NOTES

INSURANCE: APPLICABILITY OF THE MISSOURI SUICIDE STATUTE TO ACCIDENT POLICIES AND DOUBLE INDEMNITY PROVISIONS OF LIFE INSURANCE POLICIES

A Missouri statute[1] provides that "in all suits upon policies of insurance upon life . . . it shall be no defense that the insured committed suicide . . . ." The courts have long interpreted this statute as applying to accident policies and to double indemnity provisions,[2] as well as to life insurance policies.[3] However, this interpretation of the statute has recently been nullified by a decision of the St. Louis Court of Appeals.[4] It is the purpose of this note to examine the statute and evaluate its effect in the light of the recent decision.

The Missouri suicide statute was first enacted in 1879 to invalidate stipulations commonly inserted in insurance policies to exclude coverage in the event the insured commits suicide.[5] In the 1898 case

1. Mo. Rev. Stat. § 376.620 (1949).

2. Logan v. Fidelity & Cas. Co., 146 Mo. 114, 47 S.W. 948 (1898). All subsequent cases dealing with the statute's effect upon accident policies have adopted this interpretation. See, e.g., Kaskowitz v. Aetna Life Ins. Co., 316 S.W.2d 132 (Mo. App. 1958); Aufrichtig v. Columbian Nat'l Life Ins. Co., 298 Mo. 1, 249 S.W. 913 (1923); Scales v. National Life & Acc. Ins. Co., 212 S.W. 8 (Mo. 1919). But cf. Ticktin v. Fidelity & Cas. Co., 87 Fed. 543 (W.D. Mo. 1898).

A double indemnity provision in a life insurance policy is a form of accident insurance and is treated as such by the courts; therefore in this note the term "accident policy" will be used generically to cover both forms.

3. Knights Templars' and Masons' Life Indemnity Co. v. Jarman, 187 U.S. 197 (1902). But the statute does not apply to fraternal benefit insurance, Tice v. Knights of Pythias, 204 Mo. 349, 102 S.W. 1013 (1907); nor to stipulated premium insurance, Baker v. National Home Life Ins. Co., 239 Mo. App. 990, 195 S.W.2d 912 (1946); although it does apply to policies issued on the assessment plan, Bowers v. Missouri Mut. Ass'n, 333 Mo. 492, 62 S.W.2d 1058 (1933) (dictum); Andrus v. Business Men's Acc. Ass'n, 283 Mo. 442, 223 S.W. 70 (1920).

4. Kaskowitz v. Aetna Life Ins. Co., 316 S.W.2d 132 (Mo. App. 1958).

5. These clauses are necessary because the weight of American authority holds that death by suicide is not impliedly excepted from the risks an insurer assumes under a life insurance policy. Vance, Insurance § 94, at 560 (3d ed. 1951). However, for a time the federal and some state courts held that there was such implied exclusion on grounds of public policy. Ritter v. Mutual Life Ins. Co., 169 U.S. 139 (1898). The latter position has now been generally repudiated. Northwestern Mut. Life Ins. Co. v. Johnson, 254 U.S. 96 (1920). For a general discussion of the problems of suicide coverage see Fallon, Coverage and Suicide in Life Insurance, 58 Dick. L. Rev. 1 (1953).

of *Logan v. Fidelity & Cas. Co.*,[6] the Missouri Supreme Court was presented with the sole issue of whether or not the statute was applicable to accident policies. The court held that an accident policy was a policy of insurance upon life within the meaning of the statute and allowed recovery, the statute barring the insurer's defense based on the stipulation excluding suicide from coverage. It does not appear from the report of the case whether the insured was sane or insane at the time of the suicide. Furthermore, because of the insurer's willingness to limit the issue, the court did not concern itself with the distinction long recognized by all courts that suicide while sane is not an accident but that suicide while insane is an accident,[7] the reason generally given being that the condition of insanity itself is a risk undertaken by the insurer.[8] Following the *Logan* decision the statute was broadly interpreted in the 1910 case of *Applegate v. Travelers Ins. Co.*[9] There the St. Louis Court of Appeals held that an accident policy clause, which denied the right of recovery if death were by poisoning, could not be a defense to the insurer where death by poisoning was suicidal. The court presaged future developments by reasoning that such an exclusionary clause would be used by insurers to annul the effect of the statute on accident insurance.[10]

