LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
MONDAY, SEPTEMBER 13, 2021

PERSPECTIVE

An accidental opinion

By Benjamin Blakeman

Two years ago, Kathy Williams, a Missouri woman, fell down a flight of stairs in her home and died. Her blood alcohol level was .337.

She was insured under an accidental death insurance policy that excluded "being intoxicated" as a cause of death. But she did not die because she was intoxicated. She died because of an intracranial hemorrhage. Her head went through the wall of the staircase. Kathy's husband, Gary, signed up for the insurance benefit through his job. It was therefore subject to Employee Retirement Income Security Act of 1974, which permits an administrator, usually an insurance company employee, to decide whether to pay the claim. The fox in charge of the henhouse.

If the claim is denied, the employee can file an administrative appeal. Obviously, this system is inherently biased against payment of claims. In many cases including this one, the administrator has "discretion," which means the denial only has to be "reasonable," it does not have to be correct.

Congress, in its infinite wisdom, believed that ERISA would more efficiently resolve claims, and did not want to burden the courts with a tsunami of cases and overwhelm the judicial system if (as the employers' well-paid lobbyists had argued in support of the legislation) employees were granted the same rights as consumers, because as Calvin Coolidge observed, the business of America is business; and so, the rights of individual employees were outweighed by the principle that business must be allowed to function efficiently.

Business can function much more efficiently, of course, when it can cost-effectively offer employees benefits, and later deny those benefits whenever possible. That increases the bottom line, and higher profits make the stock market go up. It's good for America. Of course, there were other considerations raised in the ERISA debate, including fairness, deprivation of constitutional rights, access to the courts, and the like, so in order to obtain the necessary votes to pass, concessions had to be made in the legislation to satisfy those who felt that employees should have some form of redress. Not an actual trial of the case, mind you, but at least a cursory review of the administrative record by a court just to make sure the denial of the claim wasn't too shocking.

But judges being judges, some of them actually took their responsibilities seriously, and they scrutinized the denials of claims and reversed some of the more egregious ones that inevitably occurred, but the great majority were either never appealed (often because the aggrieved employee couldn't obtain legal representation) or were rubber- stamped by judges because, as the courts later determined, the mere fact that the administrator is also a claims payer in and of itself does not create an automatic conflict of interest, but only in limited situations, warrants a "higher level of scrutiny", a phrase having no clear rules of application.

Under this system, the overwhelming majority of claim denials were upheld. And since the denial of a claim required only that the decision have been "reasonable", this regime naturally resulted in many technically incorrect claim denials being upheld despite being plainly wrong.

In other words, the fox, being an intelligent and fair-minded creature by nature, would pick and choose among its charges and eat only the hens that reasonably deserved to be eaten. Kathy Williams, apparently, was one of those.

There was zero evidence in this case that alcohol contributed to Kathy's death. The denial of the claim was based upon speculation by a nurse hired by the insurance company who listed possible side effects of intoxication copied from a medical text as to what might have happened, but no evidence of any kind that any of these actually occurred in this case.

Was the denial of this claim relatedto a Midwestern bias against women who get intoxicated in the middle of the afternoon? We will never know. The thing we do know, if reason means anything, is that it is not reasonableto conclude that a person died as a result of what might have happened according to a medical textbook.

The only evidence is that if Kathy had fallen down the stairs and had not hit her head, she would not have died. Therefore, as a matter of fact and law, she died as a result of an accident. Alcohol did not cause or contribute to her death. Nevertheless, as the district judge, and later, the panel of judges that heard Kathy's appeal in the 8th U.S. Circuit Court of Appeals in St. Louis easily found, it was "reasonable" for the claims administrator to conclude that because her state of intoxication made it more likely that she would fall down the stairs, her death was excluded under the terms of her husband's policy.

