"Accidental Death" and "Accidental Means" life insurance policies: What's the Difference?

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Introduction

California maintains a distinction between "accidental death" and "accidental means" policies. The rule established by the Supreme Court of California for recovering under accidental-death policies is that the death must be unexpected or unintended. No other "accident" or event is actually required. The rule is *not* that the death must be caused by some external unanticipated force, or that death by "natural causes" is excluded. These arguments have been made over the course of many years by the insurance industry, but they have been rejected because an insurer who wants to sell coverage that does not include death by "natural causes" or death without some unexpected external force can simply sell a different type of insurance: accidental-means coverage.

California law distinguishes between an accidental-death and an accidental-means policy as well as a standard life-insurance policy. In essence, there are three types of coverages for life insurance under California law. (It should be noted, however, that accidental-death and accidental-means policies are a type of disability insurance.)

The insurance industry nevertheless still argues fervently that for both an accidental-means policy and an accidental-death policy that there must be some external force that causes the death to occur. In making this argument the industry never acknowledge what is different between these two types of coverage. It just argues that the requirement for there to be an external force that causes the death is required for both types of coverage. That part, according to the insurance industry is the same.

But what is different—according to the insurance industry—between an accidental-death and an accidental-means policy? This question is never answered. Instead, the insurance industry argues that policyholders are seeking to turn

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accidental-death policies into standard life-insurance policies. But this is untrue. A standard life insurance policy covers claims for deaths that are expected—and even those that are intended after the usual two-year exclusion for suicide ends. See, e.g., *Malcom v. Farmers New World Life Ins. Co.* (1992) 4 Cal.App.4th 296, 298.

By contrast, an accidental-death policy does not pay claims for deaths that are expected or intended. For example, suicide is generally covered under a standard life-insurance policy that is more than two years old. Suicide would never be covered under an accidental-death policy. Second example: an insured has been diagnosed with cancer and is told he has two months to live. He dies in two months. His death is expected. It is covered under a standard life-insurance policy, but would not be covered under an accidental-death policy. This is the distinction. It is quite clear what the difference between all three coverages is. The insurance industry can tell you what is the *same* between accidental-death and accidental-means policies. It cannot tell you what is *different* between them.

Now, the astute reader may wonder if a policy is called an accidental-death policy, why should deaths that occur due to "natural causes" be covered? Is not a death by natural causes not an "accident"? Does not an accidental-death policy by its very title suggest that deaths by natural causes are not covered? Perhaps if this issue were one of first impression in California, courts could consider such arguments. But this is not an issue of first impression. The courts in California have for nearly a century maintained that accidental-death policies are different from accidental-means policies. How are they different? The answer has been repeated over and over by the courts. The California Supreme Court revisited the issue most recently in 1994, when it proclaimed:

> It also is the case that in jurisdictions (such as California) that have developed the distinction between "accidental means" and "accidental results, [or accidental death]" policies requiring only that there be proof of accidental death have been construed broadly, "such that the injury or death is likely to be covered unless the insured virtually intended his injury or death," perhaps because the insurer could have limited its liability by employing the "accidental means" language. (*Weil v. Federal Kemper Life Assurance Co.* (1994) 7 Cal.4th 125, 140 [27 Cal.Rptr.2d 316].)

The insurance industry cannot explain the difference between the types of coverage because it has no explanation of how accidental-death and accidental-means policies are different.

For example, the industry would argue that a heart attack is not an "accidental death" in the everyday sense of that phrase. The industry would argue that the layman's sense of the term "accident" should be used and the case law from the Supreme Court should be ignored. The preservation of the distinction between accidental-death and accidental-means policies is vital to the protection of consumers in California, and it has a simple safety mechanism for risk-adverse insurance companies: If they want to sell a policy that only covers death that occurs due to some external, accidental force, then they can sell accidental-means policies.