It was not until 1919, in the decisions of *Brunswick v. Standard Acc. Ins. Co.*[11] and *Scales v. Nat'l Life & Acc. Ins. Co.*,[12] that the court questioned these early decisions for their failure to differentiate between suicide while sane and suicide while insane. In both cases suit on accident policies had been brought to recover when the insured had committed suicide while sane. In both cases the supreme court denied recovery on the ground that a suicide while *sane* was not within the coverage of the policy because only suicide while *insane* is an accident. The statute might invalidate the clause excluding suicide from coverage where the suicide was committed while insane but in the case of sane suicide there would be no cause of action at all. The statute, said the court, merely abolished the insurer's defense of suicide and did not write into the policy a cause of action where none existed upon the facts.[13]

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6. 146 Mo. 114, 47 S.W. 948 (1898).

7. Vance, op. cit. supra note 5, § 95, at 566. The test for determining the difference between suicide while sane and suicide while insane was established for Missouri in Rodgers v. Travelers Ins. Co., 311 Mo. 249, 278 S.W. 368 (1925) and Lemmon v. Continental Cas. Co., 350 Mo. 1107, 169 S.W.2d 920 (1943).

8. Vance, op. cit. supra note 5, § 94, at 563-64.

9. 153 Mo. App. 63, 132 S.W. 2 (1910).

10. Id. at 87-90, 132 S.W. at 10-11.

11. 278 Mo. 154, 213 S.W. 45 (1919).

12. 212 S.W. 8 (Mo. 1919).

13. 278 Mo. at 169, 213 S.W. at 49; 212 S.W. at 9-10.

The reasoning of the *Scales* and *Brunswick* cases was applied in 1943 to effect a reversal of the *Applegate* decision. Like the *Applegate* case, the case of *Fields v. Pyramid Life Ins. Co.*[14] was concerned with suicidal poisoning while insane and a policy clause specifically excluding liability for death caused by poisoning. In the *Applegate* case the court had held that such a clause was ineffective where the poisoning was suicidal because otherwise the intent of the statute with regard to accident policies would be defeated. In the *Fields* case the court, employing the rationale of the *Scales* and *Brunswick* decisions that the statute had not enlarged the insurer's obligation under the policy, concluded that inasmuch as death was by poisoning, and the policy excluded poisoning from coverage, there could be no recovery even though the poisoning was suicidal. The statute removed the insurer's defense where the suicide was committed while insane, but it did not remove the defense of no liability for poisoning.

In the 1958 decision in *Kaskowitz v. Aetna Life Ins. Co.*,[15] the reasoning of the *Fields* case was extended to the common exclusionary clause pertaining to death resulting from mental disease or infirmity. The insured had committed suicide while insane by jumping to his death from a sixth floor window. The policy contained no exclusion pertaining to death from falls, but the court denied recovery on the basis of another clause excluding from coverage death resulting from mental disease. The court found that the purpose of the latter exclusionary clause was not merely to evade the statute, but was to exclude from coverage all accidental deaths caused by mental disease.[16] Since such a clause is inserted in accident policies because of the increased likelihood of accidental injury to persons of unsound mind, its purpose is broader than the mere exclusion of an insane suicide.[17]

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14. 352 Mo. 141, 176 S.W.2d 281 (1943).

15. 316 S.W.2d 132 (Mo. App. 1958).

16. Id. at 138

17. An opposite opinion was expressed by the Kansas City Court of Appeals in Spillman v. Kansas City Life Ins. Co., 238 Mo. App. 419, 180 S.W.2d 605 (1944), where the insurer's defense based upon a clause excluding death caused by mental disease was essentially the same as in the Kaskowitz case. The court stated that the exclusion of double indemnity recovery "for death resulting from self-destruction, while sane or insane," followed by another exclusion for death resulting from "any kind of illness, disease or infirmity" did not bar recovery even though insured had shot himself while insane, because to give effect to such clauses would defeat the intent of the suicide statute. But because the court also found the effect of the separate policy exclusions to be ambiguous, it therefore held that the law would not look for the cause of death farther than the active, efficient and procuring cause, i.e., the gunshot wound, for which there was no exclusion in the policy. On review, State ex rel. Kansas City Life Ins. Co. v. Bland, 353 Mo. 726, 184 S.W.2d 425 (1945), the Missouri Supreme Court held that the

