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Insurance Law—Presumption Against Suicide

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of the court agreed. The majority, however, refused to entertain such a strict interpretation of the section and held that it was satisfied by any method whereby there was a clear designation of the sex of the candidates. Furthermore, such an interpretation, they felt, is fortified by the provision in the Election Law stating that the order in which the names appear on the ballot is determined by lot.[15]

The majority's view is the more realistic approach. The provisions of the Election Law should be liberally construed to allow ballots in a form which could cause no possible confusion or difficulty.[16] But in the present case it does not appear how clear the ballot was in fact. If there was no indication that the voter should vote for one male and one female, there could reasonably be votes cast for two males, for instance, and the ballot should have been made clearer. The Court, however, apparently found otherwise.

INSURANCE LAW

Presumption Against Suicide

A very popular protective feature which is included in many life insurance contracts is the so-called double indemnity clause.[1] In most instances, this provides for payment of an additional sum equal to the face value of the policy upon receipt by the insurer of due proof that the sole cause of the insured's death was bodily injury and that bodily injury was produced solely by external, violent and accidental means.[2] The insured's self-destruction, of course, is not death by accidental means, and double indemnity clauses expressly exclude this risk.[3]

In *Begley v. Prudential Ins. Co. of America*,[4] the insured's body was found beneath the window of his second-story hospital room; no one had witnessed the events leading to his fatal injury; and investigation disclosed that the window was up and the screen broken. There was some evidence that the insured who had been suffering from various diseases was mentally depressed during the weeks immediately preceding his death. In the death proofs submitted by the beneficiary death was attributed to certain head injuries, but copies of the death certificate and the medical examiner's report contained the added comment *"Jumped or fell from window of Veterans Hospital 7/4/52."*

15. N. Y. ELECTION LAW §104. Order of names upon ballot . . . 2. The officer or board with whom or which is filed the designations for a public office or party position shall determine by lot, . . . the order in which shall be printed on the official primary ballott, . . . the names of candidates for a party position . . . .

16. *Belford v. Board of Elections*, 306 N. Y. 70, 115 N. E. 2d 658 (1953).

1. This protection is offered by most major life insurance companies. See THE NATIONAL UNDERWRITER CO., WHO WRITES WHAT (1955) p. 82.

2. See samples of company contracts set forth in CHILTON CO., THE SPECTATOR HANDY GUIDE (1956).

3. Id.

4. 1 N. Y. 2d 530, 136 N. E. 2d 839 (1956).

The beneficiary brought suit against the Insurance Company when it refused to pay the double indemnity proceeds. The plaintiff's case consisted of the death proofs which had been submitted to the defendant. The Company defended on the grounds that (1) plaintiff's proofs of death failed to show that death resulted from accidental means and (2) the insured in fact committed suicide. The Appellate Division[5] reversed a jury verdict for the plaintiff and dismissed the complaint—reasoning: a showing of accidental death is a condition precedent to recovery; proof containing the statements "jumped or fell" is not due proof of accidental death; any prima facie case which the plaintiff may have had by virtue of the presumption against suicide[6] is overcome by defendant's evidence[7] showing circumstances wholly inconsistent with accidental death. In reversing the Appellate Division and ordering a new trial, the Court of Appeals concluded that it was error for the Appellate Division to hold, as a matter of law, that the proof submitted was insufficient. To paraphrase the Court's holding on this defense: where the contract fails to spell out the elements, due proof is that from which a reasonable person might infer accidental death, and since no one witnessed the event the words "jumped or fell" do not conclusively show suicide.

As regards the defendant's affirmative defense of self-destruction the Court, in effect, decided that the Appellate Division misinterpreted the presumption against suicide: "When death has resulted from violence, the presumption . . . does more than shift the burden of proof and upon having done so disappears from the case; it continues to the end of the case and if a fair question of fact is presented as to whether death was due to suicide or accident, then the jury should answer accident. *Wellisch v. John Hancock Mut. Life Ins. Co.*"[8] The *Wellisch* case did not involve a suit on the double indemnity clause, but a defense of suicide to avoid paying the sum insured when death occurred during the first two policy years.[9] The decision in the instant case seemingly applies the dicta in *Wellisch* to an action for double indemnity where the plaintiff not only must show the insured's death but also has the burden of proving that his decease came about in the particular manner described in the double indemnity clause. But for the fact that

5. *Begley v. Prudential Ins. Co. of America,* 285 App. Div. 961, 138 N. Y. S. 2d 851 (2d Dep't 1955).

