Munich RE

What makes an "accident" an accident?

In an etymological sense, anything that happens may be said to be an accident.[1]

The challenge of an accidental death is determining whether the death is an accident according to the terms of an insurance policy. For over a century, courts and underwriters have struggled to answer what was recently described as "one of the more philosophically complex simple questions," what makes an accident an accident?[2] The lack of a commonly accepted definition has given the courts plenty of occasions to deal with the duty of defining an accident.

Historical background

Accidental death benefits originated and were first marketed as a stand-alone product. Professor Adam F. Scales provided a historical and social background for the development of accidental death coverage.[3] On one end, in the face of the new and dangerous inventions that emerged during the first half of the nineteenth century, e.g., automobile, mechanized equipment, the law failed to evolve quickly enough. Instead, it fell in the hands of the still developing insurance industry to provide meaningful compensation for the many who were killed and injured in the dawn of industrialization.[3] To the discredit of certain insurers, some accident policies were written so as to frustrate, rather than fulfill, the legitimate expectations of the unschooled policyholders. In early years, these policies rarely fulfilled their initial promise of quick and hassle-free compensation.[3] As a response to the mortality experience due to train accidents, the insurance industry introduced a series of limitations on the duration and amount of benefits, including an increasing number of policy exclusions. Yet, Scales points out that over time, courts applied interpretations distancing from the more 'odious features' in order to honor the consumers' reasonable expectations.

Policy structure

There are two main components in accidental death coverage: the insuring clause and the exclusionary clauses. Whereas the burden to prove that death was accidental rests upon the claimant, it is up to the insurers or plan administrators to prove exclusions that bar coverage. The following considerations have given the courts guidance in interpreting a death in the context of an accidental death policy: the policy language; the insured's subjective expectation; and causation.

Policy language

Many courts have agreed that the term "accidental" should be defined in its ordinary, popular sense.[4] It should be applied from the point of view of the insured. Moreover, undefined terms in an insurance policy are to be construed strictly in favor of the insured; and if the undefined term is in an exclusionary clause, an even stricter standard must be applied.[5]

Subjective expectation

The accidental death definition incorporates what happens without intention or design, and which is unexpected, unusual, and unforeseen.[6] However, the question comes down to what level of expectation is necessary for an act to constitute an accident; whether an intentional act proximately resulting in injury or only the ultimate injury itself must be accidental. In considering this question, Massachusetts concluded that if the insured had climbed over a guardrail 40-50 feet above railroad tracks and evidence demonstrated that he either jumped or fell to his death; death should not be considered accidental. The court opined that the insured knew or should have known that serious bodily injury or death was a [probable] consequence substantially likely to occur as a result of his volitional act of placing himself on the outside of the guardrail and hanging on with one hand. A reasonable person would have expected this

result.[7] In Mississippi, a loss resulting from an overdose of medicine prescribed by a physician may constitute an accident if the overdose was taken without suicidal intent. Likewise, the death or injury of an insured who mistakenly consumes poison may also be an accident. If the policy broadly excludes loss by the ingestion of poison that was taken in a "voluntary or otherwise" manner, the insurer may not be liable. In Rhode Island, an insured who suffered a heart attack while driving and was killed in the resulting collision was ruled as accidental since the insured did not have any subjective expectation that he would suffer a heart attack while driving.[8] In order to properly adjudicate an accidental death benefit, having a clear understanding of policy language and the relevant case law is key.

Causation

Accidental means v. results

Death by accidental means is where the result arises from acts done unintentionally. It provides that the mechanism or action causing the injury or death is accidental producing effects, which are not their natural and probable consequence. Death by accidental results means that death was the unintended result arising from acts done, even where the acts are done voluntarily. Some courts make a distinction between death by accidental means versus accidental results while others view accidental means and results as inseparable.[9] In *Huff v. Aetna Life Ins. Co.*, a driver suffered a heart attack and lost control of his vehicle.[10] Upon impact, the insured broke a rib, which then perforated his heart and caused him to die instantly. This was a case of first impression for the Arizona court, and the court held the insured's beneficiary was barred from recovering any additional accidental means benefits. In California, courts differentiate between insurance policies covering accidental death and death by accidental means; however, when the policy does not specify means, courts apply the beneficiary-friendly accidental death standard. In that sense, an insured voluntarily taking prescribed medication and dying of complications of toxicity may be able to recover from the accidental death policy if no other exclusionary provision applies. An illness is not accidental. However, the presence of a pre-existing illness will not relieve the insurer from liability if an accident itself (in this case, drug toxicity) is the proximate cause of death, even though the pre-existing disease actually contributed to the cause of death.

Proximate or efficient cause

A proximate or efficient cause is the primary cause of an injury; not necessarily the closest cause in time or space nor the first event that sets in motion a sequence of events leading to an injury.[11] For instance, an insured suffered from a recent spell of dizziness and weakness and sustained a fall; and, as a result, broke his hip. During his hospitalization, he developed pneumonia and died. Some courts would determine that the injury from the fall was the proximate cause of death, as it set in motion the events culminating in his death. However, others would factor in his recent spells of dizziness; reasoning that it could not be said that the insured died solely from accidental means. In applying this consideration, California explains, where an accident is the proximate cause of death and illness is merely one link in the causal chain, a beneficiary may recover under the insurance policy. Medical mishaps may be excluded when the insured voluntarily undergoes surgery and death is a foreseeable outcome. However, death may be considered accidental for insurance purposes or the result of "accidental means" when the death is not foreseeable or death proximately results from other accidental means. Maryland courts determined that proof that an accident was the proximate cause of death must show that the death could have been caused by the accident, and that no other efficient cause has intervened between the accident and time of death.[12] For example, an insured's beneficiary may be barred from recovering from an accidental death policy if the insured died from an accidental fall caused by seizure. The seizure was not accidental and was the proximate cause of the insured's fall. Contrary to this argument, Arizona explains that losses resulting from any injury caused or contributed to, by, or as a consequence of, disease or a bodily infirmity, even if proximate or precipitating cause of loss is accidental and the disease or infirmity is the remote or indirect cause, are barred from recovery.[13]