Clearly the result of the *Fields* and *Kaskowitz* decisions is, in effect, to nullify completely the applicability of the suicide statute to accident policies. The *Fields* case held that a policy exclusion of death by a certain *means* was not merely a device for evading the statute and would bar recovery if the insured fell within its limitation. But this decision still left the effect of the statute at least partly intact, since an accident insurer desiring to limit its liability for suicide while insane would have to exclude so many means of accidental death also used in committing suicide that the policy would have lost its salability. In this respect the more reaching effect of the *Kaskowitz* decision is obvious; the exclusionary clause there goes not to the *means* of death, but to the very *condition* on which all recovery for suicide under an accident policy is based, i.e., mental disease and infirmity. Thus the result of the *Kaskowitz* decision is that insurers have the way open to make the application of the suicide statute to accident policies a nullity by the simple method of relying on the clause which excludes from coverage accidental death resulting from mental disease and infirmity. Such a clause will exclude a suicide while insane from coverage, and since a suicide while sane is not an accident and so is not covered, there will be no basis for application of the suicide statute to an accident policy.

Evaluation of this result necessarily leads back to the question of whether the original decision in the *Logan* case, that the suicide statute applied to accident policies as well as life policies, was correct. The only evidence remaining of the intent of the 1879 legislature is the statute itself. Even the court in the *Logan* case relied only on the plain meaning of the words in reaching its conclusion. The basis for the decision was that despite the fact that accident insurance was issued by a different type of company, and despite any classification of insurance policies made for purely business reasons, accident insurance was nevertheless insurance upon life.[18] The reasons for doubting the correctness of this judgment today are that the Missouri courts have effectively nullified this doctrine, although still adhering to it in name, and that no other state having a similar suicide statute applies it to accident insurance.[19] Furthermore, there appears to be,

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Kansas City court was entitled to find the policy ambiguous, and that the decision really rested on that ground, and not on the ground that the exclusionary clauses would defeat the suicide statute. The court in the Kaskowitz case pointed out that the policy provisions there involved contained no such ambiguity, inasmuch as the exclusionary clause read, "resulting directly or indirectly, wholly or partly, from bodily or mental infirmity . . . even though the proximate or precipitating cause of death is accidental bodily injury." 316 S.W.2d at 134.

18. 146 Mo. at 122-26; 47 S.W. at 950-51.

19. Vance, op. cit. supra note 5, § 95, at 566. Including Missouri there are thirteen states which have some sort of suicide statute with regard to insurance.

contrary to the conclusions of the *Logan* case, a practical reason for drawing a distinction on policy grounds between life and accident insurance for purposes of the statute. This reason lies in the basic difference between what is contemplated by the parties to a life insurance contract and what is contemplated in an accident or double indemnity policy. In the former, the insured seeks indemnification for an event which surely must happen, and his policy has the character

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Of the twelve other than Missouri, ten have statutes similar in nature to the Missouri statute, but in no state other than Missouri is the statute either judicially or legislatively applied to accident insurance. Ariz. Rev. Stat. Ann. § 20-1226 (1956) (life insurance); Colo. Rev. Stat. Ann. § 72-3-23 (1953) (life insurance; specifically does not apply to accident insurance or to parts of life insurance policies insuring against accidental death); Ill. Rev. Stat. c. 73, § 945 (Supp. 1958) (mutual benefit assessment company); La. Rev. Stat. Ann. § 22:170 (1951) (life insurance; specifically not applicable to provisions of life policy for accidental death benefits); Nev. Rev. Stat. § 688.300 (1957) (fraternal benefit societies); N.Y. Ins. Law § 155 (life insurance); N.D. Rev. Code § 26-0324 (1943); Okla. Stat. Ann. tit. 36, §§ 2722, 4024 (Supp. 1957) (fraternal benefit societies; life insurance); Utah Code Ann. § 31-22-7 (1953) (life insurance; specifically not applicable to accident policies nor to accident or double indemnity provisions of a life policy); Va. Code § 38.1-437 (1950) (life insurance). All of these statutes permit the insurer to exclude from risks covered suicide committed within the first or second policy years, but thereafter they must cover all deaths by suicide. The Missouri statute goes farther and invalidates a defense based on suicide whenever the insured kills himself, unless it can be proved the policy was taken out in contemplation of self-destruction.

