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Ohio Insurance: A Study in Legal Adroitness

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INTRODUCTION

The usual clause found in accident and life insurance double indemnity policies insures against death or injury effected solely and exclusively by external, violent, and accidental means.[1] This article will be limited to an examination of court interpretations of the clause "accidental means," with particular reference to Ohio law. The specific question to be answered is: will an injury that results from a voluntary act of the insured be compensable under a policy containing the above provision?

Insurance policies are construed the same as other forms of mercantile contracts.[2] The words of the contract are given their normal and ordinary meaning.[3] In the event of ambiguity, the policy is construed against the insurance company and in favor of the insured.[4] These construction rules are simple enough in a vacuum, but when they are applied to an individual claim, the results, as might be expected, are far from harmonious. The interpretation of the language contained in insurance policies has long been a fruitful source of litigation. The most prolific of the policy language interpretation cases have been those involving the construction of the clause "accidental means."

A court attempting to interpret the clause "accidental means" may be confronted with any one of the following three fact situations:

1. The means (cause) which was responsible for insured's injury was unintentional, as where the insured has slipped or fallen. Under these facts no court has denied recovery under the clause "accidental means."
2. The means (cause) which occasioned insured's injury was intentional and the result was likewise intentional, as where the insured has committed suicide. In this situation no court will allow recovery under the clause "accidental means."
3. The means that gave rise to insured's injury was intentional, but the result was unintended. To illustrate this, suppose the insured attempts to repair his television set, but being unfamiliar with the set's operation the insured places his wrench on the wrong bolt and electrocutes himself.

Reduced to the essentials, the problem is whether there can be an accident, as contemplated by the clause "accidental means," where the

1. Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W.2d 576 (1942); Morgan v. Indemnity Ins. Co., 276 App. Div. 123, 99 N.E.2d 228 (1951).

2. John Hancock Mut. Life Ins. Co. v. Hicks, 43 Ohio App. 242, 183 N.E. 93 (1931).

3. Toms v. Hartford Fire Ins. Co., 146 Ohio St. 39, 63 N.E.2d 909 (1945); Bobier v. National Cas. Co., 143 Ohio St. 215, 54 N.E.2d 798 (1944).

4. Gibbons v. Metropolitan Life Ins. Co., 135 Ohio St. 481, 21 N.E.2d 588 (1939); Washington Fid. Nat'l Ins. Co. v. Herbert, 49 Ohio App. 151, 195 N.E. 492 (1934).

insured has intentionally done the act which caused his injury. In this situation the courts are divided as to whether the injury was caused by accidental means. One view interprets the clause "accidental means" literally and allows recovery only where the means is accidental (unintentional). The other view allows recovery where either the means or the result is classified as accidental (unintentional).

Before discussing the Ohio law, a brief survey of the principal cases under each view will be helpful in order to understand and objectively appraise the Ohio position.

View That Allows Recovery Only for Accidental Means

An example of the reasoning under this view is found in the case of *Tuttle v. Pacific Mutual Insurance Company*.[5] There, the insured contracted meningitis from snuffing a nasal douche too vigorously. The court denied recovery on the basis that there was no accidental means. The court reasoned that the insured did just what he intended to do. The inhalation was no harder than the insured intended it to be. Finding no accident in the cause (means), judgment was awarded to the insurance company.

One of the leading cases under this strict view is *Landress v. Phoenix Mutual Life Insurance Company*.[6] In this case, death was caused by sunstroke while the insured was playing golf. The majority concluded that under a policy insuring against death or injury by accidental means there may be no recovery under these facts. Writing for the majority, Mr. Justice Stone stated:

> But it is not enough, to establish liability under these clauses that the death or injury was accidental in the understanding of the average man . . . for here the carefully chosen words defining liability distinguish between result and external means which produces it. The insurance is not against accidental results.[7]

The court reasoned that the death may be accidental, but the means (exposure to the sun) was not accidental. Therefore, a differentiation is made between the results to the insured and the means which is the operative cause in producing these results. This view was well stated in the early *Pledger*[8] case, where the court said, "accidental death is an unintended and undesigned result arising from acts done; death by accidental means is where the result arises from acts unintentionally done."[9] In other words, the distinction is between cause and effect. This view precludes recovery for injuries caused by insured's voluntary acts.

