

Suicide and the Life Insurance Death Claim[†]

Edgar Sentell

I.

INTRODUCTION

The problem of determining whether a death was accidental or suicidal frequently arises and is of great importance in coroner's investigations, insurance claims, and in worker's compensation proceedings.

In addition, suicide has become an issue in tort actions by survivors of persons who committed suicide as a result of injurious actions of a third party. It is an issue in a malpractice action against a doctor, psychiatrist, or hospital for failure to take steps to prevent a patient's suicide.

Although the duty of determining whether a death was suicidal or accidental may arise under a wide variety of circumstances, this problem falls frequently upon those courts and juries concerned in the litigation of life insurance contracts. Most life insurance contracts exclude coverage of death by suicide, sane or insane, occurring within a contestable period usually fixed at one or two years after the issuance of the policy. Most accident insurance policies and clauses in life contracts providing for double indemnity in case of accidental death likewise exclude payments for suicidal deaths, while sane or insane.

Suicide is one of those things that no one likes to talk, or even think about. It is an awkward and uncomfortable subject. We do not like to acknowledge that, for some people, life seems not to be worth living. Even as perceptions change with respect to mental illness, in addition to the natural emotion of grief, a suicide will often precipitate emotions

[†] Submitted by the author on behalf of the FDCC Life and Health Insurance Section.



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such as anger, guilt and embarrassment in a family. A general reluctance to admit suicidal intent of friends and relatives and difficulties in recognizing it under certain circumstances undoubtedly result in underreporting. Suicide was the eleventh leading cause of death in the United States with 32,439 deaths in 2004. Over half of those suicides were committed with a firearm. When the statistics are broken down by age, the facts are sobering. In the 10-24 year-old age range, suicide is the third leading cause of death and in the 25-34 year-old age range it is the second.¹

Although studies have identified some risk factors for suicide, the information that is available is very sketchy. Life insurers believe they do not have a well-developed ability to predict who will commit suicide. The insurer's underwriting job is rendered even more difficult by the problem of anticipating just when a person might commit suicide, or when he or she might be considered free from the risk of committing suicide. Because insurers cannot identify who will be suicidal, or when a particular person will be suicidal, they have no way by which to refuse to insure suicidal persons. The best interest of the policyholders as a group must be considered. To make no effort to prevent suicidal persons from applying for life insurance to benefit their dependents will clearly be unfair to other policyholders.

¹ These statistics, obtained from the Center for Disease Controls web site, are broken down by age, race, or geographical location (<http://www.cdc.gov/ncipc/wisqars/>).

Those others have to share the resulting higher costs of the insurance. The problem with suicide is that the insured takes control of the contingency of the insured event.

A policy provision under which premiums are refunded, but no other benefit is payable if the insured dies by suicide within the first two years after the policy is issued is generally believed to furnish sufficient protection against those persons who might be tempted to take out life insurance with the intention of committing suicide. At the same time, the beneficiary of the insured who commits suicide after the expiration of two or more years will have the same protection that he or she would have in the event death occurred in any other manner.

“Suicide cases are painful cases to try and difficult for the defendant to win.”² The plaintiff/beneficiary has the sympathy of the jury and presumption of law in his or her favor. In order to overcome these presumptions of the law and hear the defense will need hard evidence. When trying to prove suicide, the case will only be as strong as the factual investigation. The investigation will frequently need to go beyond the formal discovery with which attorneys are familiar.

II. BURDEN OF PROOF

In instances in which there is some evidence tending to indicate suicide, it may also be possible to interpret that evidence in a way that is consistent with a non-suicidal cause of death. Because of the probability that the evidence will be contradictory and ambiguous, the allocation of the burden of proof and the presumption against suicide are of tremendous importance.

In a suit on a life insurance policy with suicide as an affirmative defense, the burden of proof is on the insurer to prove the insured committed suicide.³ The exact nature of the burden of proving suicide varies by jurisdiction. The majority rule is the insurer, by a preponderance of the evidence, has to prove that the insured intentionally took his or her own life.⁴ When a jurisdiction has declined to follow the majority approach, the defense’s burden ranges from: (1) reasonably satisfying the jury that the cause of insured’s death was

² Phineas M. Henry, *The Trial of Suicide Cases*, Proceedings, Legal Sections, American Life Convention 57 (1946 & Supp. 1959).

³ Joseph Schachter & Co. v. John Hancock Mut. Life Ins. Co., 801 F.2d 563 (2d Cir. 1986); *see also* 46 C.J.S. *Insurance* § 1435.

⁴ C.M. Life Ins. Co. v. Ortega Through Ortega, 562 So.2d 702 (Fla. Dist. Ct. App. 1990); *Evans v. Nat’l Life & Acc. Ins. Co.*, 488 N.E.2d 1247 (Ohio 1986).

suicide⁵ to (2) establishing suicide to the exclusion of every other reasonable hypothesis⁶ to (3) clear and convincing proof that is clear and satisfactory.⁷

One Pennsylvania court held that an insurer was precluded from asserting the suicide exclusion in a life insurance policy as a defense because it failed to sustain its burden of proving that the insured and beneficiary were aware of the suicide exclusion and understood its effect.⁸ Thereafter, the Pennsylvania Supreme Court held that the insured's "lack of knowledge or understanding of a clearly drafted exclusion clause in a written contract of insurance executed by both parties does not render the clause unenforceable" and said that the Hionis case was "not to be followed."⁹

In a suit on an accident insurance policy or on a life policy for double indemnity, the defendant is not required to plead or prove suicide as a defense, since the plaintiff has the burden of pleading and proving that death resulted from an accident.¹⁰ That placing of the burden of proof correctly may decide the case is demonstrated by several cases in which the beneficiary sued on both the life indemnity and double indemnity provisions of a policy. Juries found that neither party sustained his burden of proof. That is, judgment was for the plaintiff on the life indemnity because there was no proof of suicide, but judgment was for the defendant on the double indemnity because there was no proof of accident.¹¹ Conflicting decisions, however, have arisen in this area.