Substantially contributed

Similar to proximate or efficient cause, courts may examine to what extent the pre-existing illness or condition played a role in the death or injury. In an Arkansas case, the insured had a heart attack while at work. After accidental benefits were denied, the claimant contended that the insured's cardiac arrest was caused by mowing grass on a hot, humid afternoon which was not one of the insured's normal job duties and, as a result of this unusual exertion, he suffered a heart attack. The court stated that the insured's obesity, diabetes, hypertension and high cholesterol partially caused or substantially contributed to his heart attack, thus his death was not a covered loss under the insured's accident policy.[14] In Massachusetts, a death from a fall caused by the insured's epilepsy was not considered accidental as the insured was afflicted with the disease at the time of the accident and the epilepsy proximately caused or substantially contributed to the death.[15] However, in Michigan, when a policy insuring against accidental death contains exclusionary language substantially to the effect that benefits are precluded where death directly or indirectly results from or is contributed to by disease,

the primary consideration is limited to determining if the accident alone was sufficient to cause death directly and independently of disease. An exclusionary clause therefore precludes recovery where death results from pre-existing disease or from a combination of accident and pre-existing disease.[16] In Alabama, the court held that the insured's death due to renal failure came within the disease exception of the accidental death policy, even though a fall and resulting pelvic fracture led to a chain of events that included the insured's decision to refuse hemodialysis. Pursuant to The Employee Retirement Income Security Act (ERISA), the court applied the Eleventh Circuit's "substantially contributed" test, and held that because the plaintiff (beneficiary) was unable to show that end stage renal failure did not substantially contribute to her demise, the insurer's decision to deny accidental death benefits was correct.[17]

Predominant cause

Although this consideration is very similar to the review of the proximate cause; in this case, it is the insurer's duty to prove that illness was the predominant cause of death, namely, that without the injury, death would have occurred when it did due to illness or disease.[18] In Louisiana, a beneficiary sought to recover under an accidental death policy, which covered death by injury "resulting directly and independently of all other causes in loss covered by the policy."[19] The insured died of endocarditis resulting from a staph infection that had entered the insured's bloodstream through a puncture caused by a spider bite. The court noted that the phrase "resulting directly and independently of all other causes" has been interpreted to mean the predominant cause of death and stated the insured's burden was to establish that an accident was the predominant cause of death. The treating physician was of the opinion that a spider had bitten the insured and the staph entered the body through the bite, which ultimately caused the death. He reached this conclusion by eliminating every other reasonable source for the entry of the infection. The court concluded that the plaintiff met her burden of establishing that the death was accidental. Montana courts have been more clear. It is required that the accident must be the proximate or predominant cause of the insured's death.[20] Precluding benefits for deaths contributed by a pre-existing, but dormant disease that also contributes to the death will not bar from recovery.

Conclusion

It is the claim examiner's goal to review the inclusionary as well as the exclusionary provisions of an accidental death policy. In establishing paradigms that will honor consumer's expectations, a claim examiner must refrain from abusing discretionary language; rather, one must interpret the policy in its more ordinary, popular sense. Undefined terms will be construed to the benefit of the insured, especially exclusionary provisions. The fact finder must also consider the subjective expectations of the insured. The Oregon Supreme Court has acknowledged the futility of defining an accident and instead, their approach treats the legal interpretation of accident as malleable depending on the facts of a given case. In situations where accident or accidental is not defined in the policy, it is for the court to decide the definition which is properly applicable to the particular factual situation.[21] Where multiple facts played a role in an insured's death, consulting with your legal team might help to avoid the potential risks of applying an incorrect causation consideration in the specific jurisdiction of the particular claim.

References

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[4]United States Mut. Accident Assoc. v. Barry, 131 U.S. 100, 9 S. Ct. 755, 762, 33 L. Ed 60
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[6]Norris v. New York Life Ins. Co., 49 F.2d 62 (4th Cir. 1931); John Hancock Mut. Life Ins. Co. of Boston v. Plummer, 181 Md. 140, 28 A.2d 856 (1942)
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[8]Vickers v. Boston Mutual Life Insurance, 135 F. 3d 179, 1998 WL 29841 (1st Cir. 1998)
[9]Home Beneficial Life Ins. Co. v. Partain, 205 Md. 60, 106 A.2d 79 (1954)
[10]120 Ariz. 548
[11]http://legal-dictionary.thefreedictionary.com/proximate+cause
[12]Bethlehem Steel Co. v. Jones, 222 Md. 54, 158 A.2d 621 (1960); Old v. Cooney Detective Agency, 215 Md. 517, 138 A.2d 889 (1958).
[13]Malanga v. Royal Indemnity Co., 101 Ariz. 588, 422 P.2d 704 (1967)
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[16]Michigan: Summary of the Law
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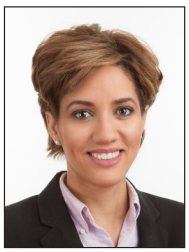
[18]Murphy v. Continental Casualty Co., 269 So. 2d 507 (1st Cir. 1972
[19]Carnes v. Continental Casualty Co., 212 So. 2d 441 (La. App. 2nd Cir. 1968).
[20]Carnes v. Continental Casualty Co., 212 So. 2d 441 (La. App. 2nd Cir 1968).
[21]Chale v. Allstate Life Ins. Co. 353 F.3d 742, 746 (9th Cir. 2003)



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