



LITIGATION MATTERS

In light of the positive feedback and questions arising from our first edition of *Litigation Matters* in July 2016, we are pleased to follow-up with this issue dedicated to further discussion of the suicide exclusion and debate related to the use of the *whether sane or insane* wording. We welcome Helen Sava, from Sava Associates, as a collaborator on this issue.

In recent months, our industry has debated the use of the *whether sane or insane* terminology in the suicide exclusion, which is considered by many as being socially and medically outdated. There is importance in staying current with societal language related to mental health and at the same time, ensuring that policy wording reflects the scope of coverage.

To ensure we provided an in-depth view of this important topic, we engaged Helen Sava, a lawyer specialized in Life and Health insurance defence, to assist in researching the origin of the expression *whether sane or insane* and opine on the legal impact, if any, of removing the expression *whether sane or insane* from the suicide exclusion.

1. The *whether sane or insane* language within the suicide exclusion comes from a well-developed Common Law Case History.

Helen Sava points out that from a legal standpoint, this wording "has become a term of art in the industry evolving over 150 years from English and American jurisprudence".

She further explains that the use of *whether sane or insane* comes in response to cases such as *Blackstone*. In this Michigan case *Blackstone v Standard Life & Accident Ins Co*, 74 Mich 592; 42 NW 156 (1889), "an insured caused his own death by slitting his throat with a razor. The policy excluded coverage for death 'by suicide' but made no mention of 'sane or insane'. The plaintiff sought recovery on the grounds that the insured was insane at the time of the act. The plaintiff won".

"In direct responses to [such cases], insurers began adding to their suicide exclusions the language '*sane or insane*', specifically to avoid the necessity of any investigation into the state of mind of the insured".

The Court has since almost universally held that with such an expression, the suicide exclusion provision applies if the insured comes to his death by his own hand.

Since then, this wording has developed a settled legal meaning or interpretation. In the Life insurance context it is clear, valid and not ambiguous.

2. The impact of removing *whether sane or insane* from the suicide exclusion varies depending upon the line of business.

It is important that the language within the exclusion be examined against the specific requirements of each insurance product as it could lead to an incorrect interpretation or direction if all types of coverage are analyzed under the same umbrella.

- LTD/Individual Disability - remove the self-inflicted injury exclusion: The self-inflicted injury exclusion under disability coverage may be obsolete and have little impact for these coverages given our society's evolution in its approach to mental health disorders. For these products, removal of the self-inflicted injury exclusion is acceptable as mental health conditions are usually priced for and covered.

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- **Basic Group Life - no impact:** removing the language poses no impact on coverage issued without evidence as it does not usually include a suicide exclusion.
- **Optional Group Life - little impact:** this coverage usually includes the wording *whether sane or insane* in the suicide exclusion; however, risk is less acute in removing this language given the volume of coverage is lower compared to the amount of coverage issued without underwriting evidence.
- **Individual Life and AD&D coverage - this is where the value lies:** the *whether sane or insane* language is still the best protection for these coverages to avoid potentially costly and painful litigation for all parties.

3. The industry should strive for a balance between evolving societal language for mental health and the legal impact of removing the *whether sane or insane* wording from the exclusion.

Helen Sava indicates that it is important to remember the language is in place to “both limit industry risk and minimize the costly obligation on the part of the insurer to introduce evidence concerning the mental state of the deceased”.

The *whether sane or insane* suicide wording promotes fairness in pricing for policyholders and provides “sufficient protection against those persons who might be tempted to take out Life insurance with the intention of committing suicide”.

The status quo should apply on the existing suicide *whether sane or insane* exclusion wording for Individual Life and AD&D coverages while our industry determines what alternate language can be equally effective. We advocate that the wording should be guided by the principle that the language has only changed to reflect the terminology of our time.

Possible alternate wording for *sane or insane*

The *sane or insane* language has been in place in insurance contracts for over a century. Here are some suggestions for evolved wording; however, we do not know if these will be as effective as the current language in preventing litigation.

- *Regardless of the state of mind and whether a mental health disorder is present or not at the time of death.*
- *Regardless of the state of mind or any health disorder at the time of death.*

NOT IF, BUT HOW