III. PRESUMPTION AGAINST SUICIDE

"The single most important legal consideration for claimant's counsel is the strong presumption of law that the decedent did not commit suicide."¹²

⁵ Federated Guar. Life Ins. Co. v. Wilkins, 435 So.2d 10 (Ala. 1983).

⁶ Benoit v. Speight, 432 So. 2d 1114 (La. Ct. App. 1983); Schelberger v. Eastern Sav. Bank, 461 N.Y.S.2d 785 (App. Div. 1983).

⁷ For a practical guide by jurisdiction see 9A COUCH ON INS. § 138:59.

⁸ Williams v. Nationwide Ins. Co., 571 F. Supp. 414 (D. Pa 1983), citing Hionis v. Northern Mut. Ins. Co., 327 A.2d 363 (Pa. Super. Ct. 1974).

⁹ Standard Venetian Blind Co. v. Am. Empire Ins. Co., 469 A.2d 563, 564 (Pa. 1983).

¹⁰ Johnson v. Minnesota Mut. Life Ins. Co., 799 F. Supp. 75 (N.D. Cal. 1992).

¹¹ Hoholik v. Metropolitan Life Ins. Co., 286 N.W. 228 (Mich. 1939).

¹² Leonard M. Ring, *Obtaining Insurance Proceeds Over a Suicide Defense*, 16 FORUM 743, 745 (Spring 1981).

The courts are very reluctant to punish insurance beneficiaries by denying them the benefits of the policy solely because the insured took his or her own life in violation of community standards of decency.¹³ There is a presumption of law against a normal and sane person committing suicide.¹⁴

According to some authorities, the presumption is evidentiary and does not disappear on the introduction of evidence to the contrary; but according to others, the presumption is not evidence, does not shift the burden of producing evidence, or at least does not shift the burden of proof, to the insurance company, and it does not survive the introduction of evidence proving or tending to prove suicide.¹⁵ The majority rule is that the presumption against suicide is not evidence and disappears upon the introduction of evidence as to suicide.¹⁶ Although the presumption is a strong one and stands until overcome by testimony, it is *prima facie* only and rebuttable.¹⁷

IV. INTENT AS AN ELEMENT OF SUICIDE

Suicide is, by definition, the intentional taking of one's own life.¹⁸ For death to be suicide, the decedent must have intended to take his or her life at the time of the act that resulted in the death.¹⁹

The most difficult cases to determine involved insureds who deliberately take actions that result in their death, where it is either probable or at least foreseeable that the actions would cause harm or even death to the insured, but where it is not clear that they actually intended to kill themselves.

Policies variously refer to suicide simply as "suicide," or as "intentional self-destruction," or "death by one's own hand." Although these phrases all describe the same phenomenon, questions of interpretation may arise.

¹³ 20 AM JUR PROOF OF FACTS 3d 227.

¹⁴ *C.M. Life Ins. Co.*, 562 So. 2d 702; *Evans*, 488 N.E.2d 1247.

¹⁵ 46 C.J.S. *Insurance* § 1435 (2008).

¹⁶ See 103 A.L.R. 185, supplemented in 158 ALR 747.

¹⁷ *Travelers Ins. Co. v. Miller*, 62 F.2d 910, 913 (7th Cir. 1932); *C.M. Life Ins. Co.*, 562 So. 2d 702.

¹⁸ *Freeman v. Metropolitan Life Ins. Co.*, 134 S.E. 639 (Ga. Ct. App. 1926); *Southern Farm Bureau Life Ins. Co. v. Dettle*, 707 S.W.2d 271 (Tex. App. 1986) (inclusion of the word "intentional" in the trial judge's definition of suicide, "intentionally taking one's own life" was held proper in accordance with the majority rule).

¹⁹ *Fleetwood v. Pacific Mut. Life Ins. Co.*, 21 So. 2d 696 (Ala. 1945); *Security Life & Trust Co. v. First Nat'l Bank*, 460 S.W.2d 94 (Ark. 1970); *Charney v. Ill. Mut. Life Cas. Co.*, 764 F.2d 1441 (11th Cir. 1985); *Nielson v. Provident Life & Acc. Ins. Co.*, 596 P.2d 95 (Idaho 1979).

