North Dakota Law Review

Volume 41 | Number 3 Article 7

1964

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Recommended Citation

Hunke, Carlton J. (1964) "Insurance - Suicide or Self-Inflicted Injuries - Unintentional Death of Insane Insured Determined Suicide," *North Dakota Law Review*: Vol. 41: No. 3, Article 7.
Available at: https://commons.und.edu/ndlr/vol41/iss3/7

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RECENT CASES

INSURANCE—SUICIDE OR SELF-INFLICTED INJURIES—UNINTENTIONAL DEATH OF INSANE INSURED DETERMINED SUICIDE—The decedent, while drunk and temporarily insane, killed himself by stepping into the path of a school bus. His wife brought suit upon an accident insurance policy which excluded loss caused by "suicide, sane or insane."[1] The jury determined the death was not suicide, and a judgment entered on this verdict in favor of the plaintiff was affirmed by the Court of Civil Appeals.[2] The Supreme Court of Texas, one judge dissenting, *held* that because of the "suicide, sane or insane" provision, the insurance company was not liable even though the decedent did not intend to take his life and could not realize the moral and physical consequences of his act. *Aetna Life Ins. Co. v. McLaughlin,* 380 S.W.2d 101 (Tex. 1964).

This case thus adopts the majority view even though a perusal of the decisions since 1930 indicates a definite trend toward the minority view, which holds that consciousness of the physical nature and consequences of the act and an intention to kill oneself are essential to invoke the "suicide, sane or insane" exclusion.[3] Unless these conditions are present, the death is accidental.[4]

During the nineteenth century, the insurance companies did not add the words "sane or insane" to the suicide exclusion clause,[5] and were held liable where the insured destroyed himself while insane.[6] When the words were added, the majority of the courts extended the suicide exclusion clause to self-destruction by an insane as well as by a sane person.[7] Suicide is generally defined as intentional self-destruction,[8] and in cases not involving the "sane or insane" clause the majority view jurisdictions have adhered to

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1. The clause read: "Insurance under this policy shall not cover any loss caused directly or indirectly; wholly or partly, or contributed to substantially, by bodily or mental infirmity; or ptomaines; or bacterial infections (except pyogenic infections which shall occur through an accidental cut or wound); or any other kind of disease; or medical or surgical treatment (except such as may result directly from surgical operations made necessary solely by injuries covered by this policy); or war, or any act of war; or suicide, sane or insane."

2. Aetna Life Ins. Co. v. McLaughlin, 370 S.W.2d 229 (Tex. Civ. App. 1963).

3. Muzenich v. Grand Carniolian Slovenian Catholic Union, 154 Kan. 537, 119 P.2d 504 (1941); National Life Ins. Co. v. Watson, 194 Ky. 355, 239 S.W. 35 (1922).

4. Masonic Life Ass'n v. Pollard's Guardian, 121 Ky. 349, 89 S.W. 219 (1905); Mutual Ben. Life Ins. Co. v. Daviess' Ex'r., 87 Ky. 541, 9 S.W. 812 (1888).

5. VANCE, INSURANCE 569 (3rd ed. 1951).

6. Connecticut Mut. Life Ins. Co. v. Akens, 150 U.S. 468 (1893); Life Ins. Co. v. Terry, 82 U.S. (15 Wall.) 580 (1873).

7. Bigelow v. Berkshire Life Ins. Co., 93 U.S. (3 Otto) 284 (1876); Jenkins v. National Union, 118 Ga. 587, 45 S.E. 449 (1903); Hart v. Modern Woodmen of America, 60 Kan. 678, 57 Pac. 936 (1899).

8. Nimick v. Mutual Life Ins. Co., 18 Fed. Cas. 247 (No. 10266) (C.C.W.D. Pa. 1871); Van Zandt v. Mutual Benefit Life Ins. Co., 55 N.Y. 169 (1873); N.D. CENT. CODE § 12-33-01 (1960).

this definition.[9] Nevertheless, the majority of the courts apply the clause to the self-destruction of an insane insured who is incapable of realizing the consequences of his act or of forming an intention to kill himself;[10] they reason that this is the logical result intended by the insurance companies.[11] One court has even held that the statutory definition of suicide as "the intentional taking of one's own life" is not controlling.[12]

While the majority courts argue that their rule represents the intent of the contracting parties, the "sane or insane" clause excludes no more than "insane suicide," which properly includes only intentional self-destruction where the decedent understands the consequences of his act, but is unable to resist an insane desire.[13] By including all insane self-destruction, the majority view reaches the anomalous result that the insurer is liable where the insured, if sane, unintentionally destroys himself, but the insurer escapes liability where the insured, if insane, unintentionally destroys himself.[14] This confusion is unnecessary since the insurance companies could specifically exclude all deaths resulting from insanity,[15] and the courts would not have to re-write the policy.

