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Suicide, Sane or Insane, an Accident?

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SUICIDE, SANE OR INSANE, AN ACCIDENT?

INSURANCE companies of their own volition have never undertaken to insure the risk of suicide. At first it was held by the courts of this country that if an insured committed suicide his beneficiary could not recover, whether the policy mentioned suicide or not. The courts declared that suicide while sane was a fraud on the company. *Ritter vs. Mutual Life Ins. Co.*, 169 U. S. 139, 42 L. Ed. 693. Later the courts began to change their views where the beneficiary had a vested interest on the ground that this interest could not be defeated by the act of a third party. To overcome this view or rule of law the insurance companies began to expressly except this risk from their policies and have continued to do so to the present day.

Beneficiaries contended that this clause was inoperative and invalid, but it was early held, in *Bigelow vs. Berkshire Ins. Co.*, 93 U. S. 284, 23 L. Ed. 918, that such a clause was valid and enforceable. For, said the court, in an opinion by Davis., J.: "If they (insurance companies) are at liberty to stipulate against hazardous occupations or unhealthy climates . . . surely it is competent for them to stipulate against an intentional act of self-destruction, whether it be the voluntary act of a moral agent or not." The policy in this case excepted the risk of suicide while sane or insane.

Such has continued to be the law in most states down to the present time. However, a few states—Missouri, Utah and Colorado in particular—believing such a clause to be contrary to public policy, have passed statutes calculated to nullify its effect.

The statutes in the three states are the same in effect, the old Eighth Circuit Court of Appeals declaring in *Continental Casualty Co. vs. Agee*, 3 F. (2) 978, 983, that the interpretation given by the Supreme Court of the United States to the Missouri statute, "looking at the object of the statute and giving effect to the words according to their ordinary, natural meaning," was binding on the Circuit Court of Appeals in interpreting the Utah statute. This Utah statute is identical with the Colorado statute. The Supreme Court case referred to was *Whitfield vs. Aetna Life Ins. Co.*, 205 U. S. 489, 51 L. Ed. 895.

The Missouri statute is as follows:

"In all suits upon policies of insurance on life issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." R. S. 1919, ‡6150.

The Colorado statute reads:

"From and after the passage of this act, the suicide of a policyholder after the first policy year of any Life Insurance Company doing business in this state shall not be a defense against the payment of a life insurance policy, whether said suicide was voluntary or involuntary, and whether said policyholder was sane or insane." Colorado Compiled Laws of 1921, ‡2532.

Utah's statute is identical with the Colorado statute except that in the Utah statute the word "chapter" is substituted for the word "act" in the first phrase of the law. Compiled Laws of Utah of 1917, #1171.

The insurance companies naturally contended that such statutes were unconstitutional, but the courts have uniformly held *contra.* The Colorado Supreme Court in *Woodmen of the World vs. Sloss,* 49 Colo. 177, referring to the Colorado statute, said its "enactment was a legitimate exercise of power by the state legislature" and that it was not contrary to the provisions of either the state or federal constitutions. "By this statute," stated the court, "the state has declared it to be against public policy to permit insurance companies to contract against the payment of their policies, in the event of loss, because the insured came to his death by suicide." This view has been upheld by the Colorado Supreme Court in its later decisions and by the Tenth Circuit Court of Appeals, most recently in *Aetna Life Ins. Co. vs. Braukman,* 70 F. (2) 647.

Having settled the constitutionality of these statutes, it became necessary to interpret them, not only as to the type of companies and policies controlled, but also as to the situations which they governed. Clearly life policies issued by life insurance companies fell within the scope of the statutes, but it was contended that the acts were not so limited in their effect. Beneficiaries claimed that accident insurance policies were controlled when such policies contained a provision for payment in case of an accidental death or death by accidental

means. The courts upheld this contention from the first, the latest Colorado decision to that effect being *Mass. Protective Association vs. Daugherty,* 87 Colo. 469.

Missouri, Utah and Colorado all have agreed that the statutes apply to an accident insurance policy where the insured commits suicide while insane, but there is a decided split of authority as to the applicability of these enactments in cases of suicide while the insured is sane.