A strict reading of the exclusion requires that there be a specific intent to take one's own life in order for this suicide exclusion to bar recovery. An intent merely to injure and resulting death is not sufficient.²⁰

A second line of cases holds that the intent to perform an act that has a high probability of causing death to the actor will bring the suicide exclusion into operation, even if there is no demonstrable intent to kill or even to injure oneself. However, there is substantial disagreement as to what acts will be considered so likely to result in death that merely engaging in them will be considered suicidal. One example of a hazardous activity that will bring a suicide exclusion into effect is playing "Russian Roulette," placing a partially loaded revolver to one's head and pulling the trigger.²¹ Shooting at two armed police officers who had come to arrest the insured was considered suicide because "[u]nder the circumstances, that one or both of the Troopers would return fire was not only foreseeable, it was virtually inevitable."²²

On the other hand, it has been held that if a sane person loses his life as a direct result of his own conduct, without intention to destroy himself, he has not committed suicide, even though he has been grossly negligent or guilty of wanton or willful misconduct.²³ Thus, acts that the insured committed while drunk²⁴ or under the influence of drugs²⁵ constitute suicide only when performed with the intent to commit suicide.

A decision by a terminally ill patient to refuse extraordinary medical treatment to prolong his life may well be seen as evidencing the requisite intent to commit suicide. However, statutes in a number of states legalize and regulate such decisions made with the cooperation

²⁰ Colonial Life & Acc. Ins. Co. v. Cooper, 378 So. 2d 806 (Fla. Dist. Ct. App. 1979).

²¹ C.M. Life Ins. Co., 562 So.2d 702.

²² Krulls v. Hartford Acc. & Indem. Co., 535 N.Y.S. 2d 157, 158 (App. Div. 1988).

²³ Gulf Life Ins. Co. v. Nash, 97 So. 2d 4 (Fla. 1957); Metropolitan Life Ins. Co. v. Plumstead, 142 S.E.2d 429 (Ga. Ct. App. 1965); United Ben. Life Ins. Co. v. Schott, 177 S.W.2d 581 (Ky. 1943); Oldring v. Metropolitan Life Ins. Co., 492 F. Supp. 994 (D.N.J. 1980); Hartenstein v. New York Life Ins. Co., 113 N.E.2d 712 (Ohio Ct. App. 1952); Angelus v. Government Personnel Life Ins. Co., 321 P.2d 545 (Wash. 1958); Santaella v. Metropolitan Life Ins. Co., 123 F.3d 456 (7th Cir. 1997); Critchlow v. First UNUM Life Ins. Co. of Am., 378 F.3d 246 (2d Cir. 2004); Padfield v. AIG Life Ins. Co., 290 F.3d 1121 (9th Cir. 2002); *but see* Sims v. Monumental Gen. Ins. Co., 960 F.2d 478 (5th Cir. 1992); Hamilton v. AIG Life Ins. Co., 182 F. Supp. 2d 39 (D.D.C. 2002); MAMSI Life & Health Ins. Co. v. Callaway, 825 A.2d 995 (Md. 2003).

²⁴ Supreme Lodge, K.P. of the World v. Beck, 181 U.S. 49 (1901).

²⁵ Grannum v. Berard, 422 P.2d 812 (Wash. 1967); *In re Mills*, 27 N.W.2d 375 (Wis. 1947); *but see* McLain v. Metropolitan Life Ins. Co., 820 F. Supp. 169 (D.N.J. 1993); *see* Andrus v. AIG Life Ins. Co., 368 F. Supp. 2d 829 (N.D. Ohio 2005); Wood v. Valley Forge Life Ins. Co., 478 F.3d 941 (8th Cir. 2007).

of medical personnel and institutions.²⁶ Those statutes generally provide that a decision to refuse life-prolonging procedures will not be considered suicide for any purpose,²⁷ presumably including insurance purposes.

In a highly unusual case, an insurer denied liability on a number of life insurance policies on the decedent on the ground of suicide.²⁸ The insured attempted suicide, said she had intended to kill herself, and eventually persuaded a friend to shoot her, causing her death. After conflicting reasons and decisions by the trial and appellate courts, the Maryland Supreme Court held that the insured did not commit suicide because she did not take her own life. It found that the definition of suicide in the Maryland Insurance Code and the insurance policy did not include death caused by another even if it was intended or desired. The court noted that the Maryland Legislature had never deemed it necessary to define “suicide” until 1999, when it enacted the Assisted Suicide Act.²⁹ There, the Legislature defined “suicide” as “the act or instance of intentionally taking one’s own life.”³⁰ The friend did not merely assist her in taking her own life; it was his act that killed her. Thus, her death did not occur by suicide, the policy exclusion did not apply, and her beneficiaries were entitled to the proceeds.

V.

SANE AND INSANE PROVISIONS

The term “suicide” is generally held to define the willful and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish self-destruction. Therefore, it has been held that the term “suicide” does not include self-destruction by an insane person. As a result, most policies contain a clause excluding death from suicide, while sane or insane. The courts have generally held that the addition of the words “sane or insane” does away with the necessity that the insured have comprehension of the moral or legal nature of the consequence of the destructive act. Gary Schuman’s article is an excel-

²⁶ See, e.g., FLA. STAT. Ch. 765 (1985) (“Life-Prolonging Procedure Act”). Repealed by Laws 1992, c. 92-199, § 10. eff. Apr. 10, 1992.

²⁷ See, e.g. FLA. STAT. Ann. § 765.309(2) (2008), which provides: “The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide.”

²⁸ *Fister v. Allstate Life Ins.*, 783 A.2d 194 (Md. 2001).

