12-1-1958

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Thomas W. Warlick

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Life Insurance—Effect of Homicide Exclusion in Double Indemnity Clause

The recent case of Goldberg v. United Life and Acc. Ins. Co.\(^1\) indicates a trend toward a new interpretation and construction of double indemnity clauses in life insurance policies. The facts were as follows: the insured and another gentleman were observed in discussion in a social club; the insured apparently addressed harsh and profane words to his companion; the companion thereupon struck the insured with his fist; the insured fell backward, striking his head on a concrete floor and suffering a concussion from which he died a short time later.

The defendant company earlier had issued to the insured certain life insurance policies containing double indemnity clauses.\(^2\) Plaintiff, the wife of the insured, had been named beneficiary. The defendant company immediately paid to the plaintiff the total face value of the policies, but refused to pay double indemnity, basing its refusal on two grounds: (1) the insured did not meet his death by accidental means within the coverage of the policies, and (2) the insured's death resulted from "homicide," a cause of death expressly excluded from the double indemnity insuring agreements.

As to the defendant's first ground, the court conceded, without deciding, that the evidence was sufficient to show prima facie that the insured met his death through accidental means within the insuring provisions of the policy. Of necessity, in every case which turns on exclusions from a double indemnity provision the court must reach this conclusion, since there can be no recovery of double indemnity in any event if death does not result from accidental means. Although this presents a problem of real significance in many fact situations, the better reasoned authorities apparently would support the court's conclusion on this set of facts.\(^8\)

\(^1\) 248 N.C. 86, 102 S.E.2d 521 (1958).

\(^2\) The pertinent stipulation read: "The United Life and Accident Insurance Company ... promises to pay Double Indemnity ... in the event that such death should result directly and independently of all other causes from bodily injury effected solely through external, violent, and accidental means ... provided such death shall not have resulted from homicide ..." (Emphasis added.)

\(^8\) To determine whether a death results solely from accidental means, the situation must be considered from the viewpoint of the one killed. Releford v. Reserve Life Ins. Co., 154 Tex. 228, 276 S.W.2d 517 (1955). The assailant can act intentionally and the death still result solely from accidental means. Black v. Massachusetts Acc. Co., 57 R.I. 237, 189 Atl. 3 (1937). Although an injury may be intentionally inflicted by another, nevertheless, if the injury was not naturally to be foreseen by the insured, death results from accidental means within the meaning of a double indemnity provision. Mutual Life Ins. Co. v. Distretti, 159 Tenn. 138, 17 S.W.2d 11 (1929). But, "where the insured is the aggressor in a personal encounter and commits an assault upon another with demonstration of violence and knows, or under the circumstances should reasonably anticipate, that he will be in danger of great bodily harm as the natural and probable consequence of his act..."
However, the court affirmed a dismissal of the plaintiff's complaint on the second ground, holding that the evidence disclosed conclusively that the insured met his death by "homicide" within the meaning of the exclusion in the policy. This was true despite the fact that the companion, in striking the blow, had no intent to kill.

Technically, the decision is correct when considered in view of the broad legal definition of the word "homicide"—the killing of one human being by another human being. Nevertheless, the court in this decision seemingly has gone further than any other reported American case, although a careful analysis of the reported decisions will disclose a trend toward construing the provision "homicide" liberally in favor of insurance companies.

The situation most obviously included as a homicide is the one in which the insured is the victim of a felonious intentional killing amounting to first degree murder. The insurance company, of course, is not liable in such a situation. Also, where the insured is killed incident to the commission of a felony the courts seem to agree that death results from "homicide" within the meaning of the policy exclusion. Such a killing is first degree murder under the felony-murder rule. However, where the killing is done by an insane person, the courts early developed

..., his injury or death may not be regarded as caused by accidental means." Scarborough v. World Ins. Co., 244 N.C. 502, 505, 94 S.E.2d 558, 561 (1956). However, "even where it appears the insured is the aggressor in an altercation, his ensuing death may be held as [resulting from accidental means] ... provided it also appears the insured was in such mental condition that he could not reasonably anticipate he would be in danger of great bodily harm as a probable consequence of his acts." Newton v. Colonial Life and Acc. Ins. Co., 149 F. Supp. 113, 115 (E.D.N.C. 1957).

