

## Suicide is Not Covered

By An Accident Insurance Policy

Even After a Period of Two Years Has Elapsed

by Claude M. Jarry

Pursuant to the Civil Code of Québec, an insurer cannot exclude coverage of the suicide of its insured if the suicide occurs after two years following the issuance of the policy. This rule is set forth in article 2441:

**2441 C.C.Q.: The insurer may not refuse payment of the sums insured by reason of the suicide of the insured unless he stipulated an express exclusion of coverage in such a case and, even then, the stipulation is without effect if the suicide occurs after two years of uninterrupted insurance.**

This provision, which is of public order, is binding upon insurers; they cannot derogate therefrom by inserting an exclusion in the contract of insurance which does not comply with the provision

Given the existence of this provision, what happens in the case of an accident insurance policy which, by definition, only covers losses resulting from an accident?

In the recent decision in the matter of *Vallée v. Assurance-vie Desjardins*<sup>1</sup>, the Superior Court ruled on the effect of article 2441 C.C.Q. as regards the application of such a policy following a suicide.

In 1987, the plaintiff had taken out an accident insurance policy providing coverage in the event of accidental loss. The policy included, as a named insured, the plaintiff's daughter who was then 18 years old. Eight years later, she committed suicide by inhaling carbon monoxide. The plaintiff



submitted a claim to the insurer for the amount mentioned in the policy for losses caused by accidental death.

Article 1 of the policy in question stipulated that this was insurance in the event of death, mutilation, fracture, rupture or loss of use resulting from an accident. The policy also contained an exclusion provision stating that the insurer would not pay any indemnity if the suicide of the insured occurred during the two years following the date on which the policy was subscribed.

The question raised as a result of the claim was the following: Was the insurer required to indemnify the plaintiff, because the suicide occurred more than two years after the policy was issued, or was the insurer's refusal to indemnify the plaintiff well founded, given that it was admitted that the death resulted from suicide and not from an accident within the meaning of the policy?

In order to settle the dispute, the Court first examined the terms and conditions of the policy, because it was the policy that defined the nature of the covered risks and the conditions of coverage.

The first element required in order to give effect to the policy in question was the occurrence of an accident; the loss must have resulted from an external cause and must not have been caused by the insured. Article 1 of the policy stipulated that coverage would extend to death, mutilation, fracture, rupture or loss of use resulting from an accident; it was not exclusionary in nature, but, rather, defined the scope of the coverage. It is important to distinguish between these two concepts, because the principles for interpreting a provision setting forth insurance coverage are different from those used to interpret a provision setting forth an exclusion. An exclusion obliges the insurer to establish that the loss is an excluded occurrence and, as such, it is an exception to the principle that places the burden of proof on the insured to establish that the coverage set forth in the policy applies to the insured's claim.<sup>2</sup>



LAVERY, DE BILLY

BARRISTERS AND SOLICITORS

<sup>1</sup> *Régnald Vallée v. Assurance-vie Desjardins*, C.S. Trois-Rivières, 400-05 000714 965, May 7, 1999, Justice Ivan Gadin.

<sup>2</sup> As regards this principle, see: S.S.Q. *Mutuelle d'assurance-groupe v. Blanchard* (1998) R.R.A. 722 (C.A.); *American Home Co. v. Champagne* (1981) C.A. 6.

In the case at hand, before considering the exclusion provision, the Court had to determine whether the loss was covered by the terms and conditions of the policy.

Given that the parties admitted the suicide, the Court concluded that the death did not result from an accident, because it did not result from an external cause as defined in the policy, but, rather, resulted from the wilful actions of the insured. Since the plaintiff was unable to show that the loss was covered by the insurance policy, the insurer was well founded in refusing to pay the indemnity, even if the suicide occurred after a period of two years had elapsed following the issuance of the policy.

To our knowledge, this is the second ruling rendered by the Superior Court with respect to this question. The case of *Boucher v. Assurance-Vie Desjardins*<sup>4</sup> dealt with the same kind of dispute. The plaintiff relied on article 2532 of the Civil Code of Lower Canada whose wording, although slightly different from that of article 2441 C.C.Q., was to the same effect as that of article 2441 C.C.Q. In this matter, the Court also indicated that suicide does not constitute an accident.