²⁹ See MD. CODE, Criminal Law § 3-102 (2008).

³⁰ See *Estate of Fister v. Allstate Life Ins. Co.*, 783 A.2d 194, 212 (Md. 2001).

lent source for understanding the sane and insane exclusion.³¹ He first lays the historical background for the exception and the public policy considerations. Schuman explains that most states have held the “suicide, sane or insane” clause “will exclude all non-accidental acts of self-destruction, regardless of the insured’s mental condition or understanding of the moral character of the act.”³² While the majority of jurisdictions disregard the state of mind of the insured as irrelevant, there is a “distinct split of authority over the issue.”³³ It is the minority view that if the insured’s insanity was “such that there was no comprehension that the act performed would cause injury or death, or that the insured did not intend the fatal consequence of the act due to his or her insanity, the act cannot then be considered a ‘suicide’ for the purposes of the exclusion clause.”³⁴ If you are defending a case in a jurisdiction following the minority view, then you will have to show that the “insured committed the act of self-destruction with suicidal intent,” that is “the insured understood the physical nature and consequences of the act of self-destruction.”³⁵

The case that is most often associated with the minority view is *Searle v. Allstate Life Insurance Co.*³⁶ According to the court in *Searle*, “a proper interpretation of the [sane or insane] clause is that it exempts the insurance company from liability only if the insured, whether sane or insane at the time, committed the act of self-destruction with suicidal intent.”³⁷

Irresistible impulse is another aspect of the discussion around the sane or insane exclusion. Irresistible impulse means that someone was so overcome by an insane impulse that they were unable to resist the desire to commit suicide.³⁸ As long as the insured understood the physical nature and consequences of his or her actions, courts have rejected an exception for irresistible impulse and excluded coverage.³⁹

“Just as different states have adopted various tests of sanity and insanity in the field of criminal law, so have the various states taken differing approaches to this question as it pertains to the applicability of a suicide exclusion.”⁴⁰

³¹ Gary Schuman, *Suicide and the Life Insurance Contract: Was the Insured Sane or Insane? That is the Question—Or Is It?*, 28 TORT & INS. L.J 745 (Summer 1993).

³² *Id.* at 756.

³³ *Id.* at 760.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 696 P.2d 1308 (Cal. 1985).

³⁷ *Id.* at 1315.

³⁸ Schuman, *supra* note 31, at 763.

³⁹ *Nielsen v. Provident Life & Acc. Ins. Co.*, 596 P.2d 95 (Idaho 1979).

⁴⁰ 20 AMJUR. POF 3d 227. For a breakdown by jurisdiction of the case law for the “suicide, sane or insane” exclusion. *See* 9 A.L.R.3d 1015.

VI. DEATH CERTIFICATE

For cause of death, insurance companies look to policy reports, hospital reports, and the death certificate. One of the important roles of the coroner or medical examiner is to classify the manner of death among the categories of natural, accident, suicide or homicide. Most coroners are elected (many are funeral directors); few pathologists are medical examiners. In a majority of the cases, manner of death is assigned to one of these four categories on the basis of a limited investigation, witness interviews, autopsy findings and toxicology results. In some cases, however, manner of death is not so readily established and will be listed as pending until further investigation, analysis, or consultation is completed. In determining the manner of death, coroners do not routinely secure psychological data.

There is not a unanimous view among the various jurisdictions with reference to the admissibility of a death certificate attributing the insured's death to suicide or accident. In some, the coroner's verdicts are inadmissible because they are opinion or hearsay evidence.⁴¹ "In other jurisdictions, however, the coroner's verdict or finding is admissible, and is *prima facie* evidence of the facts found."⁴² "However, even where a statute provides that an official document is *prima facie* evidence of the "facts" stated therein, trial judges often rule that the mode of death stated (accident or suicide) is an "opinion" and not a fact and either blank out this portion of the document before admitting it or exclude the document altogether."⁴³

VII. PROOF OF MOTIVE

While motive is not required, the lack of motive may raise substantial doubt as to whether the death resulted from suicide.⁴⁴

⁴¹ *Morton v. Equitable Life Ins. Co.*, 254 N.W. 325 (Iowa 1934); *Carson v. Metropolitan Life Ins. Co.*, 100 N.E.2d 197 (Ohio 1951); *Lockwood v. Travelers Ins. Co.*, 498 P.2d 947 (Colo. 1972).

⁴² AM. JUR. *Insurance* § 2007 n.6 quoting *Charter Oak Life Ins. Co. v. Rodel*, 95 U.S. 232 (1877); *Mutual Life Ins. Co. v. Newton*, 89 U.S. 32 (1874). See "Official death certificate as evidence of cause of death in civil or criminal action," 21 ALR 3d, 418, 449.

⁴³ James S. Cline, *Defense of a Suicide Case*, 16 FORUM 726, 740 (Spring 1981); also see, *Wood*, 487 F.3d 941.