The different types of policies

There are several different types of life insurance policies. (*See, generally,* 1 *Couch on Insurance* § 1:39 (3d ed.).) Whole-life policies and term-life policies generally pay a death benefit if the insured dies. The cause or manner of death need not occur in any particular way. Death by suicide is generally covered after two years.

There is another category of life insurance that is actually classified by the California Insurance Code as "accidental death and dismemberment insurance" ("AD&D"). (Cal. Ins. Code § 106.) These policies are cheaper and provide less coverage than standard life-insurance policies. AD&D policies, in turn, consist of two categories: "Accidental Death" policies and "Accidental Means" policies. (*See, generally, Weil v. Federal Kemper Life Assurance Co.* (1994) 7 Cal.4th 125 [27 Cal.Rptr.2d 316].)

Accidental-death policies, instead of covering death under any circumstance, only cover the death if it is "unexpected and unintended" by the insured. The emphasis is on the result. Hence, even an unexpected stroke or heart attack or aneurism would be covered.

Accidental-means policies provide narrower coverage. They include the restriction of the accidental-death policies but also add another requirement: the death must be caused by some external force. That is, the means or method by which the death occurs must also be unexpected and unintended. Hence, a sudden heart attack or stroke brought on by internal, natural causes would not be covered under such a policy.

Weil confirms the difference

Weil confirms the difference between "Accidental Death" and "Accidental Means": One requires external force, the other does not. The insurance industry likes to ignore *Weil v. Federal Kemper Life Assurance Co.* In that case, the California Supreme Court conducted a comprehensive review of the law relating to accidental-death and accidental-means policies under California law. The policy in *Weil* was an accidental-means policy. (*Id.* 7 Cal.4th at 130. The Court outlined the distinction between the two types of policies:

> In articulating the difference between insuring against accidental death and insuring against death by accidental means, this court stated: "The policy, it will be observed, does not insure against accidental death or injuries, but against injuries effected by accidental means. A differentiation is made, therefore, between the result to the insured and the means which is the operative cause in producing this result. It is not enough that death or injury should be unexpected or unforeseen, but there must be some element of unexpectedness in the preceding act or occurrence which leads to the injury or death. 'A person may do certain acts, the result of which acts may produce unforeseen consequences and may produce what is commonly called accidental death, but

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> the means are exactly what the man intended to use, and did use, and was prepared to use. The means were not accidental, but the result might be accidental.'"

Id. at 134-35 (quoting *Rock v. Travelers' Ins. Co.* (1916) 172 Cal. 462, 465 [156 P.1029].)

Thus, accidental-death policies have the following elements:

(1) The policy must be in force at the time of the death.

(2) The insured must die.

(3) The death must be unexpected and unintended.

Accidental means policies, by contrast, have the following elements:

(1) The policy must be in force at the time of the death.

(2) The insured must die.

(3) The death must be unexpected and unintended.

(4) The act preceding the death must be unexpected.

The fourth element is the one requiring some form of external force, or unexpected act such as being struck by a car. If an unexpected, external force causes the death, the loss would be covered any type of policy. Thus, the definition of "accidental death" as determined by the California Supreme Court is quite broad. (*Weil*, 7 Cal.4th at 140.)

If insurers want to limit their liability to death caused by external forces, then the solution is simple: only sell accidental-means policies. All insurers have to do is use the phrase accidental-means in their policies: "Without the word 'means' in the policy, the policy will be construed as an 'accidental death' policy." (*Heighley v. J.C. Penney Life Ins. Co.* (C.D. Cal. 2003) 257 F. Supp. 2d 1241, 1253.)

"Accidental Death" requirements

The "accidental death" policy cases only require that death be unexpected or unintended. There is a wealth of California case law that explains the operation of accidental-death policies. Some of the more important decisions are summarized below.

In *Slobojan v. Western Travelers Life Insurance Co.* (1969) 70 Cal.2d 432, 439 [74 Cal.Rptr.895], the insured was a police officer who died from a heart attack while chasing a subject. The Court found that the death was covered because the death was "reasonably unexpected and unanticipated." (*Id.* at 442.)

