IADC COMMITTEE NEWSLETTER
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INSURANCE AND REINSURANCE

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IN THIS ISSUE

Massachusetts Court determined that by reducing the flow of oxygen to his brain attempting to create sexual pleasure, a man died as a result of his own actions and not as a result of an unforeseeable accident. Under the terms of the man's insurance policy, his widow was not entitled to Accidental Death benefits.

Court Cuts Off Oxygen to Autoerotic Asphyxiation Insurance Claim

ABOUT THE AUTHOR

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ABOUT THE COMMITTEE

The Insurance and Reinsurance Committee members, including U.S. and multinational attorneys, are lawyers who deal on a regular basis with issues of insurance availability, insurance coverage and related litigation at all levels of insurance above the primary level. The Committee offers presentations on these subjects at the Annual and Midyear Meetings. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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To the average person, what constitutes an "accident" is likely clear. If someone trips and falls—in most instances, it would be considered an accident. If someone bumps her head getting out of a car—it's probably just an accident. And if someone were to drop something heavy onto his foot—it would likely be deemed a careless accident. So it seems axiomatic that if in everyday life we can determine what constitutes an accident, it should be easy to determine whether an injury or death is caused by that accident, right? Maybe in everyday day life the answer in fact would be easily discernable.

But, as with many seemingly simple everyday concepts, in the context of the law, what constitutes an "accident" can be a bit less clear and accordingly what injuries are caused by an "accident" are even more difficult to discern. Throw issues related to insurance contracts or benefit plans into the mix and it becomes even murkier. In the context of life, health, & disability insurance, some contracts or benefit plans may provide enhanced coverage or benefits in the event an injury or death occurs because of an "accident." Conversely, other contracts may have coverage exclusions if injury or death were to be self-inflicted or self-caused and not truly the result of an "accident." The analysis of, the seemingly simple concept of whether injuries arose from an accident, are therefore not quite as easy as they may seem when you consider principles of law.

In the context of insurance coverage, various situations can give rise to these fact patterns. For instance, did someone who crashed her vehicle into a ditch while intoxicated die by "accident" such that an accidental death benefit insurance provision would become payable? Did someone walking precariously along a cliff on top of the barrier wall when he fell to his death die of an "accident" or did he know that his demise was a likelihood; or maybe he even intended to fall? Of course the law varies by jurisdiction, as does the language in different insurance policies or benefit plans. Looking to whether the insured expected to die or live or whether an average person in the insured's position would have expected to die or live, the answers given by courts can be fact and jurisdiction specific.

An order issued by the United States District Court for the District of Massachusetts in April highlights a fact pattern that is treated differently in different courts.[1] The order issued in the case of *Wightman v. Securian Life* also highlights a fact pattern that is more frequently litigated than might be expected—death related to autoerotic asphyxiation. Autoerotic asphyxiation is "a state of intentionally induced (as by smothering or strangling oneself) so as to heighten sexual arousal during masturbation."[2] In *Wightman* the crux of the

[1] *Wightman v. Securian Life Insurance Co.* 2020 WL 1703772 (D. Mass. 2020).

[2] *Merriam-Webster.com Dictionary*, s.v. "autoerotic asphyxiation," accessed May 16, 2020, https://www.merriam-webster.com/dictionary/autoerotic%20asphyxiation.

matter was whether the deceased insured, Dr. Wightman, who died while engaging in autoerotic asphyxiation, by his actions precluded his widow from receiving all the benefits under a life insurance policy on Dr. Wightman's life.

Through his employer, Dr. Wightman was enrolled in life insurance coverage and $300,000 of additional "Accidental Death" coverage. Under the terms of the Accidental Death benefit, an additional $300,000 would be due and payable by the insurance company were the death or dismemberment to be caused by an event, which was "unintended, unexpected and unforeseen." Further, the policy specifically excluded Accidental Death coverage when the death is caused by suicide or attempted suicide, whether sane or insane, and intentionally self-inflicted injury and attempted self-inflicted injury, whether sane or insane. After Dr. Wightman's death, his widow made a claim for death benefits under the insurance policy. The insurer paid a portion of the amount claimed by the widow but refused to pay the $300,000 benefit for Accidental Death coverage. The widow of Dr. Wightman ultimately sued.

