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INSURANCE-RIGHT OF INSURED TO RECOVER UNDER DISABILITY CLAUSE OF LIFE INSURANCE POLICY FOR SELF-INFLICTED INJURY

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INSURANCE—RIGHT OF INSURED TO RECOVER UNDER DISABILITY CLAUSE OF LIFE INSURANCE POLICY FOR SELF-INFLICTED INJURY—A policy of life insurance was issued to one Rice providing for payment of certain disability benefits to the insured if he should "sustain a physical impairment such as . . . the permanent loss of the sight of both eyes." As a proximate result of an unsuccessful attempt to commit suicide the insured was blinded. The policy contained no express limitations or restrictions on such self-inflicted injuries but did provide

that the insurance company should not be liable for benefits "if the death of the insured resulted from suicide." Rice was apparently sane at the time he attempted to kill himself. *Held*, recovery is allowed. The obligation to pay for disability suffered is an absolute one in the absence of contractual provision limiting it. There is no statute or public policy forbidding payment. *Prudential Insurance Co. v. Rice*, (Ind. 1944) 52 N.E. (2d) 624.

A claim for disability benefits arising out of an abortive attempt at suicide is relatively rare. Too often the actor accomplishes what he set out to do, but in either case the question arises as to the liabilities of his insurer. The English common-law courts adhered to the position taken by the church that suicide was infamous and held it to be a crime.[1] Likewise an attempt at suicide was indictable.[2] In this country opinion is divided on the subject.[3] If an insurance policy does not specifically except suicide, it has been suggested that the insurer may still avoid liability because of the illegality of the suicide attempt.[4] Recovery is denied also on the basis of fraud when a policy is taken out in direct contemplation of suicide.[5] Ordinarily, however, suicide is not planned at the time of the issuance of the policy, and it is often motivated by emotional forces quite disconnected from thoughts of insurance. The claim of the beneficiary of the policy or his estate in suicide cases has been faced by several defenses; (a) that the contract contains an implied condition that the insured will not deliberately, sanely, and intentionally destroy himself,[6] (b) that the insurer would be defrauded if recovery

[1] Commonwealth v. Mink, 123 Mass. 422 (1877); State v. Campbell, 217 Iowa 848, 251 N.W. 717 (1933). See 4 BLACKSTONE, COMMENTARIES, Wendell ed., c. 14, p. 176 et seq. (1854).

[2] Reg. v. Doody, 6 Cox Crim. Cas. 463 (1854); The King v. Mann, [1914] 2 K.B. 107. Self-mayhem was also a crime. 1 BISHOP, CRIMINAL LAW, p. 166, § 259(2) (1923).

[3] The criminal nature of suicide and attempts at suicide is generally governed by statute. In the majority of states suicide is not defined as a crime. RICHARDS, LAW OF INSURANCE, 4th ed., p. 658, § 372 (1932); May v. Pennell, 101 Me. 516, 64 A. 885 (1906); Sanders v. State, (Tex. Crim. App. 1908) 112 S.W. 68. But it is recognized as a grave public wrong. Hundert v. Commercial Travelers' Mut. Acc. Assn., 279 N.Y.S. 555, 244 App. Div. 459 (1935). Some jurisdictions say it is criminal. Penn Mutual Life Ins. Co. v. Cobbs, 23 Ala. App. 205, 123 S. 94 (1929).

Attempts at suicide may or may not be crimes depending on the jurisdiction. It has been said that if suicide itself is not punishable, the attempt to commit suicide is left without punishment, because the act itself could never be punished. Commonwealth v. Dennis, 105 Mass. 162 (1870). Contra, Darrow v. Family Fund Soc., 116 N.Y. 537, 22 N.E. 1093 (1889). Cases are collected in 92 A.L.R. 1180 (1934).

[4] 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, p. 4518, § 1236 (1929). See also 6 COOLEY, BRIEFS ON INSURANCE, 2d ed., p. 5211 (1928) and Patterson v. Natural Premium Mut. Life Ins. Co., 100 Wis. 118, 75 N.W. 980 (1898) where the court allowed recovery even though suicide was technically a crime.

[5] Smith v. National Ben. Soc., 123 N.Y. 85, 25 N.E. 197 (1890); Campbell v. Supreme Conclave, 66 N.J.L. 274, 49 A. 550 (1901).

[6] It has been said, "Death, the risk of life insurance, the event upon which the insurance money is payable, is certain of occurrence; the uncertainty of the time of its occurrence is a material element and consideration of the contract. It cannot be in the contemplation of the parties, that the assured, by his own criminal act, shall deprive the contract of its material element; shall vary and enlarge the risk, and hasten the day of payment." Supreme Commandry K. of G. R., 71 Ala. 436 at 447 (1882). See also

were permitted,[7] (c) that an intentional shortening of the period of paying premiums is unfair to other policy holders whose premiums might be reduced if recovery were denied,[8] (d) that payment on a policy for a suicide is contrary to public policy in that it might encourage such public wrongs,[9] (e) that by recovery the insured and his estate would be benefiting from his wrong.[10] In spite of these objections, which have more or less been met,[11] the weight of authority favors the holding that suicide is an assumed risk.[12] In the instant case suicide was not accomplished. Should the same principles apply? While some courts have said that the contract contains an implied condition that the insured will not hasten the maturity of the policy by his own act,[13] the court in the case at hand found that the promise of the insurer to pay disability benefits was absolute, because the policy contained a clause exempting the company in case of self-murder but contained no similar clause for self-mutilation—an application of the rule,

Ritter v. Mutual Life Ins. Co., 169 U.S. 139, 18 S. Ct. 300 (1898). However, it is to be observed that insurance companies frame their own policies, and if the policy fails to except suicide, then it would seem that it was meant to be an assumed risk. 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, p. 4612, § 1262a (1929). Patterson v. Natural Premium Mutual Life Ins. Co., 100 Wis. 118 (1898), cited note 4.

