IN FACT AND IN LAW

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Accidental Death Benefit Provision:
Did the Insured Expect to Die?

By Jean Saint-Onge

On March 21, 2003, the Supreme Court of Canada, in a judgment written by Madam Justice McLachlin, dismissed the appeal made by the insurer, American International Assurance Life Co. and upheld the decision of the British Columbia Court of Appeal [1], thus entitling the respondent Martin to payment of the accidental death benefit.

In this decision, the Supreme Court established that, in order to ascertain whether a given means is "accidental", it is necessary to determine whether the consequences of the actions and events that produced the death were unexpected. The Court held that it is not useful to separate the "means" from the rest of the causal chain and ask whether they were deliberate. Rather, it is necessary to look to the chain of events as a whole, and consider whether the insured expected death to be a consequence of his actions and circumstances.

The Facts

The insured, Dr. Edward Joseph Easingwood, was a 46-year-old family practice physician. In 1996, after a painful orthopaedic injury, he became physiologically dependent on both morphine and demerol and had to stop working. After completing a program of gradual withdrawal from these drugs, Dr. Easingwood returned to work in mid-October of 1996 and was at the time discussing future projects with his family and friends.

On October 29, 1996, Dr. Easingwood told his spouse that he was going for a drive in an attempt to relieve the pain in his leg. He drove to his office, where he was found dead on the following morning.

The Coroner found that Dr. Easingwood died from an overdose caused by an intravenous injection of demerol. Toxicology reports also indicated that phenobarbital, which has an additive effect upon demerol, was found in his blood. There was no evidence to explain how the phenobarbital entered the victim's system.

The Insurance Policy

The policy described itself as an "*Accidental Death Benefit Provision.*" However, the clause granting coverage referred to deaths effected through "*accidental means*" and read as follows:

> **"Subject to this provision's terms, the Company will pay the amount of the Accidental Death Benefit [. . .] upon receipt of due proof that the Life Insured's death resulted directly, and independently of all other causes, from bodily injury effected solely through external, violent and accidental means [. . .]" (emphasis added)**

Arguments of the Parties

The insurers maintained that Dr. Easingwood's death was not effected through "*accidental means*", as required by the policy. They argued that his self-injection of that particular dosage of demerol was a deliberate act, and that his death was a consequence that he must have foreseen as possible, given the high dosage and his knowledge as a medical practitioner.

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[1] *American International Assurance Life Co.* v. *Martin*, [2003] R.R.A. 399 (C.S.C.), J.E. 2003-600 (C.S.C.). This judgment is not yet published in the S.C.R.

The respondent Dorothy Martin, on the other hand, asserted that the death of her husband was "*accidental.*" She rejected the argument that "*accidental means*" is narrower than "*accidental death*" on the grounds that it would then exclude accidental deaths that are the natural effects of deliberate actions. She also asserted that, in any event, it was reasonable to infer that Dr. Easingwood died by "*accidental means,*" mistakenly believing that he was administering a non-lethal dose.

The Judgement of the British Columbia Supreme Court[2]

Although the Court expressed doubt as to whether there is a real distinction between insurance policies covering "*accidental death*" and those covering only death caused by "*accidental means,*" it nevertheless dismissed the claim under the above-mentioned provision. The Court was of the view that the relevant test for "*accidental means*" is whether the insured's injuries were caused by an "*unlooked-for mishap*" or "*an untoward event which was not expected or designed*". The Court then inferred from Dr. Easingwood's experience as a drug-user and knowledge as a medical practitioner that he would not have been unaware of the risks posed by injecting this amount of demerol, particularly in combination with phenobarbital. On this basis, the Court concluded that Dr. Easingwood's death was not effected through accidental means.

The Judgement of the British Columbia Court of Appeal[3]

The Court of Appeal allowed the respondent's appeal. It also questioned the usefulness of the distinction between "*accidental death*" and death by "*accidental means*". However, it held that it was not necessary to decide this question since, in its view, it was "*enough, for the purposes of this appeal, to look at the action that caused the injury and all the circumstances surrounding it in a holistic way and to ask whether in ordinary and popular language the event as it happened would be described as an accident.*" The Court then inferred from the circumstances of Dr. Easingwood's death that it was more likely than not that he had not intended to give himself a potentially lethal dose. Because an unintentional overdose would be regarded as an accident by the ordinary person, the Court held that Dr. Easingwood's death had occurred accidentally, and that the respondent could therefore recover under the policy.