The Minnesota and Texas statutes are somewhat different in nature. Minn. Stat. Ann. § 63.235 (Supp. 1958) provides that suicide of the insured *is* a proper defense against any claim for double indemnity for accidental death on a certificate of an assessment benefit association even after passage of two years when the certificate would otherwise be incontestable except for non-payment of premium. Tex. Rev. Civ. Stat. Ann., Insurance Code, art. 3.45 (Vernon 1952) allows an insurance company to issue a policy promising a benefit less than the full benefit in case of death of the insured by suicide; art. 14.20 allows the same on a mutual assessment policy; both articles specify that they are not applicable to accident policies.

In Colorado and Utah the suicide statutes were at one time, like Missouri, interpreted as applying to accident insurance. Officer v. London Guarantee & Acc. Co., 74 Colo. 217, 220 Pac. 499 (1923); Carter v. Standard Acc. Ins. Co., 65 Utah 465, 238 Pac. 259 (1925). In both states, however, these decisions have been reversed by the legislatures amending the suicide statutes to expressly exclude accident polices and double indemnity provisions from their scope. The Colorado statute was amended in 1935 and the Utah statute in 1931. See note, legislative history, Colo. Rev. Stat. Ann. § 72-3-23 (1953) and Utah Code Ann. § 31-22-7 (1953). Prior to the amendment the Colorado decisions closely paralleled the later developments in Missouri. Compare New York Life Ins. Co. v. West, 102 Colo. 591, 82 P.2d 754 (1938), with the Missouri case of Fields v. Pyramid Life Ins. Co., 352 Mo. 141, 176 S.W.2d 281 (1943); and compare Vann v. Union Cent. Life Ins. Co., 140 F.2d 611 (10th Cir. 1944), with Kaskowitz v. Aetna Life Ins. Co., 316 S.W.2d 132 (Mo. App. 1958).

of an investment in which only the date of payment is uncertain.[20] The insurer, on its part, is aware that it has a certain obligation. On the other hand, in the case of accident or double indemnity insurance, the insured seeks indemnification for an event which may never happen at all,[21] and his expectation is one of a bonus to be paid in case he dies by unnatural means. The insurer expects only to be liable upon the happening of some unexpected and unforeseeable occurrence. Conceding that there are policy reasons for protecting the beneficiary of an insured who commits suicide when covered by life insurance, where the insurer accepts the liability for the death *itself*, these reasons for protecting the beneficiary do not exist in the case of accident insurance where the insurer has agreed to assume liability only on the occurrence of an *accidental* death. In the latter instance the parties did not contemplate a payment based on the mere fact of death, but realized that death must result from a more specific, i.e., accidental, cause. There is therefore no reason why the insurer should be prevented from specifying which causes of death are included in its coverage.

It is the firm holding of the Missouri courts that the suicide statute was not intended to enlarge the rights of a suicide's beneficiary, nor give him any preference over the beneficiary of a non-suicide where both policies exclude from coverage death by certain causative means or mental condition.[22] If the statute gives no preference to a suicide's beneficiary, its only effect is to bar an insurer from excluding from coverage the fact of suicidal death itself. Since death per se is not covered by accident insurance, as it is by life insurance, the statute should only apply to the latter. Seemingly the Missouri courts have never realized the inherent inconsistency of saying that the statute does not enlarge recovery but yet applies to accident insurance. The *Kaskowitz* decision shows this inconsistency conclusively, and it only remains for the courts to recognize it by expressly overruling the *Logan* case.[23]

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20. Vance, op. cit. supra note 5, § 179, at 943.

21. Ibid.

22. Kaskowitz v. Aetna Life Ins. Co., 316 S.W.2d 132 (Mo. App. 1958); Fields v. Pyramid Life Ins. Co. 352 Mo. 141, 176 S.W.2d 281 (1943); Brunswick v Standard Acc. Ins. Co., 278 Mo. 154, 213 S.W. 45 (1919); Scales v. National Life & Acc. Ins. Co. 212 S.W. 8 (Mo. 1919).

23. The effect of overruling the Logan case would also be a refusal to follow the result of Whitfield v. Aetna Life Ins. Co., 205 U.S. 489 (1907), wherein the United States Supreme Court held that the statute likewise barred a clause which did not exclude recovery in the event of suicide but which merely limited recovery to a fraction of the face value of the policy. If an insurer can limit his liability altogether, as in the Kaskowitz case, there would appear to be no more reason for not permitting him to give a fractional benefit in the event of suicide.