENT DOMAIN STATUTE

In 1934, plaintiff acquired certain property adjoining defendant railroad's switch-yard which has been in use and operation since prior to 1926. The yard comprised two main line tracks, running north and south, and a series of ten tracks adjacent to and west of the main line used as switch tracks. The westernmost of this system of tracks, called a scale track, was within 100 ft. of plaintiff's house. Plaintiff contends that defendant spotted its engine upon the scale track nearer his house than was necessary, and that as a result, quantities of smoke, soot and cinders and noxious vapors were cast upon his property causing him special damage. *Held,* that, a railroad company is not liable to an abutting landowner, under the eminent domain statute, for damages to the property after claims for the original location and construction have been settled or barried by the statute of limiations; and further, the court below erred in holding that the defendant had created an "unnecessary nuisance" or private nuisance rather than a public nuisance. *Thompson v. Kimball,* 165 F. (2d) 677, (C. C. A. 8th 1948).

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13. Rustin v. Standard Life and Accident Insurance Co., 58 Neb. 792, 79 N. W. 712 (1899).
14. Joseph A. Coy Co., Inc. v. Younger, 192 Okla. 348, 136 P. (2d) 890 (1943).
15. Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N. W. (2d) 576 (1942); Griswold v. Metropolitan Life Ins. Co., 107 Vt. 367, 180 Atl. 649 (1935); Whatcott v. Continental Casualty Co., 85 Utah 406, 39 P. (2d) 733 (1935).
16. Donohue v. Washington Nat. Ins. Co., 259 Ky. 611, 82 S. W. (2d) 780 (1935); Parker v. Provident Life and Accident Insurance Co., 178 La. 977, 152 So. 583 (1933); Losleben v. California State Life Insurance Co., 133 Cal. App. 550, 24 P. (2d) 825 (1933).
17. Evans v. Metropolitan Life Insurance Co., 26 Wash. (2d) 594, 174 P. (2d) 961, (1946).
18. Lickleider v. Iowa State Traveling Men's Ass'n., 184 Iowa 423, 166 N. W. 363, 3 A. L. R. 1295 (1918), modified, 168 N. W. 884.