⁴⁴ *New York Life Ins. Co. v. Melgard*, 74 F.2d 489 (7th Cir. 1935); *Green v. Southern Farm Bureau Life Ins. Co.*, 390 So. 2d 977 (La. Ct. App. 1980); *Employers Nat'l Life Ins. Co. v. Brewer*, 563 S.W.2d 863 (Tex. App. 1978). This is further supported, see Leonard M. Ring, *Obtaining Insurance Proceeds Over a*

Accidents tend to occur during ordinary, accustomed, or repetitive activities. Suicide, on the other hand, involves an unusual set of circumstances. Juries want and need to know why someone killed themselves in order to believe that the death was suicide. Motive can be established through a suicide note, if there is one, or:

evidence of recent psychiatric care; treatment for nervous condition or depression; treatment for medical surgical illness; history of nervous breakdown; history of psychiatric hospitalization; history of suicide attempts or threats; unhappiness, upset or hopelessness noted; symptoms of depression, symptoms of alcoholism or excessive drug use; change in marital status, past year; change in employment circumstances; trouble with significant others—legal or social; interpersonal disruption, home or other troubles; disruption in living pattern (good or bad); recent change in behavior; unusual behavior, day of death; isolation at time of event; and recent purchase of weapon.⁴⁵

VIII. EVIDENTIARY FACTORS

In most cases, the issue of suicide is one of fact for the jury or judicial fact finder. It is possible for the evidence in a given case to so overwhelmingly support a conclusion that a death was by accident or suicide that the issues may be decided as a matter of law. In *Sankovich v. Life Insurance Co. of North America*,⁴⁶ the Ninth Circuit Court of Appeals provides an excellent analysis of several Montana cases dealing with the question of suicide as a matter of law. The court analyzed the facts of *Sankovich* in light of the facts of *Nichols v. New York Life Insurance Co.*⁴⁷ and *Equitable Life Assurance Society v. Irelan*,⁴⁸ in which

Suicide Defense, 16 FORUM 743, 747 (Spring 1981).

⁴⁵ Cline, *supra* note 43, at 732. For an additional list of examples used to establish motive see 9A COUCH ON INSURANCE § 138:64.

⁴⁶ 638 F.2d 136 (9th Cir. 1981) (applying federal and Montana law).

⁴⁷ 292 P. 253 (Mont. 1930). In *Nichols*, the insured died of strychnine poisoning. The insured told a neighbor that she had taken three capsules and wished that she had taken more. She told a neighbor that she had fought with her husband and was mad at him. She also said, "I am through with the world, all through. I am going to take poison and end it all." Finally, just before dying, the insured stated, "Please, mother, forgive me, and God forgive me." *Id.* at 254.

findings of suicide as a matter of law were upheld, as well as *Lewis v. New York Life Insurance Co.*⁴⁹ and *Gamer v. New York Life Insurance Co.*,⁵⁰ in which determinations of suicide as a matter of law were overruled.

Other courts have recognized that suicide may be found as a matter of law.⁵¹ For example, in an Iowa case, an insurer denied policy benefits on the ground of the suicide exclusion.⁵² The insured wrote a suicide note then started the engine of his truck in the enclosed garage of his house. He died of carbon monoxide poisoning, but in his house near the front door, near the garage, suggesting he had changed his mind. His widow claimed that his death was accidental, but his death was a result of his attempted suicide, and the court held that no reasonable person could find his death to be accidental. Summary judgment for the defendant was affirmed.

⁴⁸ 123 F.2d 462 (9th Cir. 1941).

⁴⁹ 124 P.2d 579 (Mont. 1942).

⁵⁰ 76 F.2d 543 (9th Cir. 1935), *after remand*, 90 F.2d 817 (9th Cir. 1937), *rev'd* 303 U.S. 161 (1938), *on remand*, 106 F.2d 375 (9th Cir. 1939), *cert. denied*, 308 U.S. 621 (1939) (applying Montana law).

⁵¹ *See, e.g.*, *Haith v. Prudential Ins. Co.*, 106 N.W.2d 169 (Neb. 1960); *Foster v. Globe Life & Acc. Ins. Co.*, 808 F. Supp. 1281 (N.D. Miss. 1992), *aff'd* 980 F.2d 1445 (5th Cir. 1992), applying Mississippi law. An insured was found dead, hanging from a door with one end of a knotted pair of electrical extension cords tied around his neck; the cords were looped over the door and the other end was fastened to the opposite door knob. All investigative reports and the death certificate attributed his death to suicide by strangulation. He had a history of unemployment and alcohol abuse, which often led to quarrels with his wife and he was depressed. The district court granted summary judgment for the insurer on the basis that the insured committed suicide.

Duncan v. American Home Assurance Co., 747 F. Supp., 1418 (M.D. Ala. 1990), applying Alabama law. A man died by jumping from the tenth floor of a hotel. The death certificate, coroner's report and police report all stated that the cause of death was suicide, and the plaintiff who sought the policy benefits presented no evidence that the insured's death was not by suicide. The court granted the insurer's motion for summary judgment.

Cf. Phillips-Foster v. UNUM Life Ins. Co. of Am., 302 F.3d 785 (8th Cir. 2002), an ERISA case. The district court granted an insurer's motion for summary judgment, holding that the plan administrator had not abused her discretion in denying claims on the basis of suicide exclusions in a supplemental life insurance policy and accidental death and dismemberment coverage in another life insurance policy. The circuit court's affirmation was based on its finding that the administrator's decisions was supported by substantial evidence, including the following facts: two weeks before he was shot to death, the insured purchased additional life insurance and drafted a new will; two days before his death he gave a letter to his nephew that included his proposed obituary and instructions for burial; he was seen on a surveillance tape the day before his death removing a gun from a cabinet to which he had the only key; hours before his death he prepared a farewell tape for his family; and he had been treated for depression and had recently suffered financial setbacks. There was also evidence that his beliefs in voodoo and Santeria may have led him to seek his own death in order to pass his spiritual powers to his housemate.

