

Insurance--Construction of Policy Insuring Against Accidental Injury (Silverstein v. Metropolitan Life Ins. Co., 254 N.Y. 81 (1930))

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INSURANCE—CONSTRUCTION OF POLICY INSURING AGAINST ACCIDENTAL INJURY.—Defendant insured plaintiff's husband against the results of bodily injuries "caused directly and independently of all other causes by accidental means." The policy was not to "cover accident, injury, disability, death or other loss caused wholly or partly by disease or bodily or mental infirmity or medical or surgical treatment therefor." The insured, while lifting a milk can, slipped and fell, the can striking him on the abdomen. It was found that a small ulcer at the junction of the stomach and duodenum had weakened the wall, with the result that the impact of the blow was followed by perforation, permitting the contents of the stomach to escape into the peritoneum, causing peritonitis, and later death. The evidence showed that the existence of the ulcer was unknown to the insured and were it not for the blow would have had no effect upon his health, for it was dormant and not progressive. In an action by the beneficiary under the policy, *Held*, judgment for plaintiff. Death was the result of an accident to the exclusion of all other causes; the ulcer was not a disease or an infirmity within the meaning of the policy. *Silverstein v. Metropolitan Life Ins. Co.*, 254 N. Y. 81, 171 N. E. 914 (1930).

The words "bodily infirmity or disease" are frequently used in policies of insurance and have a well-understood meaning. They are construed to be practically synonymous and to refer only to an ailment or disease of a settled character.¹ Since a slight impairment of full bodily vigor may constitute an infirmity, it is apparent that in order to be excluded from the coverage of the policy, the disease or infirmity must be of a substantial character and so significant that it would be commonly regarded as an infirmity.² A different construction of the term would tend to limit narrowly the scope of the insurance contract and reduce its coverage to an absurdity. In giving effect to the intentions of the parties, the Court is properly guided by the reasonable expectation and purpose of the ordinary man when making contracts of this type.³ It follows that the parties contemplated the policy would cover a condition which, though abnormal or unsound in itself, would not be the producing cause of injury. The ulcer was a harmless condition; it did not materially impair the bodily powers of the insured.⁴ Only as a consequence of the blow did it become a source of mischief. The blow, therefore, was the moving, sole and proximate cause of the death, and whether the ulcer con-

¹ 1 C. J. 452; *Cooley*, Briefs on Insurance, vol. 4, p. 3198; *Meyer v. Fidelity, etc. Co.*, 96 Iowa 378, 65 N. W. 328 (1895), *Manufacturers' Accident Indemnity Co. v. Dorgan*, 58 Fed. 945 (C. C. A., 6th), 22 L. R. A. 620 (1893).

² *Eastern Dist. Piece Dye Works v. Travelers Ins. Co.*, 234 N. Y. 441, 453, 138 N. E. 401 (1923).

³ *Bird v. St. Paul F. & M. Ins. Co.*, 224 N. Y. 47, 51, 120 N. E. 86, 87 (1918); *Goldstein v. Standard Accident Ins. Co.*, 236 N. Y. 178, 183, 140 N. E. 235, 236 (1923); *Van Vechten v. American Eagle Fire Ins. Co.*, 239 N. Y. 303, 146 N. E. 432, 38 A. L. R. 1115 (1925).

⁴ *Black v. Travelers' Ins. Co.*, 121 Fed. 732 (C. C. A., 3rd), 61 L. R. A. 500 (1903).

tributed directly or indirectly is immaterial. It has been held that if in the act which precedes the injury something unforeseen, unexpected or unusual occurs which produces the injury, then the injury may be said to have resulted through accidental means.⁵ The governing principle is well stated to be that "if there is no active disease, but merely a frail general condition, so that powers of resistance are easily overcome, or merely a tendency to disease which is started up and made operative, whereby death results, then there may be recovery even though the accident would not have caused that effect upon a healthy person in a normal state."⁶ In determining the liability of the insurer in actions of this type, the doctrine of following the chain of causation is properly restricted by the courts to the terms of the contract as contemplated by the parties.⁷

R. L.

INSURANCE—FALSITY OF MATERIAL REPRESENTATIONS VIOLATES POLICY—SECTION 58, INSURANCE LAW CONSTRUED.—Plaintiff beneficiary under her husband's life insurance policy upon his death brought this action for \$10,000 on the policy. Defendant denied liability on the ground that the plaintiff's husband gave false answers to questions in regard to previous consultation with and treatment by physicians. Plaintiff contended the answers to such questions were truthfully made to the defendant's local agent and medical examiner and that they had full knowledge of the facts although the answers as contained in the written application were found to be false. The plaintiff claims that the defendant is not deceived and the representations, though material, are not fraudulent. *Held*, for defendant. *Minsker v. John Hancock Mutual Life Insurance Company*, 254 N. Y. 333, 172 N. E. — (1930).

Prior to the enactment of section 58 of the Insurance Law¹ the case

⁵ *Mutual Accident Assn. v. Barry*, 131 U. S. 100, 9 Sup. Ct. 755 (1888); *Mutual Life Ins. Co. v. Dodge*, 11 F. (2nd) 486 (C. C. A., 4th), 59 A. L. R. 1240 (1926); *Western Com. Travelers' Assn. v. Smith*, 85 Fed. 401 (C. C. A., 8th), 40 L. R. A. 653 (1898).

⁶ *Silverstein v. Metropolitan Life Ins. Co.*, at 85, quoting *Rugg, Ch. J.*, in *Leland v. Order of United Commercial Travelers of America*, 233 Mass. 558, at 564, 124 N. E. 517, 520 (1919).

⁷ *Schwartz v. Commercial Travelers' Mutual Accident Assn. of America*, 254 N. Y. —, 172 N. E. —, decided June 3, 1930, *aff'g* 227 App. Div. 711, *id.* 132 Misc. 200 (1928); *Lewis v. Ocean Accident & G. Corp.*, 224 N. Y. 18, 20, 120 N. E. 56, 7 A. L. R. 1129 (1918).

¹ N. Y. Insurance Law, sec. 58 (Laws of 1906, ch. 326) provides in part "that every policy of insurance issued or delivered within the state on or after the first day of January, 1907, by any life insurance corporation doing business within the state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or any other writings, unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void."