This particular point has never come before the courts in Colorado. In this connection the case of *Business Men's Assurance Co. vs. Scott,* 17 F. (2) 4, which came before the Eighth Circuit Court of Appeals on appeal from the District Court for the District of Colorado and necessitated the interpretation of the Colorado statute, since the policyholder had shot and killed himself while insane, the court stated (p. 6), "The question of whether the beneficiary in such a policy as this would have been entitled to recover if the insured had committed suicide while sane was not considered in any of these (Colorado) cases, and the Supreme Court of Colorado has thus far held only that suicide while insane is death by accidental means, and covered by an accident policy providing for death benefits." The court refused to go further than this in interpreting the statute, but did state by way of dictum that there was no reason why suicide while sane should be covered by an accident policy, since suicide while sane is in no sense of the word an accident.

The Missouri courts, in interpreting their statute, follow the reasoning set forth in this dictum. It was held in *Brunswick vs. Standard Accident Ins. Co.,* 278 Mo. 154, 213 S. W. 45, that the statute did not apply where the insured committed suicide while sane. This court stated that such a death was not an accident. The burden of proof was still on the beneficiary to show an accidental death and if the proof showed suicide while sane then the beneficiary had failed to bear the burden. The defense of suicide need not be pleaded; merely a denial of the accidental death, which the plaintiff had still to prove, sufficed.

The United States Supreme Court had previously interpreted this Missouri statute in a different manner in the *Whitfield* case, *supra.* However, the *Brunswick* case has since been

followed by the old Eighth Circuit in the case of *Von Crome vs. Traveller's Ins. Co.*, 11 F. (2) 350, which held suicide while sane to be a defense under the Missouri statute in the above circumstance. The court rightfully based its decision on the right of the state courts to determine the meaning and applicability of its own state statutes and the binding effect of such interpretation on the federal courts.

The Utah statute has been interpreted in exactly the opposite way and in the following manner. The *Agee* case, *supra,* came before the old Eighth Circuit on appeal from the District Court for the District of Utah. Here the insured met his death by drowning. The insurance company attempted to rebut a prima facie case of accidental death by introducing evidence of suicide while sane. The trial court refused to admit this evidence. The Circuit Court approved this ruling, stating that the defense would have been good in the absence of the statute, but that it had been abolished by the act. It also stated that any attempt on the part of the insurance company to contract so as to limit its liability in the instance of suicide was a nullity and the insurance company would be liable notwithstanding the suicide.

A writ of certiorari was granted by the United States Supreme Court but was later revoked by it due to the receipt by that court of a certified copy of the opinion of the Supreme Court of Utah in the case of *Carter vs. Standard Ins. Co.*, 65 Utah 465, 238 P. 259, 41 A. L. R. 1495, decided while the *Agee* case was still before the United States Supreme Court.

In the *Carter* case, which came before the Utah courts, the controversy was as to whether the insured's death, possibly caused by an overdose of laudanum, was accidental or whether he had deliberately and intentionally committed suicide. The Utah Supreme Court upheld the beneficiary by a somewhat peculiar holding to the effect that although suicide while sane would be a good defense, nevertheless "after the plaintiff has made a prima facie case of accidental death, to then permit the defendant to prove the death was suicidal in order to rebut the proof of accidental death would be to 'fly in the very teeth of the statute,' and render it useless for the very purpose for which it was evidently intended." This interpreta-

tion of the Utah statute by the Utah Supreme Court, being in accord with the holding in the Circuit Court of Appeals in the *Agee* case, the United States Supreme Court found it unnecessary to review that decision and therefore revoked the writ of certiorari as above mentioned.

The *Agee* case is remarkable, for while stating that the Missouri and Utah statutes are the same in effect and that the interpretation of the former is controlling on the court in its interpretation of the latter, the court yet chose to disregard the Missouri court's interpretation of its statute and followed the old *Whitfield* case. The *Agee* case, as well as the *Carter* case, goes a long way in interpreting the statute. It writes the contract for the parties, making the company pay on a policy covering death by accidental means, where the death was not an accident under any construction of the word whatsoever.