The importance of preserving evidence cannot be over emphasized. To determine conclusively whether suicide was the intended outcome, the death investigator would need to cross-examine the deceased. Because this is impossible, the investigation needs to establish the suicide from secondary evidence.

The facts will be difficult to ascertain for numerous reasons such as: the deceased's family and friend's denial and guilt may make them less likely to cooperate, individuals who will be familiar with the situation may be reluctant to conclude that the insured has taken his or her own life, there will be a short window of opportunity to preserve physical evidence, witnesses may forget important information or it is no longer be available at trial, and once a homicide is ruled out the police the investigation may end. Thus, the physical, personal and social evidence will need to be preserved under difficult circumstances.

The most direct indication of suicide is several independent witness reports. The best example is a man jumping from a bridge after a police officer tries to talk him out of it. Suicides, however, are usually solitary acts. Only occasionally do people have the misfortune to witness a suicide.

Suicide notes are the second most direct indication of intent to commit suicide. A suicide note is not essential to proving a suicide but it is the strongest evidence and will make it much easier. Unfortunately, a suicide note is found in only one-third of cases.⁵³ Suicide notes written at the time of the insured's death are admissible in evidence.⁵⁴ A suicide note is strong but not conclusive evidence of suicide.⁵⁵ The jury is free to give the note as much or as little weight as it deems appropriate.⁵⁶

The majority of suicide notes are left at the scene but "astute counsel will make inquiry of relatives, friends, business associates, and correspondents of the deceased to whom a note may have been given or mailed."⁵⁷ There is the possibility that the note was destroyed or concealed to cover up the suicide or that a note was planted that to cover up a murder.⁵⁸ Take note of the material available to the deceased, the language used and the spelling.⁵⁹

⁵² Estate of Tedrow v. Standard Life Ins. Co., 558 N.W.2d 195 (Iowa 1997).

⁵³ Robert I. Simon, *You Only Die Once - But Did You Intend It? Psychiatric Assessment of Suicide Intent in Insurance Litigation*, 25 TORT & INS. L.J. 650 (Spring 1990).

⁵⁴ Home Life Ins. Co. v. Miller, 33 S.W.2d 1102 (Ark. 1930); Jefferson Standard Life Ins. Co. v. Richeimer, 36 S.W.2d 652 (Ky. 1931).

⁵⁵ Sovereign Camp, W.O.W. v. Dennis, 87 So. 616 (Ala. Ct. App. 1920); Cole v. Standard Life Ins. Co., 154 So. 353 (Miss. 1934).

⁵⁶ Penn Mut. Life Ins. Co. v Roberts, 269 S.W. 736 (Ky. Ct. App. 1925).

⁵⁷ Ring, *supra* note 12, at 749.

⁵⁸ *Id.*

A history of unsuccessful suicide attempts is also a strong indication that the death was intentional. Such history may be apparent from the medical file or from physical signs such as scars on the wrists. According to the National Institute of Mental Health, about ninety percent of those who commit suicide have a diagnosable mental disorder—most commonly depression—often complicated by substance abuse.⁶⁰

What definitely gives the death away as a suicide is the irrefutable physical evidence of the death itself.

A “bull’s-eye” suicide investigation focuses first on the dead body. What was the cause of death? Where was the placement and what was the condition of the fatal wound? Was any disease present? If a medical examiner or coroner was involved and an autopsy performed, many of these questions will already be answered. Coroners do not investigate all deaths that might be suicidal, however, and not all such investigations are complete. If necessary, experts should be retained to establish the cause and mode of death and, in an appropriate case, the body exhumed in order that an autopsy can be performed.

The next target of the investigation is the scene or place of death. The physical location and condition of everything at the scene should be noted. Was there a suicide note, record or tape? What, where and in what condition was the suicide weapon or device? What was the position of any locks? Was anything out of place? Was anything unusual present? What were the routes of access or egress? Were there any witnesses to the event? In this latter regard, do not overlook the possibility that the deceased telephone someone just prior to his death or that someone was close enough to the scene to have heard something material. No item at the scene is too small to be considered. For example, in a jump/fall/push case, the presence of a large number of cigarette butts might indicate premeditation. And in barbiturate deaths, it has been established that most suicides obtain their pills from doctors while most addicts obtain their pills illegally.

In investigating these two areas (the body and the death scene), the possibility of alteration of the physical evidence, either inadvertently or deliberately, should not be overlooked.⁶¹

⁵⁹ *Id.*

⁶⁰ Commentary: Responsibility and Insurance Coverage of the Mentally Ill, Ralph Slovenko, JD, PhD., Vol. 33, No. 2 (2005).