The Judgement of the Supreme Court of Canada

The Supreme Court of Canada dismissed the appeal made by the insurer, American International Assurance Life Co. Madam Justice McLachlin, writing for an unanimous bench, identified the issues to be considered as follows:

- The distinction between "*accidental means*" and "*accidental death*";
- What constitutes death by accidental means?

The Distinction Between "*Accidental Means*" and "*Accidental Death*"

In the opinion of the Court, the insurer's contention that the category of deaths caused by accidental means is narrower than that of accidental deaths is problematic, in that it excludes accidental deaths that are the natural effects of deliberate actions. Such an interpretation neither meets the reasonable expectations of the parties, nor does it take into account the fact that almost all accidents have some deliberate actions among their immediate causes. To insist that these actions, too, must be accidental would result in the insured rarely, if ever, obtaining coverage.

The Court held that to ascertain whether a given means of death is "*accidental,*" it is necessary to determine whether the consequences of the actions and events that produced death were unexpected. It is not useful to separate the "*means*" from the rest of the causal chain and ask whether they were deliberate. Hence, one must look to the chain of events as a whole, and consider whether the insured expected death to be a consequence of his actions and circumstances.

This interpretation of "*death by accidental means*" expresses the ordinary meaning of the phrase, which refers to unexpected death. When death is the unexpected result of an action, we say that the death was "accidental", or that it was brought about by "accidental means" as opposed to "intentional means." Thus, according to the Court, "*death by accidental means*" and "*accidental death*" have the same meaning.

[2] (1999), 16 C.C.L.I. (3d) 180 (B.C.S.C.).

[3] (2001), 86 B.C.L.R. (3d) 4 (B.C.C.A.).

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What Constitutes Death by Accidental Means?

The Supreme Court of Canada is of the view that, to meet the reasonable expectations of both the insured and the insurer, one must inquire how the phrase "*death by accidental means*" is used in ordinary language. According to the Court, the accidental nature of a particular means of death depends on the consequences that the insured had or did not have in mind.

The pivotal question is thus whether the insured expected to die. The circumstances of the death may point to the answer. However, to the extent that the answer is unclear when the matter is viewed solely from the perspective of the insured, one may consider whether a reasonable person in the position of the insured would have expected to die. The applicable test is thus essentially subjective.

Finally, the Court emphasizes that the test does not change for cases involving activities that are extremely dangerous, where one's conduct brings with it a high risk of death ("courting of the risk" theory). The question is always "What did the insured actually expect?" Other than where there is a special exclusionary clause in the insurance policy, the mere fact that someone has engaged in a dangerous or risky activity does not rule out the possibility that death was accidental.

Comments

Having dismissed the contention of the insurers with respect to the distinction between "*accidental means*" and "*accidental death,*" the Court concluded that Dr. Easignwood's death was accidental, since his state of mind and the circumstances of his death showed that he did not expect to die. The most reasonable inference that may be made from the known facts is that Dr. Easingwood merely miscalculated how much demerol his body could tolerate.

The Supreme Court is, however, careful to emphasize that coverage under an accidental death benefit policy depends not only on the circumstances surrounding death but also on what the insurance contract stipulates. It remains open to the insurer to limit the coverage by means of explicit exclusion clauses in respect of certain circumstances of death.

With respect to the burden of proof, the Court declared that: "*This approach does not place an unfair burden of proof on the shoulders of the insurer to show that death was not accidental. The onus is on the plaintiff to establish a* prima facie *case that the death was accidental, at the risk of non suit. The plaintiff must therefore adduce evidence that permits the trier of fact to infer, on a balance of probabilities, that the insured's death was accidental, within the ordinary meaning of that word. The tactical burden then shifts to the insurer to displace these inferences. The burden of proof never shifts, but remains squarely with the plaintiff.*"

Insurers would be well advised to review their insurance policies and decide whether they wish to add specific exclusion clauses covering this type of situation. Our Life and Disability Insurance Law Group members are recognized experts in this field and will gladly provide you with the assistance you need.

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