In *Pilcher v. New York Life Insurance Co.* (1972) 25 Cal.App.3d 717, 719-20, 727 [102 Cal.Rptr. 82], the insured died of a heroin overdose, and the Court of Appeal reversed the finding below that there was no coverage. The court found coverage under this accidental-death policy because the insured's death was "unintentional and unexpected." (*Id.* at 723.) Although the insured may have meant to take drugs, the resulting death was not expected. Hence, the means of his death were not accidental, but the result was. Hence, the claim was covered under an accidental-death policy.

In *Nash v. Prudential Insurance Company of America* (1974) 39 Cal.App.3d 594, 596-97 [114 Cal.Rptr.299], the insured fell overboard from a yacht, began to swim back towards the boat, but then sank into the water. The medical cause of death was disputed, with some experts testifying that the death was caused by the insured's pre-existing heart condition. (*Id.* at 597-98.) The case went to trial, with the jury finding for the insurer; the Court of Appeal reversed, finding for the insured based on instructional error that would have caused the jury to erroneously conclude that a medical condition could not have resulted in an unexpected death. (*Id.* at 603.)

In *Arata v. California-Western States Life Insurance Co.* (1975) 50 Cal.App.3d 821, 823 [123 Cal.Rptr. 631], the court found coverage where the insured fell and then died later in the hospital due to a preexisting condition of hemophilia.

In *Nagel v. Continental Casualty Co.* (C.D. Cal. 1980) 498 F. Supp. 265, 266, the insured had a long, adverse health history, including epileptic seizures. The insured became ill after a meal and went to the hospital, where the next day she was found dead. (*Id.* at 265-66.) In finding the insured's death to be covered, the court made note of the fact that the policy was an accidental-death policy and not an accidental-means policy: "It is crucial in this case to note that the language of the policy covers 'bodily injury caused by an accident resulting directly and independently of all other causes.' This is not a policy using language 'death caused by external, violent and accidental means.'" (*Id.* at 266.)

In *Williams v. Hartford Accident and Indemnity Co.* (1984) 158 Cal.App.3d 229, 233 [204 Cal.Rptr. 453], the insurer tried to argue that even under an accidental-death policy there had to be some external force that causes the death, which the court appears to accept. The Supreme Court in *Weil*, ten years later, rejected Williams' view as observed in *Paulissen v. U.S. Life Insurance Co.* (C.D. Cal. 2002) 205 F. Supp. 2d 1120, 1128 & n.11.

In *Olson v. American Bankers Insurance Co.* (1994) 30 Cal.App.4th 816 [35 Cal.Rptr.2d 897], the California Court of Appeal applied *Weil* to a case involving an accidental-death policy. Quoting from *Weil*, the *Olson* court observed that "policies requiring only that there be proof of accidental death have been construed broadly, 'such that the injury or death is likely to be covered unless the insured virtually intended his injury or death.'" (*Id.* at 822 (emphasis added).) *Olson* is the most significant case on this issue since *Weil.*

Mariscal v. Old Republic Life Insurance Co. (1996) 42 Cal.App.4th 1617 [50 Cal.Rptr.2d 224], is an accidental-death-policy case in which the court focused mostly on the bad faith of the insurer. The insured had been in an automobile accident, went to the hospital, and later died due to heart failure. (*Id.* at 1619.) The court found coverage.

In *Bornstein v. J.C. Penney Life Insurance Co.* (C.D. Cal. 1996) 946 F. Supp. 814, 819, the court held that the issue in an accidental-death case is only whether the death was unexpected and intended:

> Indeed, if the insured died as a result of his Arteriosclerotic Disease, whether his death so attributable is termed of "natural causes," by "disease," or by "old age" is of no consequence. The issue is whether his death was unexpected, unintended, and happening out of the usual course of events.