[7] See 8 L.R.A. (N.S.) 1124 at 1128 (1907). Of course, there could be no fraud if the risk were assumed in the contract.

[8] 49 HARV. L. REV. 304 at 309 (1935). It cannot be considered unfair to the other policy holders if the company's contract expressly included the risk. The same would apply if the assumption were by implication. See note 6 supra.

[9] "A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment. If, therefore, a policy—taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns—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, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent on him, or to whom he was indebted." Ritter v. Mutual Life Ins. Co., 169 U.S. 139 at 154 (1898). It has been argued that public policy favors provision for dependents, whether they be direct beneficiaries of the policy or merely take under the estate of the insured. See instant case at p. 627. In fact, some states have passed statutes abolishing suicide as a defense, e.g., Mo. Rev. Stat. Ann. (1939) § 5851; Va. Code (1942) § 4228.

[10] It is hard to see how a dead man may enjoy life insurance benefits himself. As a general rule, if the policy is for the benefit of a third person, the courts have been willing to allow recovery. 6 COUCH, CYCLOPEDIA OF INSURANCE, p. 4650, § 12621 (1929); Seiler v. Economic Life Assn., 105 Iowa 87, 74 N.W. 941 (1898); Darrow v. Family Fund Soc., 116 N.Y. 537, 22 N.E. 1093 (1889); Grand Legion of Illinois, S.K.A. v. Beaty, 224 Ill. 346, 79 N.E. 565 (1906). See also RICHARDS, LAW OF INSURANCE, 4th ed., p. 641, § 366 (1932).

[11] See notes 6, 7, 8, 9, 10 supra and 8 L.R.A. (N.S.) 1124 (1907).

[12] VANCE, HANDBOOK OF THE LAW OF INSURANCE, 2d ed., p. 802 (1930).

[13] Where insured had shot himself and was disabled, recovery was refused, because the act was a purposeful creation of the liability against which he was insured. Fanti v. Travelers' Ins. Co., 34 N.Y.S. (2d) 34 (1942). See also Sullivan v. Prudential Life Ins. Co., 131 Me. 228, 160 A. 777 (1932).

expressio unius est exclusio alterius.[14] This probably reflects the disposition of courts to construe policies in favor of the insured when forfeiture is at issue.[15] One feature of the disability cases is still troublesome. True, the insured suffers the physical inconvenience of his injuries, but he also lives to enjoy the benefits of his insurance by having committed a wrong, a moral wrong at least.[16] Although the reasoning in the suicide cases is somewhat analogous,[17] a departure is made at this point.[18] Perhaps the holding in favor of the insured can be justified by the court's contention that a person who attempts suicide, while not technically insane,[19] is not completely rational either.[20]

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[14] Instant case at 624. In Aetna Life Ins. Co. v. DuBarry, (D.C. Ore.) 12 F. Supp. 664 (1935), where the policy provided that no benefits would be paid for disabilities resulting from wartime military service, the court found the language to imply that recovery could be had for disability from other causes.

[15] Blumer v. Phoenix Ins. Co., 45 Wis. 622 (1878); Texas & Pacific Ry. Co. v. Reiss, 183 U.S. 621 at 626, 22 S. Ct. 253 (1901); Royal Ins. Co. v. Martin, 192 U.S. 149 at 162, 24 S. Ct. 247 (1904).

[16] In refusing to allow recovery of disability benefits arising from an attempted suicide it was said, "We are not dealing with suicide accomplished, but with an attempt at self-murder; not with the rights of a beneficiary who is himself guilty of no wrongdoing, but with those claimed by the insured who himself has been guilty of one of the great moral wrongs, of a crime infamous at common law, if completed, a species of felony." Elwood v. New England Mut. Life Ins. Co., 305 Pa. 505 at 512, 158 A. 257 (1931). See also 25 CAL. L. REV. 110 (1936).

[17] See notes 6, 7, 8, 9, supra.

[18] See note 10 supra. Cf. accident policies where it has been held that a death or injury resulting from the voluntary, intentional act of the insured is not covered. Boggan v. Provident Life & Acc. Co., (C.C.A. 5th, 1935) 79 F. (2d) 721; Losleben v. Cal. State Life Ins. Co., 133 Cal. App. 550, 24 P. (2d) 825 (1933).

[19] Insanity of the insured, in the absence of contractual provision paves the way for recovery in suicide cases. There is much dispute as to the degree of insanity necessary. RICHARDS, LAW OF INSURANCE, 4th ed., p. 643, § 367 (1932); 35 L.R.A. 258 (1897); 35 A.L.R. 160 (1925).

[20] On p. 627 of the instant case the court said, "The modern view is that one who does a rash thing is usually the unfortunate victim of some mental or physical disturbance, burden or pressure which is sufficient to warp the natural human impulse to survive, though it may not amount to actual unsoundness of mind. . . . The line of demarcation between what amounts to responsibility and irresponsibility is an extremely narrow and elusive one, and situations involving such controversies are a fertile field of litigation. It is of highest importance that insurance contracts be removed as far as practicable from such vicissitudes."