It would seem clear that in the principal case the insured would not have had reason to anticipate that death would result from his calling his companion a vile name. Death would not be the natural and probable consequence of that act. Thus, death can be said to have resulted solely from accidental means.


5 United Life and Acc. Ins. Co. v. Willoughby, 182 F.2d 113 (4th Cir. 1950) (insured killed when his house was intentionally dynamited); Lloyd v. Unity Life Ins. Co., 225 La. 585, 73 So. 2d 470 (1954) (insured stabbed by assailant); Great So. Life Ins. Co. v. Cherry, 24 S.W.2d 512 (Tex. Civ. App. 1930) (insured intentionally murdered without provocation).

an exception to the rule of non-liability of an insurance company. These
decisions are based on the theory that the word "homicide" as used in
the policy was not intended to be given its broad meaning by the parties,
but was intended to include intentional homicide only. This would
exclude murders by insane persons since they cannot be said to possess
the requisite intent.

Many courts in cases not involving insane persons have held that
the term "homicide" as used in these policies must be construed as
meaning only intentional homicides. The case most nearly contra
to the decision in the principal case is Seaboard Life Ins. Co. v. Mur-

phyy. In that case the assailant, thinking the insured had insulted him,
made a harsh remark to him. The insured did not intend to strike the
assailant but assumed such an attitude of defense that the assailant
might reasonably have thought he had such intent. The assailant struck
the insured with his fist causing him to fall backward and to crush
his head on a cement floor. The court held that death resulted solely
through external, violent, and accidental means and did not ensue as a
result of "homicide." The court felt that the term as used in the policy
embraced only intentional killings. In the Seaboard case the assailant
did not intend to kill the insured and employed no means reasonably
calculated to cause death. The assailant was guilty at most of simple
assault. This case is not readily distinguishable from the principal

case.

1 Great So. Life Ins. Co. v. Campbell, 148 Miss. 173, 114 So. 262 (1927)
(insured shot by insane person without any provocation or legal justification);
Day v. Interstate Life and Acc. Co., 163 Tenn. 190, 42 S.W.2d 208 (1931)
(insured killed by insane man with axe); Texas Life Ins. Co. v. Plunkett, 75 S.W.2d
2 "The courts generally hold that the word 'intentional' must be read into the
contract, and the company is exempt from liability only where the homicide was an
intentional one." Day v. Interstate Life and Acc. Co., 163 Tenn. 190, 192, 42
S.W.2d 208, 208 (1931).
3 The possibility of such a construction has led some insurance companies to
adopt a more inclusive wording. The life policy in Great So. Life Ins. Co. v.
Alkins, 105 S.W.2d 902 (Tex. Civ. App. 1937), had a clause providing for double
indemnity for death resulting from accidental means except where death resulted
from "intentional or unintentional homicide due to the act of a sane or insane
person." (Emphasis added.)
4 Cases cited note 7 supra. In cases turning on a "homicide" exclusion, the
courts may make no mention of the fact that an insane person may intend to do the
very act which causes death and yet not have the requisite intent to kill necessary
for a criminal conviction. Such a distinction has been drawn where the exclusion
was for "injuries intentionally inflicted by another person." Deloache v. Carolina
Life Ins. Co., 104 S.E.2d 875 (S.C. 1958). However, this would seem to be a
definite minority view. See 1 Appleman, Insurance Law and Practice § 482
(1941).
5 See, e.g., Walters v. Great Nat'l Life Ins. Co., 132 Tex. 454, 124 S.W.2d
850 (1939).
6 134 Tex. 165, 132 S.W.2d 393 (1939).
7 This would be true in Texas, at least. See, e.g., Flournog v. State, 124 Tex.
Crim. 395, 63 S.W.2d 558 (1933).
The case most nearly in accord with the decision in the principal case, and the one relied upon by the North Carolina court, is United Life and Acc. Ins. Co. v. Prostic. There the insured died of heart failure resulting from a beating inflicted by robbers. The facts were such as to raise the inference that death was not intended by the robbers. The court denied recovery on the ground that death resulted from "homicide" within the meaning of the exclusion from the double indemnity clause. It was decided that the word "homicide" could not reasonably be restricted to mean only intentional killings, for this would eliminate many manslaughters and also many first and second degree murders; especially under the felony-murder rule or where death was substantially likely to follow from the course of action pursued.