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These cases show that the definition of "accidental death" is a death that is "sudden and unexpected." Whether "natural causes" are involved is immaterial. The issue is not whether the insured dies due to natural causes, the issue is whether the cause—natural or not—is unexpected and unintended.

"Accidental means" requires external, unexpected force

"Accidental means" policies not only require that the means of the death be unexpected, they also require some external, unexpected force. There are also many cases dealing with accidental-means policies, which explain the need for the death to be caused by an external, unexpected force.

In *Price v. Occidental Life Insurance Co.* (1915) 169 Cal. 800, 801 [147 P.1175], for example, the Court held that, under an accidental-means policy, the death must be caused by "external, violent, and accidental means." It is not enough that the death itself be unexpected.

Another early accidental-means case is *Postler v. Travelers' Insurance Co.* (1916) 173 Cal. 1, 2-3 [158 P.1022], where the insured was committing an armed robbery during which time he was shot and killed. The court held that the death did not follow from an accidental external force because the means of his death "were the natural and probable consequences" of his criminal act. (*Id.* at 4.)

In *Clarke v. New Amsterdam Casualty Co.* (1916) 180 Cal. 76, 77-78 [179 P.195], the insured was struck by a car and then died due to heart failure six days later. The court ruled that the accidental external force of the vehicle striking the insured was sufficient to establish coverage. (*Id.* at 82-83.)

In M*uzzy v. Supreme Lodge of the Fraternal Brotherhood* (1933) 129 Cal.App. 1, 3 [18 P.2d 107], the insured fell, later discovered that he had a hernia, had an operation to correct the hernia, and then died from an embolism caused by the surgery. The court found for the insured, holding that the fall constituted the "external violence" required by the policy. (*Id.* at 4.)

In *Dark v. Prudential Insurance Co. of America* (1935) 4 Cal.App.2d 338 [40 P.2d 906], the insured died from a self-inflicted gunshot wound. The court reversed the finding below that there was no coverage because it had not been established if the death was a suicide. (*Id.* at 344-45.)

In *Happoldt v. Guardian Life Insurance Co. of America* (1949) 90 Cal.App.2d 386, 392 [203 P.2d 55], the court held that there were "accidental means" since the insured had fallen which led to a hospital stay during which the insured ultimately died some 23 days later.

In *Spott v. Equitable Life Insurance Co.* (1962) 209 Cal.App.2d 229 [25 Cal.Rptr.782], the court properly framed the issue under an accidental-means policy as follows: "These facts are set forth in the findings, and are not disputed. The sole question is whether they show that death resulted from 'bodily injuries effected solely through external, violent and accidental means.' We have concluded that there was no ***external*** means of death here." (*Id.* at 231 (emphasis added).) Thus, accidental-means policies require an external, unexpected cause of death.

In *Shafer v. American Casualty Co.* (1966) 245 Cal.App.2d 1 [53 Cal.Rptr. 446], the insured was injured in a car accident, which aggravated his heart condition, from which he later died. The court nevertheless found that the insured died due to accidental means because the car accident was the external, unexpected event that proximately caused the insured's death. (*Id.* at 10.)

In *Hargreaves v. Metropolitan Life Insurance Co.* (1980) 104 Cal.App.3d 701, 706 [163 Cal.Rptr. 857], the court recognized the "clear distinction" between accidental-death and accidental-means policies. The court held that a heroin overdose did not constitute death by "accidental means" because there was no external, unexpected force that caused the death, even though the result of using the heroin (death) was accidental. (*Id.* at 705, 709.)

As discussed above, the Supreme Court in *Weil v. Federal Kemper Life Assurance Co.* (1994) 7 Cal.4th 125, confirmed the distinction between accidental-death and accidental-means policies. *Weil* was an accidental-means case.