There is certainly basis for the contention that the Utah court, in the *Carter* case, erred in stating that to allow the defense of suicide while *sane* in the instance of an accident policy was to "fly in the very teeth of the statute." Not to allow such a defense gives the insured a greater coverage than either he or the insurance company contemplated. The insured wanted to be protected in case of accident, and the insurance company was willing to so protect him, but neither of the parties considered or believed that death in any other way than by accident was to be covered. Yet such is the result brought about by the court virtually making itself a party and rewriting the instrument for the original contracting parties.

Very recently the Colorado statute has been interpreted by the Tenth Circuit Court of Appeals in the *Braukman* case, *supra*. In this case insured died of a gunshot wound alleged by plaintiff beneficiary to have been accidentally inflicted. The defendants' answers averred that death occurred through suicide while insured was sane. Demurrers to these answers were sustained and an appeal taken. The Circuit Court affirmed the decision of Judge Symes in the District Court for the District of Colorado, where the action was originally brought.

The opinion, after reviewing and discussing, among

others, the above cases, chose to follow the rule of the *Agee* case and its interpretation of the Utah statute. It also stated that in spite of the holding by the Missouri court in the *Brunswick* case, *supra,* it believed the reasoning and logic in the *Whitfield* case decided by the United States Supreme Court to be more sound. It further stated that the insurance companies had two courses to follow—they could either "cease writing policies in Colorado with a suicide exemption clause or, if necessary, to amend premium schedules to cover the additional risks."

This decision practically settles the question in Colorado, for although it is not binding on the Colorado courts it will undoubtedly be followed by them. The Colorado Supreme Court has already shown a tendency to go a long way in requiring the insurance companies to stay well within the letter of the law, and making it practically mandatory that the suicide clause either be left out of the policy altogether, as suggested by the Circuit Court, or amended to fit the statute. For in the *Daugherty* case, *supra,* the Colorado Supreme Court held that the clause was not only a nullity but also an express and continuing denial of liability which waived the requirements of giving notice of death and furnishing proof of loss.

This decision, like those of the *Carter* and *Agee* cases, overlooks the fact that such a clause is not a "denial of liability," but, rather, a limitation of liability and an *excepted risk* not intended to be covered by the policy and as completely outside the scope of a personal accident policy as damage to the insured's property would be.

The result of these decisions is that the insurance companies are required by law to cover the risk of suicide although to cover it expressly would render the policy void under the decision of the United States Supreme Court in the *Ritter* case, *supra,* which has never been overruled and which states that "if a policy expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy."

There would seem to be error in any case which allows recovery on an accident policy where the policyholder inten-

tionally and while in the full possession of his faculties takes his own life: For it is certainly impossible for a beneficiary under such circumstances to present a *bona fide* prima facie case of accidental death since obviously there was no accident.

The remedies suggested by the Circuit Court in the *Braukman* case are both impractical and unjust. To force a company to insure such a risk against its desire borders closely on being an infringement of the constitutional right to contract. Raising the premium rates would be inequitable in that such action would force the policyholders who are honest to bear the burden of paying for the policies of dishonest policyholders who, by their suicidal death, commit a fraud not only upon the insurance company but also on the other policyholders. The common sense and logical interpretation of the statutes, such as that adopted by the Missouri courts, allows the imposition of fair premium rates and does not impose an unjust burden on the majority of the policyholders.

HARRY S. SILVERSTEIN, JR., Class of 1936.

NOVEMBER DICTA NOTED

We were pleased recently to receive an inquiry from the editor of an Eastern Bar Association magazine inquiring the cost of reprinting 1,800 copies of the article in the November Dicta by Mr. Frank Swancara entitled "Impolitic Reinstatement of Disbarred Lawyers," and we are now advised that the printer has received an order for the article to be furnished as an insert in the Massachusetts Law Quarterly.

We extend our congratulations to Mr. Swancara.