All jurisdictions agree that an irresistible impulse to kill oneself is within the clause's application,[16] a correct result under the definition of "insane suicide." A few include accidental death,[17] but most jurisdictions maintain that this, even though caused by the hand of the insured, is not within the clause.[18] Unless prohibited by statute, as in Missouri,[19] the "suicide, sane or insane" clause is considered valid.[20]

The opinion in the instant case adopts the reasoning of the majority view that any other conclusion would involve too much difficulty in trying to determine various degrees of insanity.[21] The leading

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9. Van Zandt v. Mutual Benefit Life Ins. Co. *supra* note 8; Life Ins. Co. v. Terry, *supra* note 6.
10. United States Fid. & Guar. Co. v. Blum, 258 Fed. 897 (9th Cir. 1919); De Gogorza v. Knickerbocker Life Ins. Co., 65 N.Y. 232 (1875); Billings v. Accident Ins. Co. of North America, 64 Vt. 78, 24 Atl. 656 (1892).
11. Clarke v. Equitable Life Assur. Soc., 118 Fed. 374 (4th Cir. 1902); Seitzinger v. Modern Woodmen of America, 204 Ill. 58, 68 N.E. 478 (1903); De Gogorza v. Knickerbocker Life Ins. Co., *supra* note 10.
12. United States Fid. & Guar. Co. v. Blum, *supra* note 10.
13. Christensen v. New England Mut. Life Ins. Co., 97 Ga. 807, 30 S.E.2d 471 (1944); National Life Ins. Co. v. Watson, 194 Ky. 355, 239 S.W. 35 (1922).
14. See Commissioner Ear's dissent in *De Gogorza* at 249 which was adopted in Christensen v. New England Mut. Life Ins. Co., *supra* note 13.
15. *E.g.*, Kaskowitz v. Aetna Life Ins. Co., 316 S.W.2d 132 (Mo. 1958); Fields v. Pyramid Life Ins. Co., 352 Mo. 141, 176 S.W.2d 281 (1943). *But cf.* Weber v. Interstate Business Men's Acc. Ass'n., 48 N.D. 307, 184 N.W. 97 (1921) where the court followed the minority view and struck down a similiar provision in the insurance contract.
16. Clarke v. Equitable Life Assur. Soc., *supra* note 11; National Life Ins. Co. v. Watson, *supra* note 13.
17. Hartin v. Sovereign Camp, W.O.W., 124 S.C. 397, 117 S.E. 409 (1923); Campbell v. Order of Washington, 53 Wash. 398, 102 Pac. 410 (1909).
18. Northwestern Mut. Life Ins. Co. v. Hazelett, 105 Ind. 212, 4 N.E. 582 (1886); De Gogorza v. Knickerbocker Life Ins. Co., *supra* note 10.
19. Mo. REV. STAT. § 376.620 (1959); Whitfield v. Aetna Life Ins. Co., 205 U.S. 489 (1907).
20. Aufrichtig v. Columbian Nat. Life Ins. Co., 298 Mo. 1, 249 S.W. 912 (1923); De Gogorza v. Knickerbocker Life Ins. Co., 65 N.Y. 232 (1875).
21. Clarke v. Equitable Life Assur. Soc., 118 Fed. 374 (4th Cir. 1902); Spruill v.

cases establishing this rule are rather old, and while the reasoning may have been justified in their time, the developments of modern medicine and psychology weaken the support of that argument since insanity is now generally regarded as a disease.[22] The logical conclusion is that a death resulting from the insured's insanity should place the same liability on the insured as would a death resulting from cancer or any other disease not specifically excluded by the insurance contract.

Dictum in an early North Dakota case[23] indicated a preference for the majority view. The court in a later decision, however, apparently adopted the minority view in holding the insurer liable for the self-destruction of the insane insured even though the policy specifically excluded all deaths resulting from mental disease.[24]

CARLTON J. HUNKE

EMINENT DOMAIN—EFFECTS OF (AIRPLANE) NOISE AND VIBRATION—NECESSITY OF OVERFLIGHTS FOR FIFTH AMENDMENT TAKING —The plaintiff owned residential property within 2,000 feet of a portion of Shaw Air Force Base, South Carolina, on which jet engines were continually tested. She alleged her property was "taken" within the meaning of the fifth amendment to the United States Constitution because it was rendered uninhabitable by the incessant jet noise and vibration. The United States District Court for the Eastern District of South Carolina *held*, that there could be no taking without flights over the plaintiff's land. *United States v. Leavell*, 234 F. Supp. 734 (E.D.S.C. 1964).

That the technical trespass of direct overflight is necessary before there can be a "taking" under these circumstances has been read into the two Supreme Court decisions in this area. The first, *United States v. Causby*,[1] held that although the land might have been used for other purposes, there was a "taking" when the glide path of the aircraft crossed the plaintiff's land at an altitude below that classified by statute as "navigable airspace,"[2] rendering the plaintiff's chicken farm unproductive. Subsequently, Congress added the airspace necessary for takeoffs and landings to the "navigable airspace."[3] But in the second of these two decisions, *Griggs v. Allegheny County*,[4] the Court found that although the new limits

Northwestern Mut. Life Ins. Co., 120 N.C. 141, 27 S.E. 39 (1897).
22. 24 NOTRE DAME LAW. 92 (1949).
23. Clemens v. Royal Neighbors of America, 14 N.D. 116, 103 N.W. 402, 404 (1905).
24. Weber v. Interstate Business Men's Acc. Ass'n., 48 N.D. 307, 184 N.W. 97 (1921).

1. 328 U.S. 256 (1946).
2. Civil Aeronautics Act of 1938, ch. 601, § 3, 52 Stat. 973. See also, Air Commerce Act. of 1926, ch. 344, § 10, 44 Stat. 568 (establishing free right of air transit for interstate and foreign commerce).
3. Federal Aviation Act of 1958, 49 U.S.C. § 1301 (24).
4. 369 U.S. 84 (1962).