IX.
EXPERT AND NON-EXPERT TESTIMONY

No one wants to speak ill of the dead. Often the best witnesses for the insurer are relatives and healthcare professionals who knew the deceased intimately and report suicidal threats. Family and friends are most likely to make spontaneous statements about the likelihood of suicide to the first person at the scene, but these statements may not always be recorded by investigatory personnel. Family and friends might have reasons to make the death appear not to be a suicide and sometimes are concerned not with an accurate death investigation, but with preserving the best possible memory of the deceased.⁶²

Defense counsel will want to promptly re-interview and obtain signed statements of all persons present at the scene of death or who are involved with the investigation in order to preserve this evidence.⁶³ Where the issue is suicide, evidence that the general understanding of the insured's family, friends, and neighbors was that the insured committed suicide is admissible in corroboration of the theory of suicide.⁶⁴

Expert witnesses in a suicide case can include: (1) a forensic pathologist; (2) a forensic psychiatrist; and (3) a firearms expert in the case of death by gunshot. Studies indicate that suicides have a surprisingly high frequency of certain personal and social characteristics. Experts familiar with these studies not only have the advantage of what to look and ask for, but are able to garner information much more effectively.

An expert can be invaluable in explaining behavior that is not readily reconcilable with suicide to the layman. For instance, family and friends may testify that the deceased was in good spirits on the day of the suicide, but a person contemplating suicide is less likely to do so while deeply depressed than when his depression is lifting. Also someone may commit suicide just prior to a vacation because the idea of the disruption of an important support system or routine may be distressing. Without an expert's explanation, the jury might misunderstand this behavior.

There are several things to remember with regard to an expert when asserting a suicide claim. First, it is easy for the inexperienced to over identify with the bereaved family so the "suicide expert should be a true expert in the field."⁶⁵ Second, the expert should convey his expertise to the jury in a conversational way that they can understand, detailing his medical education and training.

⁶¹ Cline, *supra* note 43, at 729-30.

⁶² *Id.*

⁶³ *Id.* at 729.

⁶⁴ *Bayles v. Jefferson Standard Life Ins. Co.*, 148 So. 465 (La. Ct. App. 1933).

A. *Forensic Pathologist*

Determining the exact cause of death generally requires performance of an autopsy by a qualified medical examiner or a forensic pathologist. The death scene examiner may be working backwards from fact of death to the cause and manner of death. The forensic pathologist is a doctor who spends four years after medical school studying pathology or the natural effects of disease on the body, another year specializing in forensic pathology, sometimes known as legal medicine. This highly specialized field deals with application of the signs and methods of pathology to the resolutions of the problems of law. The selection of a particular forensic pathologist as a court expert is limited to a small, easily screened group. The forensic pathologist fully recognizes the importance of a careful external examination, including the clothing, to determine the pattern of injuries and that relationship to the injurious agent. The forensic pathologist is more prone to commit to the description and diagnosis of the type of traumatic injuries and their characteristics. For example, he or she will try to determine with some certainty, the range, course and path of bullets through the deceased's body. While external findings are the most important part of the autopsy, such evidence is perishable and is frequently distorted by the examination. Photographs of the death scene, wounds, and other significant details should be taken to preserve evidence and to avoid forgetfulness or inconsistency on the part of witnesses. In *Gilpen v. Aetna Life Insurance Co.*,⁶⁶ there was a conflict in testimony as to the location of a bullet wound. Various witnesses place the entrance wound above the right ear, in the middle of the forehead, over the right eye, and in the right temple. A photograph, together with expert testimony as to the type of entrance wounds, could have avoided the conflict.

B. *Forensic Psychiatrist*

The result of a physical autopsy does not necessarily shed any light on what is often the key issue in a suicide case—the intent of the insured in committing the acts that led to his or her death.

Psychiatric evaluation of the suicidal intent of the deceased-insured should be done by a forensic psychiatrist. It is very easy for the inexperienced or general psychiatrist who primarily treats patients to overidentify with the bereaved family. Forensic psychiatrists are trained to clearly separate treatment from evolution roles, avoiding biased conclusions.⁶⁷

⁶⁵ *Cling*, *supra* note 43, at 741.

⁶⁶ 132 S.W.2d 686, (Mo. 1939).

The psychological autopsy has been defined as a procedure for evaluating, after death, what was on the victim's mind before death.⁶⁸

The psychological autopsy has been generally accepted in the psychiatric field for evaluating suicide cases.⁶⁹ Psychological autopsies have been widely used in a variety of situations. They may be, for instance, part of required post-death review procedures where apparent suicide occurs in a hospital.⁷⁰ Psychological autopsies have also been offered, and sometimes accepted as evidence in judicial proceedings involving child abuse,⁷¹ workers compensation,⁷² medical malpractice⁷³ and murder.⁷⁴

The function of the psychological autopsy is to reconstruct the deceased's background, personal relationships, habits, personality traits and character—that is, his or her style of living—in order to determine the deceased's intention relating to his being dead. This is accomplished mainly through interviews with family, relatives, friends, employers, attending physicians and others who are able to provide relevant information. Again, if possible, a detailed account of the events immediately preceding death should be obtained. Desirable information is concerned with medical and other family history, patterns of reaction to stress, tensions and the role of alcohol or other drugs. A psychological autopsy, however, is also used for determining why the deceased did it. This aspect, of course, is of most significance to the practitioner who must convince a jury that the deceased had a motive to die and really did it intentionally. The conclusion is obvious: if motive is not readily apparent or cannot be easily established, defense counsel should employ an expert either to perform a psychological autopsy if one has not already been done through coroner's office or to review the known facts and give his expert opinion as to motive.⁷⁵

⁶⁷ Simon, *supra* note 53, at 662.