The outlier case – *Khatchatrian v. Continental Cas. Co.*

The outlier case, the Ninth Circuit's decision in *Khatchatrian v. Continental Cas. Co.*, conflicts with *Weil* and must therefore be rejected.

i. Khatchatrian Does Not Follow the Definition of "Accidental Death" as defined by the California Supreme Court in Weil

Despite the very clear body of law discussed above, the insurance industry has sought refuge in a federal case that is an utter anomaly and at absolute odds with *Weil, Khatchatrian v. Continental Casualty Co.* (C.D. Cal. 2002) 198 F. Supp. 2d 1157, aff'd, 332 F.2d 1227 (9th Cir. 2003.)

The district court's decision in *Khatchatrian* originated an anomalous line of cases that miss the distinction between accidental-death and accidental-means policies. For whatever reason, although this case involved an accidental-death policy, the court seemed unaware of the distinction between accidental-death and accidental-means policies and nowhere even mentions *Weil*.

The *Khatchatrian* court admitted the problem when it stated, "Plaintiff cites no California case law." (*Id.* at 1163.) This is perhaps the best explanation for what went wrong, because instead of focusing on the definitions of "accidental death" and "accidental means" in *Weil*, the court instead focused on the word "accident" and cited cases where the issue was whether an insured was unable to work due to an accident or sickness as well as property insurance cases in finding its definition.

The court rejected *Bornstein v. J.C. Penney Life Insurance Co.* (C.D. Cal. 1996) 946 F. Supp. 814, which used the correct "unexpected or unintended" language for accidental-death policy cases, and instead applied the accidental-means requirement that there be an external, unforeseen event that causes the death. Thus, the district court improperly used the definition for accidental-means policies in an "accidental death" case.

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The district court's definition for "accidental death" in *Khatchatrian* causes accidental-death and accidental-means policies to become identical. The district court in *Khatchatrian* explained that it had to apply this external, unexpected-force requirement because otherwise accidental-death policies would be the same as standard life-insurance policies. Again, the court was wrong. As discussed above, standard life policies will provide coverage for death caused by long, lingering illnesses where the death of the insured is expected. Accidental-death policies do provide narrower coverage: instead of just dying, the death must be "unexpected and unintended."

Khatchatrian was quickly disagreed with by another district court who was aware of *Weil* – *Paulissen v. United States Life Insurance Co.* (C.D. Cal. 2002) 205 F. Supp. 2d 1120. There, the court held that as long as death is "unexpected and unintended," it is covered under an accidental-death policy; there is no requirement of an external force. The court explained:

> California law distinguishes between polices that cover "accidental death" and those that cover death by "accidental means." "This distinction is critical since 'policies requiring only that there be proof of accidental death have been construed broadly, such that the injury or death is likely to be covered unless the insured virtually intended his injury or death.'" . . . Accordingly, U.S. Life — and its adjuster, John Hyland — are incorrect that Plaintiff must demonstrate that Mr. Paulissen's death resulted from "some intervening element of force or violence." Rather, because this is an accidental-death policy, Plaintiff need merely show that Mr. Paulissen's death itself was unexpected.
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> . . .
>
> [I]n light of the accidental death/accidental means distinction upheld in Weil, the Court finds that, under an accidental death policy, a death could both be accidental and caused by sickness. (*Id.* at 1128, 1129 n.14, citations omitted, emphasis added.)

Unfortunately, in *Schar v. Hartford Life Insurance Co.* (N.D. Cal. 2003) 242 F. Supp. 2d 708, relying on *Khatchatrian v. Continental Casualty Co.* (C.D. Cal. 2002) 198 F. Supp. 2d 1157, the court noted the definition of "accidental death" from Weil, but then proceeded to ignore it and instead used the definition of "accidental means" even though the case involved an accidental-death policy.

