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INSURANCE - SUNSTROKE AS "ACCIDENTAL MEANS"

INSURANCE — SUNSTROKE AS "ACCIDENTAL MEANS"— Insured died as a result of sunstroke suffered while playing golf. *Held,* Justice Cardozo dissenting, that the beneficiary could not recover because sunstroke was not an "accidental means" within a policy insuring against "death from bodily injuries effected directly and independently of all other causes through external, violent, and accidental means." *Landress v. Phoenix Mutual Life Ins. Co.*, 291 U. S. 491, 54 Sup. Ct. 461, 90 A. L. R. 1382 (1934).

This result is in accord with the usual distinction drawn by the courts between accidental means and accidental result. It is quite commonly said that the phrase "accidental means" requires something unforeseen, unusual, or unexpected in the act preceding the injury.[1] Such distinction has caused much difficulty in those cases where death or injury results from the insured's voluntary act,[2] and Mr. Justice Cardozo fears it will "plunge this branch of the law into a Serbonian bog." The sunstroke cases justify his fear.[3] Some hold that sunstroke is a disease and hence not within a policy insuring against death from bodily injury.[4] Others state, as is said in the instant case, that in the case of sunstroke the

[1] 5 COUCH, CYCLOPEDIA OF INSURANCE LAW, sec. 1137 (1929). And for a general discussion and analysis of the whole problem see CORNELIUS, ACCIDENTAL MEANS (1917).

[2] Cases collected in 7 A. L. R. 1131 (1920), 14 A. L. R. 788 (1921); 35 A. L. R. 1191 (1925); 42 A. L. R. 243 (1926); 45 A. L. R. 1528 (1926); VANCE, INSURANCE, 2d ed., p. 871 at 872 (1931); also see discussions in 28 MICH. L. REV. 1059 (1930); 25 MICH. L. REV. 309 (1927); 23 MICH. L. REV. 188, 801 (1924-25).

[3] Cases collected in 17 A. L. R. 1197 (1922); 61 A. L. R. 1197 (1929). Also see discussions in 20 MICH. L. REV. 674 (1922); 16 MICH. L. REV. 453 (1918); 17 MINN. L. REV. 216 (1933); 31 YALE L. J. 562 (1922); 13 ILL. L. REV. 133 (1918).

[4] Sinclair v. Maritime Passengers' Assurance Co., 3 El. and El. 478, 121 Eng. Rep. 521 (1861); Dozier v. Fidelity & Casualty Co. of New York, (Mo. W. D. 1891) 46 Fed. 446; but *contra*, see Farmer v. Ry. Mail Ass'n, (Mo. 1933) 57 S. W. (2d) 744; Richards v. Standard Acc. Ins. Co., 58 Utah 622, 200 Pac. 1017, 17 A. L. R. 1183 (1921).

insured usually intends every act; that the result alone is accidental.[5] But the recent tendency, with which Mr. Justice Cardozo agrees, is to obviate the distinction between accidental means and result,[6] and to adopt as a test of an accident the average man's conception thereof.[7] There can be little doubt that logically if there is "no accident in the means there can be none in the result." [8] The abolition of the distinction will save the courts much confusion, and be in accord with the average man's conception of what his policy covers. On the other hand, it must be admitted that the insurance company has contracted only against "accidental means"; that the rule of strict construction of insurance policies against the company applies only to ambiguities; and that the practical effect of doing away with this distinction might be to widen greatly the field of risk and lead to increased rates which would perhaps be prohibitive to that same average man for whose welfare Mr. Justice Cardozo is so solicitous.[9]

G. W. D.

[5] Paist v. Aetna Life Ins. Co., (E. D. Pa. 1931) 54 F. (2d) 393; Harloe v. California State Life Ins. Co., 206 Cal. 141, 273 Pac. 560 (1928); Continental Casualty Co. v. Pittman, 145 Ga. 641, 89 S. E. 716 (1916).

[6] Harris v. Maryland Casualty Co., (W. D. Pa. 1931) 2 F. Supp. 188; Continental Casualty Co. v. Bruden, 178 Ark. 683, 11 S. W. (2d) 493, 61 A. L. R. 1192 (1928); U. S. Fidelity & Guaranty Co. v. Hoflinger, 185 Ark. 50, 45 S. W. (2d) 866 (1932); Tate v. Benefit Ass'n of Ry. Employees, 186 Minn. 538, 243 N. W. 694 (1932); Elsey v. Fidelity & Casualty Co. of N. Y., 187 Ind. 447, 120 N. E. 42 (1918).

[7] Mr. Justice Cardozo, before his appointment to the United States Supreme Court, laid down this average-man test in Lewis v. Ocean Accident and Guarantee Corp., Ltd. of London, 224 N. Y. 18, 120 N. E. 56 (1918). See also Wiger v. Mutual Life Ins. Co. of New York, 205 Wis. 95, 236 N.W. 534 (1931), noted in 30 MICH. L. REV. 310 (1931); Farmer v. Ry. Mail Ass'n, (Mo. 1933) 57 S. W. (2d) 744.

[8] Mr. Justice Cardozo's dissent in the instant case.

[9] 78 UNIV. PA. L. REV. 762 (1930).