



Take10 Podcast Transcript

The Gray Zone: A conversation about Accidental Death Claims

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GK

Welcome back to RGA's Take10 podcast series.

Over 2 million people worldwide will lose their lives each year as a result of an accident. This is quite a staggering figure and indicates that whilst improvements to safety standards are being made in most regions, accidental death claims will always be with us.

I'm Gayle Kanchanapume, Executive Director and Value Add Specialist with the Global Claims Team at RGA, and I'm delighted to introduce Marjorie Corvalan, Senior Council with RGA International Division, and you guessed it, today we are going to be talking about accidental death claims.

Welcome, Marjorie.

MC

Thanks, Gayle. I'm really glad to be here.

GK

Now Marjorie, there are a myriad of different issues or complexities that can arise with accidental death claims, and we could potentially explore any one of these. However, for today's take10, I really wanted to focus on what constitutes an accident and discuss the issues that often arise when the court's hand down determinations, finding that certain circumstances are accidental when they were not intended to be payable when the policies were originally designed.

MC

That's a really good question Gayle. So, as claims managers, you know that an accidental death policy pays a benefit when a death is caused by an accident. And, when we think of an accident, we immediately think of things like somebody got run over by a bus or got hit by a train or a car accident and things like that. So that is what immediately springs to mind, and these policies have a clause that sets out when the benefit is payable and we call this insuring clause. They are written in such a way that intends for the policy to respond when an accident happens, i.e. that is when an insured is run over by bus, but this unfortunately is not always the way these policies are interpreted. So, you know the nature of these policies is that they've traditionally been issued as inexpensive products intended to cover death from accidents. So, not from disease, not from illness, but purely from accidents. They are also intended to exclude other causes, especially death from natural causes, which is, like I said, illness or disease.

A common definition of the risk has been that the death arises from a bodily injury caused directly and solely by violent, external, and visible means. So, this is meant to exclude circumstances where the death was contributed to by natural cause. A policy may define what an accident is, so the policy may contain a definition of when an accident is, but if it doesn't, then the courts apply a very famous definition, which was a decision of the House of Lords, of Fenton and Thornley, which provides that the word accident was an unlooked for mishap or an untoward event, which is not expected or designed. So, whilst in our minds, we have the idea of what an accident is, something, you know, unexpected, something that's outside of the body, something that is violent, that may not always be the way that the courts may interpret an accident to be.

GK

Yeah, I've noticed that on occasion it's not defined. Most of the policies that I've seen or worked with though usually do offer some definition of accident. So, from your experience, Marjorie, can you describe what would be a common accident definition, and maybe when you do that, you could break down the important or key elements for us and explain how do these elements work together to exclude claims which were not intended to be paid under accident.

MC

Sure. So normally, like I said before, the policies would define the word accident to be an event where bodily injury is caused directly and solely by violent, external, and visible means. So, you've got the component a bodily injury and that is caused by and directly and solely, which is meant to exclude everything else. Then we've got the words violent, external, invisible means. These are the key words that we need to consider when thinking about what is an accident from the perspective of the policy. So, if we look at the word violent, and when we think of violent, we tend to think of obvious instances of violence. Like my previous example, you know, being hit by train, that is a violent thing, anybody would agree, and we would obviously think of this as being quite violent, however this requirement might not be so obvious, So, the courts may construe, and it has actually been construed, as being the antithesis of without any violence at all. So, it's quite the opposite. So, it could mean any external cause of death. It could include things such as drowning, which normally we would not think of that as a violent means, but it has been defined as being within the definition of violent. If you look at what violence has been defined as, which is the antithesis of without any violence at all.

And then the other key part of the definition is external and visible means. So again, this is intended to cover anything that is outside of the body itself. So, it's external and visible and refers to the cause of the injury and not to the injury itself. So, what caused the injury has to be something outside of the body and something that is visible.

Using the above example of drowning that cause is external and would be contrasted to causes which are natural causes such as death arising from a disease.

GK

Thanks. That's really great context, Marjorie.

We know that establishing whether the cause was accidental as defined can often be quite tricky. It might be good to explore this concept now through the lens of a claims case study. So, what I thought I'd do is, I'll start by briefly outlining, a case that we've reviewed, and from there, perhaps we can delve into this a little bit deeper.

So, in this case, the insured, for the case study, we'll call him Mr. Jones. He was a 37-year-old man who had taken out accidental death cover three years prior to the claim. He died and his mother submitted a claim on his accidental death policy. The cause of death was noted on the death certificate to be drug toxicity/overdose and claim investigations revealed that Mr. Jones had died as a consequence of a prescription drug overdose. So, the claims investigations revealed that he had been prescribed Endone, which contains the active ingredient Oxycodone and following his Guillain Barre diagnosis, he was prescribed this medication. So, we understand that he had developed a dependence on the drug and he had continued to use it despite his painful Guillain Barre symptoms, having abated.