In *Heighley v. J.C. Penney Life Insurance Co.* (C.D. Cal. 2003) 257 F. Supp. 2d 1241, the district court attempted to reconcile the conflict between *Khatchatrian*, *Bornstein v. J.C. Penney Life Insurance Co.*, and *Weil*. *Heighley* discusses *Bornstein* and *Khatchatrian* and then *Nagel v. Continental Casualty Co.* (C.D. Cal. 1980) 498 F. Supp. 265, 266, noting that *Nagel* found coverage even though "there was no external event." (*Id.* at 1252.) Puzzled by the different results reached in *Bornstein* and *Khatchatrian*, the court in *Heighley* noted:

> Neither the *Bornstein* nor the *Khatchatrian* court discussed whether the policy at issue in each case was an accidental-death policy or an accidental-means policy, although the policies in both cases appear to be accidental death policies based on the court's reading of the facts. As noted by the court in *Olson v. American Bankers Ins. Co.*, "this distinction is critical, because 'policies requiring only that there be proof of accidental death have been construed broadly, such that the injury or death is likely to be covered unless the insured virtually intended his injury or death'" (*Id.* at 1253 (citations and footnotes omitted.)

Khatchatrian was ultimately reviewed by the Ninth Circuit in *Khatchatrian v. Continental Casualty Co.* (9th Cir. 2003) 332 F.3d 1227, which unfortunately compounded the mess made by the district court. The Ninth Circuit cited four cases in addition to the district court decision. These cases were *Bornstein,* which cites to and follows *Weil*; *Geddes & Smith*, a casualty insurance case having to do with damaged metal products and having nothing to do with life insurance; *Williams*, a case whose reasoning that was later rejected by the California Supreme Court in *Weil*; and *Alessandro,* a disability insurance case focusing on whether the insured was unable to perform a job due to an accident or a sickness.

The Ninth Circuit stated, while never mentioning the controlling precedent of *Weil* at all, that "some external force or event must be a percipient cause of the harm" for there to be coverage under an accidental-death policy. (*Id.* at 1229.) This additional requirement is in direct contravention of *Weil's* definition and absolutely negates the difference that the California Supreme Court so carefully preserved between accidental-death and accidental-means policies in *Weil*. The definition that an insured must meet to recover under an accidental-death policy is provided in *Weil*: "unexpected and unintended." There are no additional elements. If the insurer wants to protect itself and only cover deaths caused by accidental external forces, it should sell accidental-means policies. (*Weil* at 140.)

ii. When Ninth Circuit and California Supreme Court authority are in conflict on issues of California law, the California Supreme court authority is controlling and must be followed

In the federal system, each state's highest court is the "final arbiter" of the meaning of that state's law. (*Beal v. Missouri Pacific R.R. Corp.* (1941) 312 U.S. 45, 50.) The federal courts can review state laws in the context of whether they violate the federal Constitution, but still the state's highest court has the final say on interpreting the state law itself.

In *Sesser v. Gunn* (9th Cir. 1976) 529 F.2d 932, 934, the Ninth Circuit recognized the long-established rule that "the Supreme Court of California is 'clearly the final expositor of state law.'" The California Supreme Court has explained that for the principal of stare decisis to operate, the California Supreme Court must be the sole and final arbiter of the meaning of California law, which all other courts must follow. (*Auto Equity Sales, Inc., v. Superior Court* (1962) 57 Cal.2d 450, 455 [20 Cal.Rptr. 321].) Where there is such a conflict, clearly the California Supreme Court wins. Here, the courts should follow *Weil*, which maintains the long line of California law emanating from *Rock* in 1916.

As a practical matter, however, until the Ninth Circuit reverses *Khatchatrian* en banc, or the California Supreme Court

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expressly disagrees with it, which might allow a 3-judge panel to depart from it, the "law of the Circuit" will be *Khatchatrian*.

"Accidental Death" policies and the California Insurance Code

"Accidental death" policies use the same legal test for coverage regardless of whether they fall under the insurance code's classification of disability insurance or life insurance. The insurance industry has also suggested that the definition of "accidental death" changes depending on where the policy at issue falls under the California Insurance Code classifications of insurance.

