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Insurance—Death by Accidental Means—Sunstroke

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.* (D. C. E. D. Pa. 1931) 54 F. (2d) 393; *Nickman v. New York Life Ins. Co.* (C. C. A. 6, 1930) 39 F. (2d) 763; *Semancik v. Continental Casualty Co.* (1914) 56 Pa. Super Ct. 392; *Continental Casualty Co. v. Pittman* (1916) 145 Ga. 641, 89 S. E. 716; see also *Caldwell v. Travelers' Insurance Co.* (1924) 305 Mo. 619, 267 S. W. 907; *Jensma v. Sun Life Assurance Co.* (C. C. A. 9, 1933) 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 injury 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 contemplated 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, mischance 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 usefulness 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 mischance 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