Moreover, the same logic has been applied in cases dealing with life insurance policies which included additional indemnity provisions in the case of accidental death.<sup>4</sup>

This is an interesting issue which puts into play two established principles, one which protects the rights of beneficiaries of an insurance policy in the event of suicide, and the other which obliges the insured to establish that his claim is covered by the insurance policy. We should view this case as an indication that an insured or a beneficiary of an accident insurance policy cannot attempt to avail himself of rights through the application of an exclusion provision if he has not first proved the existence of an accident, the latter being the initial element required in order for the coverage to apply. However, this dispute has not been settled definitively, given that the judgment in question has been appealed.

Claude M. Jarry

*Boucher v. Assurance-Vie Desjardins*,  
C.S., 605-05-000143-904 and 605-05-000153-903,  
January 13, 1993; Justice Camille Bergeron.

The Provincial Court also rendered a judgement on this point of law over ten years ago, in the matter of *McGuerrin-Haute v. Compagnie d'assurance Combinée d'Amérique*,  
C.P. 705-02-001174-853, August 6, 1986; Justice Denis Charette applied the same reasoning.

<sup>4</sup> On this point, see, among others, *New-York Life Insurance Co. v. Schitt* (1945) S.C.R. 289 (The insured's body was found in his burned-down barn. It was up to the beneficiary to prove that the death of the insured resulted from an accident, and the beneficiary managed to provide such proof); *Villeneuve v. Prudentielle d'Amérique, Compagnie d'assurance* (1986) R.R.A. 523 (C.Q.) (The insured died after attempting to cross over a railroad crossing despite the fact that the arrival of a train was imminent. Such a risky act could not constitute an accident); *G.-M. (N.) v. S.*, Québec S.C., 200-05-001574-859, March 7, 1988, Justice Hubert Walters, J.E. 88-577 (The insured died of asphyxiation following a sexual practice which required him to hang himself. The insured was of sound mind and, therefore, could not have been unaware of the risks of such an act, so his death cannot have been the result of an accident); *S.S.Q. Mutuelle d'assurance-groupe v. Blanchard* (1998) R.R.A. 772 (C.A.) (A drowning most probably caused by a heart attack cannot be considered to be an accident).



Claude M. Jarry has been a member of the Bar of Québec since 1979 and specializes in insurance law.

You can contact the following members of the Personal Insurance Law Group for any questions you may have regarding this newsletter

*In our Montréal office*

Jean Bélanger  
Daniel Alain Dagenais  
François Duprat  
Guy Lemay  
Johanne Rémillard  
Jean Saint-Onge  
Evelyne Verrier

*In our Québec City office*

Martin J. Edwards  
Claude M. Jarry

*In our Ottawa office*

Patricia Lawson  
Alexandra LeBlanc

**Montréal**

Suite 4000  
1 Place Ville Marie  
Montréal, Québec  
H3B 4M4

Telephone:  
(514) 871-1522  
Fax:  
(514) 871-8977

**Québec City**

Suite 500  
925 chemin Saint-Louis  
Québec, Québec  
G1S 1G1

Telephone:  
(418) 688-5000  
Fax:  
(418) 688-3458

**Laval**

Suite 500  
3080 boul. Le Carrefour  
Laval, Québec  
H7T 2R5

Telephone:  
(450) 978-8100  
Fax:  
(450) 978-8111

**Ottawa**

20<sup>th</sup> Floor  
45 O'Connor Street  
Ottawa, Ontario  
K1P 1A4

Telephone:  
(613) 594-4936  
Fax:  
(613) 594-8783

**Associated Firm**

Blake, Cassels &  
Graydon  
Toronto  
Calgary  
Vancouver  
London (England)  
Beijing (China)

**Web Site**

[www.laverydebilly.com](http://www.laverydebilly.com)

All rights of reproduction reserved. This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.