⁶⁸ R.E. Litman, *500 Psychological Autopsies*, 34 JOURNAL OF FORENSIC SCIENCE, Issue 3 (1989) available at <http://www.astm.org/Journals/Forensic/Pages/1561.htm>.

⁶⁹ Jackson v. State, 553 So.2d 719, 720 (Fla. Dist. Ct. App. 1989).

⁷⁰ Terrell State Hosp. of Texas Dep't of Mental Health v. Ashworth, 794 S.W.2d 937 (Tex. Ct. App. 1990).

⁷¹ Jackson v. State, 553 So.2d 719 (Fla. Dist. Ct. App. 1989).

⁷² Campbell v. Young Motor Co., 684 P.2d 1101 (Mont. 1984); Harvey v. Raleigh Policy Dep't, 384 S.E.2d 549 (N.C. Ct. App. 1989).

⁷³ Gaido v. Weiser, 545 A.2d 1350 (N.J. Super. Ct. App. Div. 1988).

⁷⁴ State v. Lewis, 533 A.2d 358 (N.H. 1987).

C. *Ballistics and Firearms Expert*

No means of suicidal death is more frequently used than firearms. The cases are numerous and the fact patterns are very diverse. The weapon should be examined by a ballistics and firearms expert to determine the pressure necessary to pull the trigger, whether the weapon could be discharged by pulling or jarring when uncocked, or whether it is defective in any way. These findings should then be related to other facts to indicate the possibility or impossibility of accidental discharge. In my experience, a finding of accident has been sustained by such facts as that the gun was old, rusty, or "easy on the trigger," and that it had been known to accidentally discharge without the trigger being pulled. Suicide is indicated by proof that the gun was in good condition, required a heavy trigger pull, had no defects, was equipped with a safety or adequate trigger guard, and that experiment showed that it could not be discharged without pulling the trigger.

X.

INSURERS' RIGHT TO AN AUTOPSY

As a general rule, an insurer is entitled to a post interment autopsy only where it can establish, through no fault of its own, that it was impractical to demand and perform an autopsy before burial and that it is reasonably certain that examination will reveal something otherwise undiscoverable.⁷⁶

If there is a clause in the policy that allows the insurer to autopsy the body, then absent any statute to the contrary, the insurer has a valid and enforceable right to an autopsy.⁷⁷ The demand must be made in a reasonable time, and the insurer has the burden of proving that the demand for an autopsy was made within a reasonable time.⁷⁸

⁷⁵ Cline, *supra* note 43, at 733.

⁷⁶ Deneen v. New England Mut. Life Ins. Co., 615 F.2d 396 (6th Cir. 1980).

⁷⁷ Wood v. Industrial Life & Health Ins. Co., 135 So. 583 (Ala. 1931); *Sheehan v. Commercial Travelers' Mut. Acc. Ass'n*, 186 N.E. 627 (Mass. 1933). See "autopsy; exhumation" 44 AM. JUR. 2d *Insurance* § 1359.

⁷⁸ Reardon v. Mutual Life Ins. Co., 86 A.2d 570 (Conn. 1952). For a discussion of the timing and reasonableness of the request for autopsy, prior to burial and after burial, see 13 COUCH ON INSURANCE § 196:89-91. For a discussion of the power of court to order disinterment and autopsy or examination for evidential purposes in civil cases see also "Power of court to order disinterment and autopsy or examination for evidential purposes in civil case" 21 A.L.R. 2d 538.

XI. SUMMARY

The suicide clause found in life insurance policies provide for return of premiums paid where the insured commits suicide within two years of the policy date. Life insurance companies have written the suicide exclusion into their policies because it would be unfair to allow a person to purchase insurance and then force premature payment through self-destruction. When the insured may have committed suicide, attorneys representing claimants have traditional advantages over insurance defense counsel. People find it hard to believe and even harder to admit that a suicide has occurred. The insurer has the burden of proving suicide and must do it in the face of a presumption against suicide.

The intent of the insured is a major element, as reflected in “sane or insane” language found in many suicide clauses. The admissibility of death certificates and coroner’s verdicts attributing the insured’s death to acts of suicide varies from state to state and case to case. While proof of motive is not required, the lack of motive may raise substantial doubt as to whether the death resulted from suicide.

In most cases, the issue of suicide is one of fact for the jury or judicial fact finder. Defense counsel for the insurer should be prepared to present facts and circumstances that exclude with reasonable certainty any hypothesis of death by any means other than suicide. The case will only be as strong as the factual investigation. The investigation will frequently need to go beyond the formal discovery with which attorneys are familiar. What definitely gives the death away as a suicide is irrefutable physical evidence of the death itself. Defense counsel must also have as comprehensive a picture as possible of the insured and the events leading up to the insured’s death. There are many types of evidence that can be used effectively by defense counsel seeking to prove suicide. The evidence should be assembled and preserved in such form that it can be presented so as not to be subject to impeachment. Promptness and thoroughness of the investigation is the key to a successful defense.

Three expert witnesses that are commonly used in suicide cases include: (1) a forensic pathologist, (2) a forensic psychiatrist and (3) a firearms and ballistics expert in the case of death by gunshot. A qualified expert, properly prepared, can be a valuable and helpful witness in proving that a suicide occurred.