To mitigate the harshness of this view, many courts have liberal-

5. 58 Mont. 121, 190 Pac. 993 (1920).
6. 291 U.S. 491 (1934).
7. *Id.* at 495-96.
8. Pledger v. Business Men's Acc. Ass'n, 197 S.W. 889 (Tex. Civ. App. 1917).
9. *Id.* at 890.

ized their interpretation of the clause "accidental means" to permit recovery where the result following the intentional act of the insured is unforeseen, unintended, and unexpected. A typical statement of the liberal view is:

> Whether or not a means is accidental is determined by the character of the effects. Accidental means are those which produce effects which are not their natural and probable consequences.[10]

These courts, while retaining the distinction, stress the result rather than the means. This, it will be noticed, is the antithesis of the rationale employed in the strict approach. Many courts, in order to preserve the old terminology, talk in terms of accidental means and results, but actually stress ignorance of material circumstances on the part of the insured. Such courts regard the injury as caused by accidental means where the insured is unaware of material circumstances which, if known to him prior to his act, would have caused him to act differently.[11] To qualify under this approach, however, the insured must exercise ordinary care in doing the act.

Other courts, however, look to intention. When the result cannot be reasonably anticipated, and is not intended by the actor, it will be held a result produced by accidental means.[12] The courts adopting this liberal approach often reach the same result as do the courts that allow recovery for accidental result as well as for accidental means.

View That Allows Recovery for Either Accidental Means or for Accidental Results

The reasoning under this view is illustrated by the dissent of Mr. Justice Cardozo in the *Landress*[13] case, wherein the decedent had suffered a sunstroke while playing golf. The majority opinion was previously cited as a bulwark for the strict view. The dissent posed this syllogism:

> If there was no accident in the means, there was none in the result, for the two are inseparable. There was an accident throughout or there was no accident at all.[14]

This metaphysical device was again used in *Bukhata v. Metropolitan Life Insurance Company*.[15] There it was held that no accidental result can exist without accidental means, since, if all the means are intentional, the result must be intentional. Other courts, prefering not to deal in philosophy, apply the rule of strict construction against the company on the theory that the distinction which divides the court is

10. Western Commercial Travelers Ass'n v. Smith, 85 Fed. 401, 405 (8th Cir. 1898).
11. Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W.2d 576 (1942).
12. Konschak v. Equitable Life Assur. Soc'y, 186 Minn. 423, 243 N.W. 691 (1932).
13. Landress v. Phoenix Mut. Life Ins. Co., 291 U.S. 491, 493 (1934) (dissent).
14. *Id.* at 501 (dissent).
15. 145 Kan. 858, 67 P.2d 607 (1937).

not known by the average man,[16] that the clause, "accidental means," is ambiguous,[17] or that the courts should not lend a hand to companies attempting to escape liability through legal adroitness.[18] The remaining courts adopting this view use a combination of the rationale mentioned above, or merely find it more convenient not to make any distinction because of the resulting confusion.[19] There are, of course, many other public policy arguments that have been advanced by writers and courts, but they add nothing to what has already been stated.[20] The underlying idea of each seems to be that it is more equitable to grant relief than to deny it.

Thus, in those situations where the injury is occasioned by the voluntary act of the insured, these views exist:

1. The view which allows recovery only when the means are accidental.
2. The view which recognizes a distinction but has liberalized the term accidental means to accomplish more equitable results.
3. The view that allows recovery where either the means or the result is accidental.

The Ohio Position

The precedent setting case in Ohio is *New Amsterdam Casualty Company v. Johnson*.[21] Here, the insured had taken a cold bath to cool himself after horseback riding. The cold bath caused a dilation of the heart which resulted in the death of the insured. The policy insured against death via "accidental means." It was conceded at the trial that insured had no organic trouble with his heart. In denying recovery, the court said: "heart dilation following the taking of such bath when heated is a natural result from a natural cause."[22] Counsel for the plaintiff had argued that the result was unusual and unexpected, but the court answered:

> Undoubtedly an accident, in both its technical and commonly accepted meaning is an event which occurs without one's foresight or expectation and wholly undesigned, yet it is not true that every unusual, unforeseen and unexpected event is an accident within the true meaning of the term as used in insurance policies.[23]

Since the insured was not pushed nor did he slip into the tub, but rather entered voluntarily, there was no accident and what followed was a natural consequence of a natural act. Other than the result of heart dilation, nothing occurred that was not intended by the insured. To further buttress its position, the court added the rather dubious