The rationale put forth by Securian Life for its denial of the Accidental Death benefits related to the nature of Dr. Wightman's death and its determination that his death was not in fact an accident. The evidence showed that in the 1990s Dr. Wightman began spending time speaking with individuals in Internet chat rooms and developed an interest in asphyxia. Dr. Wightman had sought treatment for his interest in sex-related strangulation. But in 2016 Ms. Wightman found her husband's naked and unmoving body in the bathroom with a belt looped around his neck; the belt was then looped over the top of the bathroom door. Information on Dr. Wightman's phone and evidence at the scene pointed to autoerotic asphyxiation. The local medical examiner determined his death was an "accident" and attributed it to "autoerotic asphyxiation (hanging)."[3]

Ms. Wightman filed a claim for benefits under the policy seeking the $300,000 Accidental Death benefit. Securian Life denied the claim based on the insurance policy's exclusion for intentional self-inflected injury or attempted self-inflicted injury. The trial court ultimately agreed with Securian Life's position and upheld the denial of benefits. Applying the standard articulated by the Seventh Circuit Court of Appeals in *Wickman v. Northwestern National Insurance Co.*[4] the court applied a three-part test to determine whether a death constitutes an accident under an accidental death insurance policy. Under the first prong of the test, a court should consider the expectation of the insurer. Second, if the insured did not expect the type of injury suffered, the inquiry turns to whether that expectation was reasonable. Finally, if the insured's subjective expectation cannot be determined based on

[3] *Wightman*, 2020 WL 1703772 *2

[4] *Wickman v. Northwestern National Insurance Co.*, 908 F.2d 1077 (1st Cir. 1990)

the evidence that is available, an objective analysis must then be conducted to determine an objective expectation.

The *Wightman* court determined that it did not have to reach the third prong of the *Wickman* test because Dr. Wightman's "expectation of survival is undisputed."[5] Even if Dr. Wightman did not intend to kill himself, the court determined that Dr. Wightman did expect to commit asphyxiation and that "therefore, loss of oxygen cannot be considered unexpected, unintended or unforeseen."[6] And in this instance, Dr. Wightman failed to put any safety mechanisms in place that would save him in the event he lost consciousness when he did lose oxygen. The only safety mechanism that would have worked for Dr. Wightman required that he be able to fully stand and straighten his legs; something he was unable to do once he lost consciousness due to asphyxia. Accordingly the court rejected the notion that Dr. Wightman's actions only inflicted oxygen-euphoria without further injury or death. The court specifically noted: "When an individual purposely places a belt around his neck, purposely employs that belt to cut off blood flow, and ultimately dies from the very strangulation which he initiated, that person has died from one continuous self-inflicted injury."[7] Accordingly, the decision by the insurer to deny the Accidental Death benefits was upheld because under the terms of the policy at issue, Mr. Wightman did not die as a result of an "accident."

The decision by the court in *Wightman v. Securian Life* highlights a split in the federal circuits as it relates to Accidental Death benefits and autoerotic asphyxiation.[8] Some courts are more willing to find an expectation of survival in these instances despite the high risk of death. As with all types of insurance coverage, the specific language of the policy or plan and the governing law will be key in determining whether the "accident" is just an accident in the real world or also in the realm of the law.

[5] *Wightman,* 2020 WL 1703772 *4
[6] *Id.*
[7] *Id.* at 7.
[8] *See, e.g., Tran v. Minnesota Life Insurance Co.*, 922 F.3d 380 7th Cir. 2019)(Without establishing a *per* se rule on coverage related to autoerotic asphyxiation, based on language in policy at issue, Court determined that death due to hypoxia during autoerotic asphyxiation was a self-inflicted injury and accidental death benefits were denied); *Critchlow v. First UNUM Life Insurance Co. of America,* 378 F.3d 246 (2nd Cir. 2004)(noting death while engaging in autoerotic asphyxiation did not fall within the definition of "intentionally self-inflicted injury"); *Padfield v. AIG Life Ins. Co.*, 290 F.3d 1121 (9th Cir. 2002)(determined insured died from a fatal "mistake" and not an intentional injury during autoerotic asphyxiation and that accident insurance is generally for the purpose of protection against such miscalculations or misjudgments)

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