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David W. Rowlinson S.Ed.
University of Michigan Law School

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INSURANCE—INTERPRETATION OF "ACCIDENTAL MEANS" IN DOUBLE INDEMNITY CLAUSE—Insured engaged in a game called "Russian Roulette" in which he removed all but one cartridge from the cylinder of a revolver, spun the cylinder, placed the revolver to his head without ascertaining the position of the cartridge, and pulled the trigger. The revolver fired, killing the insured. The beneficiary of a life insurance policy on his life brought the present action to recover under a provision providing double indemnity for death effected solely through external, violent, and accidental means. The trial court directed a verdict for the insurance company. On appeal, *held,* affirmed. Such reckless abandon and exposure to a known and obvious danger cannot be said to have produced death by accidental means. *Thompson v. Prudential Ins. Co. of America,* (Ga. App. 1951) 66 S.E. (2d) 119.

There are hundreds of cases in the reports construing the term "accidental means" in double indemnity clauses of life and accident insurance policies. In general, there are two lines of authority on the meaning of "accidental means." One line of decisions places a literal construction on the term and distinguishes

accidental means from accidental results.[1] Under this view, to recover under a double indemnity provision for death by accidental means, it is not enough that the insured's death is accidental in the sense that it is an unexpected, undesigned and unforeseen result; there must be something unforeseen, unexpected and unusual in the acts or means which precede the result. Under this construction, if the death resulted directly from the insured's voluntary act, unaccompanied by any mischance, slip, or mishap in the doing of the act itself, the death, though an accidental result, is not caused through accidental means.[2] The basis for this construction is that to give the same meaning to the term "accidental means" as to the word "accidental" is to ignore the word "means," and this word should not be regarded as mere surplusage.[3] The other line of decisions, which represents the modern trend, although it still is the minority view, either does not recognize any distinction between accidental means and accidental results, or repudiates any distinction as having no effect on the determination of the insurer's liability.[4] Under this view, if death was unexpected, unusual, and unforeseen, it is death by accidental means, even though the result of a voluntary act performed by the insured without mishap, slip, or mischance. This construction is based on two grounds: (1) these two terms cannot be logically separated, for either there is an accident throughout or there is no accident at all;[5] (2) the average policy purchaser probably regards the terms as synonymous and has little conception of the metaphysics of cause and effect.[6] The Georgia decisions, including the principal case, have consistently distinguished between accidental means and accidental results;[7] however, the

[1] Landress v. Phoenix Mutual Life Ins. Co., 291 U.S. 491, 54 S.Ct. 461 (1934); Ogilvie v. Aetna Life Ins. Co., 189 Cal. 406, 209 P. 26 (1922); Hassay v. Metropolitan Life Ins. Co., 140 Ohio St. 266, 43 N.E. (2d) 229 (1942); Fulton v. Metropolitan Casualty Ins. Co., 19 Ga. App. 127, 91 S.E. 228 (1917); Mutual Benefit Health & Acc. Assn. v. Blanton, 306 Ky. 16, 206 S.W. (2d) 70 (1947); O'Neill v. Metropolitan Life Ins. Co., 345 Pa. 232, 26 A. (2d) 898 (1942).

[2] Mitchell v. New York Life Ins. Co., 136 Ohio St. 551, 27 N.E. (2d) 243 (1940) (death caused by ruptured bowel from self-administered enema by attaching tube to city water tap); Evans v. Metropolitan Life Ins. Co., 26 Wash. (2d) 594, 174 P. (2d) 961 (1946) (death from coronary occlusion suffered while pushing a stalled automobile); Landress v. Phoenix Mutual Life Ins. Co., supra note 1 (death from sunstroke while playing golf).

[3] McGinley v. John Hancock Mutual Life Ins. Co., 88 N.H. 108, 184 A. 593 (1936).

[4] Dickerson v. Hartford Acc. and Indemnity Co., 56 Ariz. 70, 105 P. (2d) 517 (1940); O'Neil v. New York Life Ins. Co., 65 Idaho 722, 152 P. (2d) 707 (1944); Goethe v. New York Life Ins. Co., 183 S.C. 199, 190 S.E. 451 (1936); Burr v. Commercial Travelers Mutual Acc. Assn., 295 N.Y. 294, 67 N.E. (2d) 248 (1946). Many courts were influenced by Justice Cardozo's dissenting opinion in Landress v. Phoenix Mutual Life Ins. Co., supra note 1, at 499, in which he said, "The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog." The Supreme Court of Colorado commented, "Whatever kind of bog that is we concur." Equitable Life Assurance Society v. Hemenover, 100 Colo. 231 at 235, 67 P. (2d) 80 (1937).