16. Burr v. Commercial Travelers Mut. Acc. Ass'n, 295 N.Y. 294, 67 N.E.2d 248 (1946).
17. Travelers Protective Ass'n v. Stephens, 185 Ark. 600, 49 S.W.2d 364 (1932); Taylor v. New York Life Ins. Co., 176 Minn. 171, 222 N.W. 912 (1929).
18. Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W.2d 576 (1942).
19. *Ibid.*
20. Annot., 166 A.L.R. 469 (1947).
21. 91 Ohio St. 155, 110 N.E. 475 (1914).
22. *Id.* at 157, 110 N.E. at 475.
23. *Id.* at 158, 110 N.E. at 476.

statement that had this case been submitted to the average businessman, he would have been "shocked" had recovery been allowed on a policy insuring against death by accidental means.

The next case decided by the supreme court dealing directly with an "accidental means" clause was *Mitchell v. New York Life Insurance Company*.[24] Suit was under a double indemnity provision which provided for increased indemnity if death resulted from bodily injury, effected solely through external, violent, and accidental means. Insured died as the result of a ruptured sigmoid caused by a self-administered enema, using a tube connected directly to the faucets in a nearby bathtub. The court denied recovery, stating: ". . . the 'means' which produced the injury and consequent death of decedent was voluntarily and intentionally employed and in the manner intended."[25] The argument was made that the rupture was caused by an increase in the water pressure, but the court observed that there was no evidence that this alleged increase was not caused by insured's manipulation of the faucet controls. It was indicated that had the pressure increased unexpectedly as a result of some condition outside insured's control, the decision might have been different.

Beginning a campaign to introduce the liberal view into Ohio law, Judge Hart dissented. He said:

> The confusion of thought on this subject arises . . . in the failure to differentiate or to recognize the distinction between the origin of injury flowing from the voluntary act of the party injured accompanied with full knowledge and apprehension of the probable consequences of his act and the origin of injury flowing from the voluntary act of the party injured, unaccompanied by apprehension on his part of unforeseen and unexpected consequences resulting from such act. In the latter case, the event or circumstance which he failed to apprehend and which were responsible for the mishap furnishes the basis of accident by accidental means.[26]

The result clearly was not intended nor expected, so it must have been occasioned by insured's misjudgment of his ability to control the water pressure. The misjudgment was the means and *this* was accidental; therefore, such injury was caused by accidental means. This dissent takes the "ignorant of material circumstances approach" mentioned earlier in the discussion of the liberal view.

The supreme court reiterated its view in *Hassay v. Metropolitan Life Insurance Company*.[27] The court approved these charges, which reflect the strict view:

> If John Hassay voluntarily and intentionally employed the means which produced his death then there can be no recovery under this policy.[28]

24. 136 Ohio St. 551, 27 N.E.2d 243 (1940).
25. *Id.* at 555, 27 N.E.2d at 245.
26. *Id.* at 556, 27 N.E.2d at 245 (dissent).
27. 140 Ohio St. 266, 43 N.E.2d 229 (1942).
28. *Id.* at 271, 43 N.E.2d at 231.

> A means is not accidental within the terms of the policy . . . because some unexpected result followed in addition to that which was intended to be accomplished.[29]

Once again Judge Hart, urging the liberal view, dissented. He stated that unless the death was the natural and probable result of insured's act, his death resulted from accidental means within the terms of the policy. If something unforeseen, unexpected, and unusual preceeds the injury, it is injury by accidental means.[30]

In *Burns v. Employers' Liability Assurance Company*[31] the supreme court would not let a chance pass by without expounding on its interpretation of the clause "accidental means." In that case death resulted from amebic dysentery caused by drinking infected water from a tap in a hotel room. The water had become infected by the breaking of a sewer pipe. The court, in pure dictum, lectured for pages on its theory of accidental means but then decided the case on the question of bodily injury. The court held that a disease such as amebic dysentery was not bodily injury as contemplated in the insurance contract.

There are several important Ohio appellate cases in this area of the law. In *Blubough v. Lincoln National Life Insurance Company*,[32] insured received a hernia from moving an oil drum. The court reasoned that since the moving was voluntary and intentional, in order for the insured to recover there must be shown an accident in the means, *i.e.*, some slip or fall while in the act of moving the drum. Since there was no such evidence, no recovery was allowed.