This case is distinguishable from the principal case in that in the Prostic case the killing clearly would be first degree murder under the felony-murder rule. In the principal case the companion had no intent to kill the insured, the felony-murder rule would not be applicable, and it would seem, at most, that he might be guilty of involuntary manslaughter.

Perhaps the strongest ground of attack upon the decision in the principal case is its disregard of certain fundamental principles of insurance contract construction. It is said that an insurance contract should be interpreted according to its plain meaning—even that meaning accorded to the words by the man on the street. It is submitted that, among laymen, an accidental killing amounting at most to involuntary manslaughter is not generally considered "homicide." Also, where provisions are uncertain or ambiguous they should be interpreted most favorably to the insured and construed most strongly against the insurer.

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However, the North Carolina decision, whatever one may think of it on its facts, poses an even more serious question: will the construction of the word "homicide" be extended to include negligent killings of one human being by another? An example of such a situation would be where death is caused by the negligent operation of an automobile. The technical legal definition of the word clearly would include such an extension. It would be but a short step from the present North Carolina decision to a holding that there was a "homicide" where death resulted from gross negligence in a situation amounting to involuntary manslaughter. The Maryland court has suggested that the definition of "homicide" not be extended to include deaths resulting from negligent acts, but that it should be restricted to deaths resulting from voluntary acts. Should the North Carolina court refuse to follow the Maryland view, but choose instead to extend the definition of "homicide" to include death resulting from negligence, a double indemnity clause would be worthless in a large number of cases. Carried to its furthest extreme, only those persons dying from such natural causes as flood or lightning would be able to recover double indemnity. Whether this would be a desirable consequence or not, the public and the legal profession are entitled to be made aware of the dangers involved. It would seem that if insurance companies desire to be absolved from liability where death results from unintentional or negligent homicides, they should so specify in their policies. Perhaps definitive legislation is needed in this area.

THOMAS W. WARLICK

Taxation—Estate Tax—Charities—Gifts to Bar Associations

Testator bequeathed $5,000 to the Rhode Island Bar Association to be used "for the advancement and upholding of those standards of the profession which are assumed by the members upon their admission to the Bar, and for the prosecution and punishment of those members who

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Ins. Co., supra; Wozniak v. John Hancock Mut. Life Ins. Co., supra. Compare in connection with both points of view this statement: "A policy of insurance and every clause and part thereof is the contract, and, like all contracts, should be construed so as to effectuate the real purpose and intention of the parties, giving to the language employed, when unambiguous, its ordinary and usually accepted meaning." Frontier Mortgage Corp. v. Heft, 146 Md. 12, 125 Atl. 772, 776 (1924).

18 "An intention to kill the victim is not, of course, an essential of homicide in its ordinary and usually accepted meaning. There are accidental homicides, and homicides by misadventure, or involuntary manslaughter, as they are sometimes called, in which there is no intention to kill or harm at all." United Life and Acc. Ins. Co. v. Prostic, 169 Md. 535, 538, 182 Atl. 421, 422 (1936).

19 See note 9 supra.