So, Mr. Jones's accidental death policy has a suicide exclusion and also an exclusion for intentional self-inflicted. In this case, the insurer declined the claim on the grounds that the death was not accidental and that it was excluded under the intentional self-inflicted injuries exclusion cause. What things stand out for you on this case, Marjorie?

MC

It's a very interesting case and there are a few factors, here that we can consider. So firstly, the exclusion clause. There are common exclusion clauses, which provide that a benefit is not payable when the death results from, like you said, suicide or the insured's voluntary action. Normally, you also have exclusions which seek to carve out committing or attempting to commit criminal offenses, accidents that occurred whilst the insured is under the influence of alcohol or non-prescribed drugs and war and riots and things like that. So, the voluntary act exclusion would seem pretty self-explanatory, and this is usually applied to the cases of suicide. So, somebody, and you need to establish intention. So, somebody intended to take their own life, you know, they either took an overdose or did something to end their life, then that would usually be excluded under voluntary acts.

However, this same principle also extends where the insured deliberately courts the risk of injury. So, somebody for example, embarking on a course of action, which is obviously dangerous, such as a case where an intoxicated insured fell to his death whilst balancing on the 13th story balcony wall. In this case, and this is a true case, the court found that his death was risked in undertaking this dangerous feat, as a test of his nerve and was not caused solely by an accident. So, he himself contributed to his death by his actions. However, this is a very fine line and it usually balances upon intention. So, what was the insured's intention when they did what they did?

So, firstly there are two issues to be considered - was the death accidental, and secondly, does the cause of death fall within one or the exclusions. So, if you're looking at your claim, those are really the first two questions that you would be asking yourself when you're assessing. So, the first question would be, does the policy define the word accident, and we just spoke about that. If the term is defined, then the contractual definition would apply. If it does not so define it, then depending on the jurisdiction, we would need to consider the case law.

I would like to add a caveat here, my knowledge lies within Asia Pacific, which is where I work, being a member of the Asia Pacific Legal Team, and I am an Australian trained lawyer, so obviously I have knowledge of the Australian law in this area. So, these issues and the way that I am expressing general legal principles here may not be relevant in other jurisdictions. So, I just wanted to put that out there. So, if somebody says oh that's not how it works in my country, this is why.

So, generally speaking, one of the main considerations is where the accident is considered at law as an unforeseen and involuntary event. The event must be involuntary. That is, you know, whether the effects of the drugs were foreseen or intended. So, did this person intend to take their own life, did they take the overdose. The common law has grappled with this definition, and it has been considered a very difficult task, which it is. It's a really difficult task. So as a result, the question then is whether accident would include the unintended consequences to a voluntary action.

So, in your case study, the person, Mr. Jones, took the drugs, but did he intend the consequence to be his death? So, in circumstances where the insured neither intended nor expected to suffer the injury, and where the injury is not the result of the natural progression of a disease, the claim may be payable. The drug toxicity could be found to be an unintended consequence of the insured taking his medication in the absence of any evidence that the insured intended to end his life by taking the medication.

So, if you had a suicide note, then obviously your consideration would be different, but in this case it doesn't seem like it. So even if he kept taking prescribed medication, did he intend to take his life?

The second question talks about the exclusion. So, does the claim fall within an exclusion? Again, intention comes into play, particularly if the wording excludes intentional self-inflicted injuries, exclusion clauses are narrowly construed usually, very narrowly construed, and so if the insurer is unable to show that Mr. Jones intended for death to occur, then he may not be able to rely on this clause.

GK

And that that's exactly what happened, in this case. The mother of the deceased contested the claim denial and the insurer was forced to overturn the decision and pay the claim on the grounds that there was insufficient evidence to prove that there was that intention there. So, as you said, this is a really interesting case and it tested some of those assessment principles that you spoke of earlier. I'd like to add here however that policies and definitions vary from company to company and region to region. So, while we've offered some guidance here around the application of exclusions for self-inflicted and intentional self-inflicted injuries, it's always important to review each new and unique case on its own individual merit.

MC

Absolutely.

GK

So earlier you briefly touched on how accident policies have been designed to prevent a claim where natural causes are either the reason for the death or where they have contributed to the death, and, from my experience, this is not an uncommon assessment scenario for claims assessors. So, situations such as a heart attack causing a motor vehicle accident or a fall that's been caused by a stroke. I wonder if you might talk about some of the policy wording that help provide insurers some protection in these scenarios.

