



Take10 Podcast Transcript

A Quiet Truth: A discussion on death by suicide and the burden of proof

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GK

Welcome back to RGA's Take10 podcast series. Today's podcast contains content about Suicide. If you are impacted by any of this content, remember help and support is available at www.findahelpline.com

Tragically approximately 800 thousand people across the globe suicide each year. Consequently, from an insurance perspective, this is not an insignificant cause of claim. Claims for suicide aren't always complex, but they can often become so, for many different reasons, but predominantly, because it can be very difficult to prove or disprove that suicide is the cause of death.

I'm Gayle Kanchanapume, Executive Director and Value Add Specialist with the Global Claims Team at RGA, and I'm delighted to introduce Anchen Winkel, Senior Claims Consultant with RGA South Africa and Basil Rajah, Legal Counsel to RGA South Africa, who will be discussing suicide claims for Take10 today.

AW

Thank you, Gayle, it's good to be here.

During our discussion we are going to explore the factors that claims assessors should consider when managing a case where suicide is suspected and also offer guidance around distinguishing suicide from an accident.

Now, the most effective way to do this is through a case study. So, Basil, let me briefly outline a case for you, then we can delve into some of the challenges that this scenario presents.

In this claim, the insured was a 52-year-old man who had taken out life cover in the amount of 250 thousand US dollars. This policy had a two-year suicide exclusion clause, meaning if he died as a consequence of taking his own life within those first two years of cover, no claim would be payable.

Sadly, he did die within the first two years, and the cause of death was suspected suicide, however, his family strongly contested this allegation and insisted his death was accidental.

I'm interested to get your views Basil. Who has the burden of proof here, and perhaps when you answer that question, you can also explain what burden of proof means?

BR

Burden of proof is also called the onus. Simply put, who has the duty to prove his or her case. He who alleges must prove, is the legal principle. In the case of insurance, this can either be the claimant where the insured is deceased or the insured when making a claim for payment. However, if there is an exclusion applied by the insurer, such as suicide, then the insurer has the burden of proof. The legal principle is that if there's a conflict, the exclusion must be interpreted in favor of the insured. So, in the case of a suicide exclusion, the insurer has the burden of proof to show, on the balance of probabilities, the insured committed suicide within the suicide exclusion period.

AW

I noticed you mentioned balance of probabilities just then Basil. Can you explain for listeners what we mean by that, in the context of a claim?

BR

Yes, it is an evidentiary standard used in a burden of proof analysis. Under the standard, the burden of proof is met when a party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. Thus, the insurer would need to show that there is a greater than 50% chance that its claim of suicide is true.

AW

So, with the case example I provided and the evidence as it stands, what principles should be applied to the assessment of this evidence, where suicide is suspected, but not proven?

BR

One has to draw a distinction between direct evidence and circumstantial evidence. Direct evidence means there are eyewitness to the event or act, in this case suicide. Circumstantial evidence refers to the indirect evidence occasioned at, or about the scene of death. For example, fingerprints, DNA etc, where there is no direct evidence, the circumstantial evidence must be as assessed by inferential reasoning.

Inference means a conclusion reached based on evidence and reasoning. The true inquiry is whether a court can, from the totality of evidence, draw inferences in accordance with the rules of logic. The evidence must be weighed as a whole.

AW

That is an important point you make there Basil. That evidence must be assessed as a whole and in its entirety.

There is an important guidance message here for claims assessors, and that is to avoid a piecemeal approach to the adjudication of a claim.

BR

Yes, that's exactly right Anchen. One must always consider the cumulative effect of all items. In essence, the following should be taken into consideration amongst others: all probabilities, the reliability and opportunity for observation of the respective witnesses; the absence of interest or bias; the intrinsic merits or demerits of the testimony itself; inconsistencies or contradictions; corroboration. It is however important to distinguish inferences and probabilities from conjecture, that is guesswork and speculation.

AW

Thanks. That's great background for us Basil. Let me now delve further into this case and give you a few more facts.

The post-mortem concluded that the insurer died from a gunshot wound to the chin at approximately 3:00 in the morning, the insurer received two police reports. One from the detective on the scene and the other from a second detective, some four months later, these reports contained different facts.

The detective on scene noticed that the rifle was found closest to the body and the motor vehicle was found with all four doors open, near three empty bottles of hard liquor. He felt that suicide was a possibility. The second police detective did not attend the scene. He indicated that the body was found on top of the rifle and inferred that it was likely an accident.