In *Groves v. World Insurance Company*[33] the policy insured against accidental bodily injury. The insured was allegedly injured as a result of a strain caused by moving a refrigerator. This necessitated an operation, and shortly thereafter the insured died. The court decided there was not sufficient evidence to conclude that the operation was the cause of the death. The alternative ground advanced by the plaintiff was that moving the refrigerator constituted an accidental bodily injury. The court might have simply stated that there was also a lack of evidence to support this contention, but they proceeded to equate the term "accidental" with the clause "accidental means," stating, in effect, that to be accidental, there must be accidental means. The policy in this case insured against "accidental bodily injury" and not against injury by "accidental means." With the technical meaning attached to the clause "accidental means" by the strict view, the incorporation of that clause into the concept of "accidental" seems to be an over-extension of the strict view. This

29. *Id.* at 271, 43 N.E.2d at 231.
30. *Id.* at 272, 43 N.E.2d at 232 (dissent).
31. 134 Ohio St. 222, 16 N.E.2d 316 (1938).
32. 84 Ohio App. 202, 82 N.E.2d 765 (1948).
33. 69 Ohio L. Abs. 78 (C.P. 1952), *aff'd*, 160 Ohio St. 355, 116 N.E.2d 204 (1953).

incorporation has no authority in prior Ohio cases. All the previous Ohio courts that have rendered decisions in this area were confronted with the clause "accidental means," and not merely the clause "accidental injury." On appeal the supreme court affirmed, with two judges concurring on the ground that there was no evidence of a slip, fall, or any accident at the time the claimed injury was alleged to have happened.[34] At least two former decisions by the supreme court had recognized that there could be an accidental injury with no accidental means, but had denied recovery because the policy provided for indemnity for injuries by accidental means.[35] In spite of this, it would seem that the *Groves* case is some authority that in Ohio there is no distinction between "accidental injury" and "accidental means." Whether this will evolve into "the law" is a matter only time can resolve.

It may be said with assurance, though, that in Ohio, the clause "accidental means" is strictly construed, and the liberal approach has found no favor in Ohio courts. However, there is at least one encouraging sign. A presumption is permitted in favor of the plaintiff that the injury or death was caused by accidental means if there is proof of violent and externally caused injuries.[36] This presumption establishes a prima facie case for the plaintiff and the burden of going forward then shifts to the defendant.[37] If the defendant can show that the injuries were occasioned by a voluntary act of the insured, the presumption has then been overcome. This presumption is the only inroad the liberal view has made in Ohio law. That there will be any further gain is doubtful in view of the decision in the *Groves* case, which seems to have extended, rather than contracted, the strict view.

There remains for analysis a group of cases where Ohio courts have permitted recovery even though a voluntary act of the insured was involved. These cases cannot be classified as triumphs for the liberal view since they expressly approve of the strict view as set down in the *New Amsterdam* case, but distinguish that case and its adherents.

In *Hammer v. Mutual Benefit Health & Accident Association,*[38] insured died as the result of heat prostration while roofing a house. The insurance company contended that the insured voluntarily exposed himself to the rays of the sun and, therefore, death was not caused by accidental means. The court held that the death was caused by accidental means. Note that this holding is exactly the op-

34. *Ibid.*

35. Mitchell v. New York Ins. Co., 136 Ohio St. 551, 27 N.E.2d 243 (1940); Burns v. Employers' Liability Assur. Co., 134 Ohio St. 222, 16 N.E.2d 316 (1938) (dictum).

36. Shepherd v. Midland Mut. Life Ins. Co., 152 Ohio St. 6, 87 N.E.2d 156 (1949); Hassay v. Metropolitan Life Ins. Co., 140 Ohio St. 266, 43 N.E.2d 229 (1942).

