January 1934

Insurance—Death by Accidental Means—Sunstroke

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview

Part of the Law Commons

Recommended Citation

Available at: http://openscholarship.wustl.edu/law_lawreview/vol19/iss3/9

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.
Where, however, the making of entries is a duty imposed by law they automatically become admissible as public records. This distinction is responsible for the exclusion of insane asylum records in *State v. Tarwater* (1922) 293 Mo. 273, 239 S. W. 480, and their admission in *Hempton v. State* (1901) 111 Wis. 127, 86 N. W. 596. See *Galli v. Wells* (1922) 209 Mo. App. 460, 239 S. W. 894, where a record of a city hospital was admitted because of a city ordinance requiring it to be kept.

Impelled by judicial unwillingness to cope with the problem on common law principles, several states have by statute made hospital and asylum records admissible. Massachusetts, Gen. L., 1920, c. 233, par. 79; New York, Cons. L., 1909, Insanity, par. 93. Missouri confines admissibility to proceedings under the Workmen's Compensation Acts, R. S. Mo. (1929) 3311.

C. B. P., '35.

**INSURANCE—DEATH BY ACCIDENTAL MEANS—SUNSTROKE.**—The insured, in good health and physical condition, while playing golf on a moderately hot day, suffered a sunstroke from which he died. *Held* on demurrer: his death did not result "directly and independently of all other causes from bodily injuries effected through external, violent, and accidental means" so as to permit recovery on accident and double indemnity life insurance policies. *Landress v. Phoenix Mutual Life Ins. Co.* (1934) 54 S. Ct. 461.

Decisions as to whether death from sunstroke while engaged in ordinary occupations falls within the category of death by accidental means are in sharp conflict, evidenced by the dissent of Cardozo, J., in the present case. And the distinction between accidental means and accidental result, though generally recognized, has not always been followed, some cases holding that when an accident in the popular sense and understanding of the ordinary layman has occurred, it is within a policy insuring against injury by accidental means, regardless of cause or effect. *Gallagher v. Fidelity and Casualty Co.* (1914) 163 App. Div. 556, 148 N. Y. S. 1016, affirmed (1917) 221 N. Y. 664, 117 N. E. 1067; *Lewis v. Ocean Navigation Corp.* (1918) 224 N. Y. 18, 120 N. E. 56; *Bryant v. Continental Casualty Co.* (1916) 107 Tex. 582, 182 S. W. 673, overruling (Tex. Civ. App. 1912) 145 S. W. 636. Another doctrine which allows the plaintiff to recover in the absence of exceptional circumstances is based on the theory that an unintended effect which is not the natural and probable consequence of the insured's course of action is produced by accidental means. *Richards v. Standard Accident Ins. Co.* (1921) 58 Utah 622, 200 Pac. 1017; *Pack v. Prudential Casualty Co.* (1916) 170 Ky. 47, 185 S. W. 496; *Continental Casualty Co. v. Clark* (1918) 70 Ok. 187, 173 Pac. 453; *Tate v. Benefit Association of Railway Employees* (1932) 186 Minn. 538, 243 N. W. 694; see *Western Commercial Travelers' Association v. Smith* (C. C. A. 8, 1898) 85 F. 401; *Note* (1932) 20 Geo. L. Rev. 512.

On the other hand, sunstroke is a pathological condition equivalent to a disease, and so is neither an accidental injury nor one produced by accidental means. *Sinclair v. Maritime Pass. Assurance Co.* (1861) 3 El. & El. 476, 121 Eng. Repr. 521; *Dozier v. Fidelity and Casualty Co.* (C. C. W. D. Mo. 1891) 46 F. 446. Other decisions deny recovery following the rule laid down in *U. S. Mutual Accident Association v. Barry* (1889) 131 U. S. 100, that there must be some unforeseen, unexpected occurrence (having a direct causal relation to the injury) in the act which produced it; and where the
sunstroke occurs while the insured is pursuing his ordinary intended course
of occupation or pleasure there is no such occurrence. *Paist v. Aetna Life
Ins. Co.* (C. C. A. 6, 1930) 39 F. (2d) 763; *Semancik v. Continental Casualty
145 Ga. 641, 89 S. E. 716; see also *Caldwell v. Travelers' Insurance Co.* (1924)
305 Mo. 619, 287 S. W. 907; *Jensma v. Sun Life Assurance Co.* (C. C. A. 9,
1938) 64 F. (2d) 457; *Pope v. Prudential Ins. Co.* (C. C. A. 6, 1928) 29 F.
(2d) 185. Two cases contra, ostensibly based on the same principle, have
failed to distinguish between cause and effect, and have found the necessary
unforeseen occurrence in the resultant prostration and not in the course
of events producing it. *Elsey v. Fidelity and Casualty Co.* (1918) 187 Ind.
447, 120 N. E. 42, overruling (Ind. App. 1915) 109 N. E. 413; *Bryant v.
Continental Casualty Co.*, above.

Almost without exception policies on which recovery for this type of in-
jury has been allowed have had special clauses stating that sunstroke shall be
an injury for which the insurer is liable if brought about by accidental
means, and while this has had little effect on the reasoning upon which the
courts have based their decisions, it has noticeably operated to influence
them in deciding whether ordinary cases of sunstroke were a risk contem-
plated by the parties at the time the contract was made. It has thus
strengthened the idea that sunstroke of all kinds, being an accident in the
view of the average insured, should be a basis of liability. The majority
and dissenting opinions in the instant case are sufficient to show that the
real issue in this and other decisions has been between the layman's
definition of an accident as an unlooked-for, unforeseeable event, mis-
chance or mishap, and the lawyer's distinction between the accident itself
and the means or cause which brought it about. Justice Cardozo recognizes
the first when he says, "When a man has died in such a way that his death is
spoken of as an accident, he has died because of an accident, and hence by
accidental means." The other side of the question is taken by Mr. Justice
Stone, speaking for the majority, "the insurance is not against an accidental
result. The stipulated payments are to be made only if the bodily injury,
though unforeseen, is effected by means which are external and accidental."

The distinction is doubtless a somewhat artificial one and has the obvious
purpose on the part of the insurer of limiting liability, but it has practical
justification. *See Note* (1930) 78 U. Pa. L. Rev. 762. If the distinction were
not recognized in any of the countless situations to which it applies under this
type of general accident policy, insurers would almost surely be compelled
to raise premiums to compensate for increased liability, affecting the use-
fulness not only of ordinary but of Workmen's Compensation insurance as
well. And if it is to be retained, the majority opinion in the present case,
based on the rule that some unintended mishance must occur in the course
of action itself to constitute accidental means, seems the more logical one.

T. S. M., '36.

**MUNICIPAL CORPORATIONS—LIABILITY FOR TORTS IN RECREATION CENTERS**—Two recent decisions typify the conflict which exists in the law of municipal liability for negligence of employees in public recreation centers. In Pennsylvania a girl eleven years old was injured when she