[5] Provident Life & Acc. Ins. Co. v. Green, 172 Okla. 591, 46 P. (2d) 372 (1935).

[6] Murphy v. Travelers Ins. Co., 141 Neb. 41, 2 N.W. (2d) 576 (1942).

[7] Atlanta Accident Assn. v. Alexander, 104 Ga. 709, 30 S.E. 939 (1898); Fulton v. Metropolitan Casualty Ins. Co., supra note 1; American National Ins. Co. v. Chappelear,

decision reached in the principal case would be the same regardless of the approach used, for where the death is not an accidental result, the means are necessarily not accidental. Death occasioned by the insured's negligence is an accidental death,[8] but where the insured pursues a voluntary and intentional course of conduct from which death or serious bodily injury is an almost certain foreseeable consequence, the death is not deemed to be accidental, since the actor is charged with a design of producing that result.[9] In the only other case found involving death from "Russian Roulette," the trial court's overruling of the insurance company's motion for a directed verdict was upheld.[10] That case is distinguishable on its facts from the principal case because there was evidence there that the insured thought he had removed all cartridges from the revolver beforehand and also that the insured lost his balance and accidentally discharged the gun while attempting to steady himself. From those facts, the jury could have found that there was something both in the means and result which was unforeseeable, unexpected, and unusual. In general, where the insured has voluntarily done an act which is intrinsically dangerous, and death, though unintended, results, the courts have usually held that there can be no recovery under the usual double indemnity clause.[11] The principal case is of this type. It is submitted that these decisions carry into the field of insurance contracts something analogous to the tort doctrine of assumption of risk. Recovery on the double indemnity clause is properly denied, since death can hardly be termed accidental where the insured virtually invites his own destruction.

David W. Rowlinson, S.Ed.

51 Ga. App. 826, 181 S.E. 808 (1935); Green v. Metropolitan Life Ins. Co., 67 Ga. App. 520, 21 S.E. (2d) 465 (1942).

[8] VANCE, INSURANCE, 3d ed., §189 (1951); 5 COUCH, CYCLOPEDIA OF INSURANCE LAW §1138 (1929).

[9] Zuliskey v. Prudential Ins. Co., 159 Pa. Super. 363, 48 A. (2d) 141 (1946) (insured deliberately jumped from a moving automobile); Kinavey v. Prudential Ins. Co., 149 Pa. Super. 568, 27 A. (2d) 286 (1942) (insured fell from a high bridge while performing stunts on the bridge's guard railing); Postler v. Travelers Ins. Co., 173 Cal. 1, 158 P. 1022 (1916) (insured killed while committing armed robbery); Cutrell v. John Hancock Mutual Life Ins. Co., 145 Neb. 550, 17 N.W. (2d) 465 (1945) (insured shot while attempting to break into a house); Kalahan v. Prudential Ins. Co., 194 Misc. 87, 84 N.Y.S. (2d) 433 (1948) and Camp v. John Hancock Mutual Life Ins. Co., Mo. App. (unreported) 165 S.W. (2d) 277 (1942) (insured killed in self-defense by the person upon whom he was making an assault with a deadly weapon); Ford v. Standard Life Ins. Co., 12 C.C.H. Ins. Law Rep., 7(a) 89 discussed in Life & Casualty Ins. Co. of Tenn. v. Benion, 82 Ga. App. 571, 61 S.E. (2d) 579 (1950) (insured died as a result of snake bite while voluntarily handling a rattlesnake during a religious ceremony).

[10] Pacific Mutual Life Ins. Co. v. Fagan, 292 Ky. 533, 166 S.W. (2d) 1007 (1942). And see Aetna Life Ins. Co. v. Kent, (6th Cir. 1934) 73 F. (2d) 685, where the insured was killed while demonstrating to a friend how another had committed suicide. In the latter case, the court held that the question of accidental means was properly submitted to the jury since there was evidence that the insured believed the gun was unloaded.

[11] See cases cited in note 9.