MC

Sure. So, there are common wordings or usual wordings that insurance companies like to use to try and cover those scenarios that you've set out, and it would also guide the claim assessors, in my view, on what information is required when you're assessing a claim, because assessing an accidental death claim, unless someone got hit by a bus, there was no other contributing cause, then they're quite straightforward. But otherwise, they may actually be quite tricky to assess and quite complex claims to assess. So, usually within the policy you have wording which says, you know, caused solely and directly by an accident. So, the words, solely and directly, they should have the effect of establishing a strong causal link between the death and the accident. This is to prevent claims where other causes have contributed to the death. So, this is by no means water-tight, and the courts have given this requirement a more liberal interpretation, but we see that these words do have, that intention at least is to try and weed out other contributing causes to the death. The other part of the definition or the wording which is quite common, is a requirement that it be independent of any other cause. So, the death be independent of any other cause. This wording should have the effect of preventing claims where there are other factors contributing to the death, such as illness or disease. This will also reinforce a requirement that the death can only ever be as a result of the accident for the policy to respond.

It's important to understand the chain of events. So, if someone had a heart attack and then died of a heart attack whilst driving a car and then crashed the car and died, then whilst it's probably going to be incredibly difficult to ascertain that chain of event, if the doctor's able to say, you know, this person died of a heart attack, and then because they passed out or because they, because they were dead, the car crashed afterwards, then you would rely on this wording to say, well, the death wasn't a result of the motor vehicle accident, it was a result of the heart attack or the stroke, or whatever other natural disease condition contributed to or caused the death.

The definition of accident, which we spoke about like I said, if this is not a defined term, the courts are likely to adopt that definition in Fenton, which is an unlooked for mishap or an untoward event, which is not expected or designed. Which talks about intention again. The most common definition of accident, like we just spoke about is through violent, external, visible means. Whilst these requirements have been given a wide interpretation as opposed to, you know, well sometimes insurance companies would like to have a strict narrow view, defining accident still affords a better chance of assessing the claim properly in accordance with what was intended to be payable than if the term is not defined. So, it's always better to define the word accident.

These definitions also include a requirement that the death occurs within a set number of days following the accident. So, it says, you know, I've seen 365 days. I've seen 90 days.

I've seen 120 days, but there's usually some date limit, and this is helpful because, if the death occurs relatively close to the date of the accident, then it is more likely than not, that the death resulted from the accident and that there are no other intervening factors. So, that's a helpful aspect to have in the definition.

Whilst you may think this is obvious, some people do not include this in their policies, but it is a requirement that death must occur whilst the policy is in-force. So, this is usually contained in the main insuring clause and I say usually, because I've seen policies without it. But it is important when you're assessing the claim to establish that the policy responds to the death of the insured person and that the death must occur within the period of risk. So, this is intended to prevent situations where the accident might have happened whilst the policy was in-force, but the death occurred after the policy has lapsed.

GK

Yeah, that's a really good point. It's the death that's the trigger for the payment and not the accident, even though the accident is required in order to, to facilitate a valid claim.

Marjorie, thank you so much for your analysis and insights, and a very interesting discussion. I'm sure our listeners have found it informative and helpful as well. Just before we wrap up, I just wanted to ask, are there any final important points or takeaway tips that you'd like to leave our listeners with?

MC

I think the biggest tip that I would say whilst assisting in complex claims or even running, or helping run litigation in disputed claims, is that, and you may think this is very obvious, but I have come across so many situations where claims assessors do not actually look at the policy and the definition and may not fully understand how the policy works. This is very important because this is the basis of the obligations between insurer and the insured. So, unless the claims assessor understands how the policy works and how the definition is worded and what the requirements are, it's going to be really difficult to gather the correct information and even to make the right decision. So, that whilst it may seem obvious, it's something that I have seen missed time and time again because usually you think, OK, I know what this policy says, I've seen so many, I don't really need to look at it. But, it's very important to actually go to the right policy, open it up, have a look at it, and always, you know, speak to your legal counsel, because these are drafted by legal counsel. So, whilst we may think, oh, we know how it works, there may be things that we may miss, you know, claims managers may miss, so have a read of it. If you don't understand or if it's something that's a bit confusing, then speak your legal counsel and then start your assessment of the claim.

GK

Yeah, that's a really good point. Thank you. Thank you for reiterating that one.

We can easily start to see how accidental death claims can become quite intricate. As with all claims, as you said, it's important to start by clearly understanding the definition and the exclusion wording and remember that every accidental death claim is different. It's a good idea to engage your own in-house legal team on all complex cases.

Thanks again Marjorie, it's been great to have you here, and thank you for a really interesting discussion.

MC

Thank you, Gayle. It was my pleasure.

GK

Thank you also to our listeners for tuning in today to this episode of Take10 and listen out for the next episode of Take10 in this life claims series, coming soon.

Speakers



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