As discussed above, accidental-death and accidental-means policies fall under the classification of disability insurance under California Insurance Code section 106. There is no distinction in the case law of "accidental death" regarding the classification of insurance. The authorities are clear that if the policy purports to provide coverage for accidental death, then the requirement for recovery under such policy is that the death be "unexpected and unintended." (*Weil*, 7 Cal.4th at 140.)

In *Nagel v. Continental Casualty Co.*, 498 F. Supp. at 266, for example, the insured was admitted to a hospital because she had become sick after dining at a restaurant. Food poisoning was suspected. She was found dead the next morning. (*Id.* at 265.) The court noted that the policy was a group policy for accidental death or bodily injury, which would also be classified as disability insurance by California Insurance Code § 106. (*Id.*)

Nevertheless, the court noted that the policy's coverage for death did not exclude coverage for death by what might be termed "natural causes": "It is crucial in this case to note that the language of the policy covers 'bodily injury caused by an accident resulting directly and independently of all other causes.' This is not a policy using language 'death caused by external, violent and accidental means.'" (*Id.* at 266.)

Similarly, *Olson v. American Bankers Insurance Co.* is also an "accident policy" that falls under the California Insurance Code classification of disability insurance. In *Olson*, the court stated that "policies requiring only that there be proof of accidental death have been construed broadly, '*such that the injury or death is likely to be covered unless the insured virtually intended his injury or death.*'" (Id., 30 Cal.App.4th at 822 (emphasis added).)

Hence, the definition that applies for accidental-death coverage is always "unexpected and unintended" – the Insurance Code classification of the "class" of insurance is not relevant on this point.

The Rutter and Croskey & Heeseman treatises

The Rutter Insurance Litigation treatise agrees that the definition that applies to "accidental death" policies is simply that the death must be "unexpected and unintended" — there is no additional requirement of external force. The insurance industry's argument that some external force is required for coverage under an accidental-death policy would obliterate the distinction between accidental-death and accidental-means policies.

Such a requirement is also rejected by the primary California insurance-law treatise, Croskey & Heeseman, California Practice Guide: Insurance Litigation. (Rutter 2006). As an initial point, the authors state, "The term 'accident' is not defined by statute; nor is it defined in most accidental-death policies. As a result, the question whether a certain set of facts constitutes an 'accident' is generally determined by case law." (*Id.*, § 6:480.5.) The authors recognize the distinction between accidental-death and accidental-means policies: "A policy that insures against 'accidental death' requires only that the insured's death was not designed or anticipated by the insured. I.e., accidental death is an unintended and undesigned result even if caused by the insured's voluntary acts." (*Id.* § 6:482, emphasis added). Note that there is the use of the word "only" and that there is no mention of some external, accidental force that must cause the death.

The treatise also contains a section defining how accidental-death coverage is to be distinguished from accidental-means coverage:

Distinguish — "accidental death": Where death results from the insured's voluntary act, it is not enough that death or injury was unintended (as it is under accidental-death policies): "The improbability of the outcome or effect is simply one consideration that must be taken into account in determining whether a death or injury resulted from 'accidental means.'" (*Id.* § 6:487 (citing *Weil v. Federal Kemper Life Assurance Co.*, 7 Cal.4th at 141.)

Justice Croskey and Judge Heeseman do cite to *Khatchatrian*, which is in absolute disagreement with the "Distinguish — 'accidental death'" section quoted above from their treatise. But they make no attempt to reconcile the fact that *Khatchatrian* requires external force under an accidental-death policy, which the authors reject as a requirement for accidental-death policies in sections 6:482 and 6:487 of their treatise.

Hopefully, the authors will soon revisit this issue to at least acknowledge that *Khatchatrian* and *Weil* are in direct contravention of one another. For now, the important thing is that the treastise does accurately describe the distinction between the two types of coverage. For accidental-death policies, it is "enough" that the death was unintended, for accidental-means policies, there must be more – the means of the death must also be evaluated. The means of the death must be accidental as well as the result. Otherwise, what is the difference between accidental-means coverage and accidental-death coverage?

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