Additional evidence confirmed that the deceased had been at a barbecue earlier that evening but excused himself to go packing for a golf trip. It was also noted that he was familiar with weapons as he and his son regularly did target shooting in a nearby area. No inquest report was received, and no blood alcohol test was done.

Now, given that background Basil, what are your thoughts on this particular case? Can you talk to us about the assessment of the evidence by the insurer and whether the required principles of burden of proof, balance of probabilities and rules of logic were adhered to.

BR

We consider the evidence of documented suicide findings as per medical legal journals and case law. Some characteristics of suicide are that one third of cases happen in public while two thirds take place in private or in secluded areas. Gunshot wounds to the head are usually at the temple or in the mouth where handgun is used or under the chin where a rifle or shotgun with a longer length is used.

There are sometimes suicide notes and usually also the presence of alcohol and drugs. Males are more likely to die of suicide than females. One must reconstruct the scene of death with the objective and proven facts. Then one has to draw the most probable inference from the proven facts. Thereafter, one must weigh up the probabilities for and against suicide. Consider putting the probabilities on two competing scales and observe, which is the heavier scale. Let us commence with our assessment of the evidence and draw the most likely inferences.

We will start with the post-mortem report. This report documents the nature of the injuries and the cause of death. It is completed by a qualified medical doctor and carries a high evidential weight.

Importantly, the nature of the injuries as per the post-mortem report must be consistent with suicide. The main post-mortem findings, whether the deceased died as a result of a single gunshot to the chin. And the estimated time of death was three o'clock in the morning.

AW

What about the place and time of death? What did these tell us about probable cause?

BR

The place of death was a secluded place near the perimeter of the insurance farm in the early hours of the morning. A reasonable question arising is, what the insured was doing alone at that time in the night, in a secluded area of his farm, far from his house. It is unlikely that he was there to do any target practice at that time, or any farming work in the dark.

This is not reasonable normal behavior. The most probable inference drawn is that he went there to commit suicide.

AW

Can we make any conclusions from the fall and the rifle that was used?

BR

Yes, this is very important. When falling the instinctive defensive reflex action is to bring the hands up and attempt to break the fall, protecting the face. The insured was a heavy man weighing 103 kgs, a fall to the ground from a standing position would yield injuries. The absence of injuries to the chest, abdomen and limbs suggest that he was possibly in a kneeling position, which effectively broke the fall after the shot was fired. We can conclude that on a balance of probabilities, he did not fall.

There is also the length of the rifle, versus the height of the insured and the direction that the rifle pointed. Having reconstructed the scene and positions of the insured and the rifle, it is plausible that it could have held the muzzle of the rifle under his chin whilst kneeling, using the ground to support the barrel.

Lastly, on the issue of whether the gun may have misfired, it is noted that the gun was new, so this is unlikely.

AW

You have given us so much to think about already Basil. Any last considerations that you would like to mention.

BR

Yes, just a few last comments on alcohol and a suicide note.

Alcohol is one of the characteristics of a suicide scene. From the police evidence, it appeared that he consumed a large quantity of alcohol before the gunshot was fired. This probably affected his motor and sensory coordination and gives rise to the inference that he did not contemplate driving back. The four doors off the vehicle were found open and suggest that he spent a long time contemplating the shooting.

I know that one of the first questions are usually about a suicide note. The fact that there were no financial problems, or a suicide note would not in itself rule out a suicide finding.

In conclusion, we find that on a balance of probabilities, the scales weigh in favor of suicide and not in favor of accidental shooting.

AW

Thank you, Basil.

This is both a very sad, yet interesting case and one that highlights the need to obtain as much information as possible to accurately weigh up the evidence and draw an informed conclusion. As claims assessors. We must also keep in mind that suicide or suspected suicide claims are always a sensitive matter for all parties involved. I would like to thank you for your detailed analysis and your counsel around the important considerations for claims assessors.

BR

Thank you Anchen, my pleasure.

AW

While we have shared some recognized principles with you today, it of course goes without saying that every suicide case is different and that it's very important to make sure that you engage your own in-house legal team on all complex death claims.

GK

Thank you to both Anchen and Basil for a very interesting discussion and thank you to our listeners for tuning in to this episode of Take10.

Listen out for the next episode of Take10 in this life claims series when we will be discussing accidental death claims.

Speakers



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