6. Man is presumed not to take his own life. *Mallory v. The Travelers' Ins. Co.,* 47 N. Y. 52, 7 Am. Rep. 410 (1871); *Wellisch v. John Hancock Mutual Life Ins. Co.,* 293 N. Y. 178 56 N. E. 2d 540 (1944).

7. I.e., Insured's mental condition, the raised window and broken screen, and the distance between the body when found and the base of the hospital building.

8. 293 N. Y. 178, 56 N. E. 2d 540 (1944). The court there held that it was error for the trial court to direct a verdict of suicide when the insurer's evidence was not conclusive. In dicta the Court expounded upon the nature of the presumption against suicide: it does not only shift the burden of proof, nor does it take the place of evidence so as to create a question of fact when all the evidence is the other way—"it is really a rule or guide for the jury in coming to a conclusion on the evidence."

9. See N. Y. INSURANCE LAW §155(2).

10. See *Whitlatch v. Fidelity and Casualty Company,* 149 N. Y. 45, 43 N. E. 405 (1896); *Ostrander v. Travelers' Ins. Co.,* 265 N. Y. 467, 193 N. E. 274 (1934).

the Court ordered a new trial, this case would conclusively answer those who ask whether the presumption has the same force in a suit for double indemnity[11] and have the effect of overruling cases which indicate that the presumption's only purpose is to assist the plaintiff in establishing a prima facie case.[12]

In this writer's opinion, the Court has gone too far in applying the presumption as outlined in the *Wellisch* case to this kind of an action. Doubtless the Court was influenced by the social opprobrium resulting from a decision implying suicide, but when the Court indicates that the jury should always find death was accidental where there is a question of fact it imposes an undue burden upon the insurer when, as is the normal case, the only evidence of the cause of death is circumstantial. Nor is the social policy favoring the payment of life insurance very persuasive in this instance for life insurance needs are not dependent upon the manner of death.

Statements of Good Health

In *Bronx Savings Bank v. Weigandt*,[13] the plaintiff brought an action to rescind a policy of savings bank life insurance which it had issued to the deceased approximately three months before his death. The insurer contended that the insured had falsely represented that he was in good health;[14] and that the policy never took effect because the insured was not in good health when the policy was delivered and the first premium paid. The defendant-beneficiary counterclaimed for the face value of the policy.

The insured, who died as the result of injuries, had stated in the application that he never had or been told that he had tuberculosis, and none was found by the Bank's medical examiner. At the trial it was established that the deceased was suffering from active tuberculosis of the spine at the time he applied for the insurance, but it was not shown that he knew or had reason to know of his condition. Faced with the rule that a life insurance applicant's statements are representations and not warranties[15]—hence rescission will not be granted unless there is a fraudulent misrepresentation[16]—the plaintiff argued that the Court will

11. See a.g., MATHESON AND PRINCE, EVIDENCE, Foundation Press (1949) p. 35.
12. *Jahn v. The Commercial Travelers Mut. Assoc., of Am.*, 256 App. Div. 835, 9 N. Y. S. 2d 257 (2d Dep't 1939); *Steinmann v. Metropolitan Life Ins. Co.*, 257 App. Div. 656, 15 N. Y. S. 2d 51 (1st Dep't 1939).
13. 1 N. Y. 2d 545, 136 N. E. 2d 848 (1956).
14. These words appeared at the bottom of a page of the application: "Except as stated above I am now in good health. The statements herein are true . . . and made for the purpose of inducing the Bank to issue insurance on my life."
15. N. Y. INSURANCE LAW §142(3). For definitions and explanations of the words *representations* and *warranties* as regards life insurance contracts see 37 WORDS AND PHRASES 40; BLACK, LAW DICTIONARY (4th ed. 1951) 1465, 1758.
16. *Sommer v. Guardian Life Ins. Co.*, 281 N. Y. 508, 24 N. E. 2d 308 (1939).