37. Hassay v. Metropolitan Life Ins. Co., 140 Ohio St. 266, 43 N.E.2d 229 (1942).

38. 158 Ohio St. 394, 109 N.E.2d 649 (1952).

posite of that rendered by the United States Supreme Court in the *Landress* case discussed previously. In *Commonwealth Casualty Company v. Wheeler*[39] insured froze to death while walking home from work. The court held this was death by accidental means. Both of these cases made the following distinction: the previous decisions on accidental means may be distinguished because the means was self-administered, and the acts were accomplished voluntarily and in the manner intended. In the *Hammer* case the syllabus of the court reads in part: "to warrant a recovery it is not necessary that the exposure to the sun be an accident."[40] This statement is difficult to reconcile with the well-settled view in Ohio. In the *Wheeler* case the court stated: "His exposure to the cold may have been voluntary, but the result was wholly unexpected and did not follow as the usual effect of a known cause. It was not the natural and probable consequence."[41] Compare that statement with one found in the *Mitchell* case:

> It is true that the result produced was not that which was intended and hence accidental. However, the fact that the result was accidental does not make the means, which produce such result, likewise accidental.[42]

The statement in the *Wheeler* case is contrary to the settled view in Ohio, since it turns upon the result rather than the means. Notice that if the *Wheeler* concept of accidental means were adopted, then in all the cases discussed in this article, recovery would have been permitted. The *Hammer* and *Wheeler* cases apparently represent exceptions to the normally strict approach. Similar results have been reached in cases which involve taking an overdose of medicine,[43] and drowning.[44] While these results are undoubtedly in line with the majority view throughout the country in this area of the law, they are certainly not the normal Ohio view.

Thus, it becomes apparent that some confusion exists in Ohio as to what constitutes injury by accidental means. It might be suspected that in these latter cases it was felt that a contra result would be carrying the strict view to absurd extremes. At any rate, they add confusion to an already abstruse area of the law. The prophecy of Mr. Justice Cardozo in the *Landress* case that "the attempted distinction between accidental results and accidental means will plunge

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39. 13 Ohio App. 140 (1919).

40. Hammer v. Mutual Benefit Health & Acc. Ass'n, 158 Ohio St. 394, 109 N.E.2d 649 (1952).

41. Commonwealth Cas. Co. v. Wheeler, 13 Ohio App. 140, 153 (1919).

42. Mitchell v. New York Life Ins. Co., 136 Ohio St. 551, 553, 27 N.E.2d 243, 244 (1940).

43. Batchelor v. United States Mut. Acc. Ass'n, 53 Ohio St. 663, 44 N.E. 1130 (1895) (Mem.).

44. United States Mut. Acc. Ass'n v. Hubbell, 56 Ohio St. 516, 47 N.E. 544 (1897).

this branch of law into a Serbonian Bog,"[45] is becoming a reality in Ohio law today.

CONCLUSION

The realities of the situation speak strongly against the Ohio position. The problem seems to stem from an outmoded interpretation of the relationship of the parties to the policy. This relationship was cogently described in *Browning v. Equitable Life Assurance Society:*

> Insurance policies, while in the nature of written contracts are not prepared after negotiation between the parties, to embrace the terms at which the parties have arrived in their negotiations. They are prepared beforehand by the insurer. . . . Normally the details and provisions of the policy are not discussed, except that the particular form of the policy is best suited to give the applicant the protection he seeks. If he reads the policy he is generally not in a position to understand its details and meaning. . . . He seldom sees the policy until it has been issued and delivered to him. . . . Many of its terms and all of its defenses and superrefinements he has never heard of and would not understand them if he read them.[46]

From the foregoing it would seem that the interpretation of the clause "accidental means" adopted by the Ohio courts is unrealistic and inequitable. Insurance companies, as well as the courts, are to blame for the "Serbonian Bog" condition of the law. The insurance companies can adequately protect themselves by explaining to the applicant the meaning of these chameleon-like words or by substituting clearer language to define their limits of liability.

In view of the respective positions of the parties and the normal business practice of soliciting, completing, and issuing policies, the insurance contract should not be treated as an ordinary mercantile contract. The nature of this relationship is either not appreciated, or is ignored in Ohio. While it is true that the average man's view should not govern the judiciary, his understanding of "accidental means" should be given great weight in this area since he is paying money for protection in the event of an accident.

The concept of the clause "accidental means" has plagued and baffled the bench and the bar since the inception of that clause in insurance policies. The clause is obviously ambiguous and should be construed against the insurance company. It is submitted that the distinction now present in Ohio should be abandoned or, in the alternative, the liberal approach should be adopted. In either event a more equitable and realistic approach to the problem can be taken. It is these areas of the law, with their hairline distinctions and inequitable results, that cause the populace to view the legal profession with something less than respect and affection.

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45. Landress v. Phoenix Mut. Life Ins. Co., 291 U.S. 491, 499 (1934).

46. 94 Utah 532, 561, 72 P.2d 1060, 1073 (1937) (concurring opinion).