But hold on a minute. Courts in most circuits have long distinguished between cases in which an excluded cause of death was a contributing factor to an accident that resulted in the death of a person, and cases in which the excluded cause was a factor that contributed directly to death. This basic distinction was eloquently explained by former president William Howard Taft when he served as a judge, in the case of Manufacturers' *Accident Indemnity Co. v. Dorgan*, 58 F. 945 (6th Cir. 1893), where he wrote:

"I]f the deceased suffered death by drowning, no matter what was the cause of his falling into the water, whether disease or a slipping, the drowning, in such case, would be the proximate and sole cause of the disability or death, unless it appeared that death would have been the result, even had there been no water at hand to fall into. The disease would be but the condition; the drowning would be the moving, sole, and proximate cause." Id. at 954.

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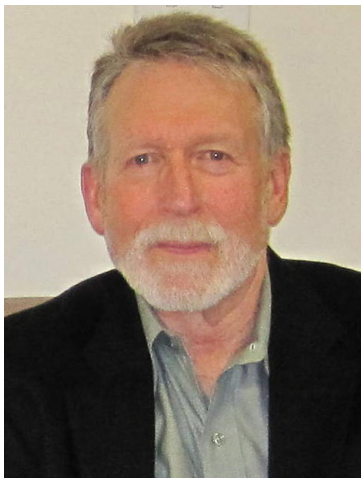

Following the same reasoning, this same court of appeals held in *Nichols v. Unicare Life & Health Ins. Co.*, 739 F.3d 1176 (8th Cir. 2014), that:

"UniCare's final argument is that it can avoid paying benefits due to the plan's intoxication exclusion. The exclusion states that no benefit will be paid for a death that results from being intoxicated. "Intoxicated" is defined in the plan as "legally intoxicated as determined by the laws of the jurisdiction where the accident occurred." Because it is an exception to coverage, UniCare has the burden of proving that the exclusion applies. *Farley v. Benefit Trust Life Ins. Co.*, 979 F.2d 653, 658 (8th Cir.1992). We agree with the district court that UniCare did not meet this burden. Arkansas law defines intoxication with reference only to the public offenses of drunk driving and public intoxication. *Jones Truck Lines, Inc. v. Letsch*, 245 Ark. 982, 436 S.W.2d 282, 284 (1969). Dana's death involved neither. We view the common and ordinary meaning of the policy language as a reasonable person in the position of the plan participant would have understood the words to mean. *Adams v. Cont'l Cas. Co.*, 364 F.3d 952, 954 (8th Cir.2004). A reasonable plan participant would have understood that the plan's intoxication exclusion is intended to apply to death caused by committing acts, such as driving, while intoxicated; not to situations where the immediate cause of death is ingestion of a lethal mixture of drugs that have been prescribed for use by the decedent. *See Sheehan*, 372 F.3d at 967 (finding that exclusion for loss resulting from being under the influence of a controlled substance was "intended to apply to death caused by, for example, driving while intoxicated, not to the accidental ingestion of a controlled substance"). The district court correctly found that UniCare had not proven that the exclusion should be used to deny coverage." Id. at 1184 (emphasis added).

In other words, the ruling here was directly contrary to this court's own precedent, which itself had been followed by federal courts for over 100 years. What was their reasoning in departing from such a well-established precedent? In a nutshell, "[S]ubstantial evidence supported Unum's conclusion that intoxication 'contributed to' her fall."

Not to her death, to her fall.

She was not intoxicated under the definition in the policy. The policy in question defined being intoxicated as follows: "INTOXICATED means that you or your dependent's blood alcohol level equals or exceeds the legal limit for operating a motor vehicle in the state where the incident occurred."

But Kathy was not operating any motor vehicle in her living room. The exclusion did not apply. She died as a direct result of an accident, not because she fell, but because she hit her head against the wall of the staircase.

Was the denial of this claim related to a Midwestern bias against women who get intoxicated in the middle of the afternoon? We will never know. The thing we do know, if reason means anything, is that it is not reasonable to conclude that a person died as a result of what might have happened according to a medical textbook.

The denial should have been overturned. This pitiful opinion will probably someday be disapproved, reversed, or not followed by other courts with a more enlightened view of reasonableness. But the wrong that was so flippantly flung at Gary Williams will take its place among many thousands, or perhaps millions, of others that have resulted from the lamentable regime brought about by the law we call ERISA. ■