[¶60-522] Cotton v. Phoenix Assurance Company of Australia Ltd.
Supreme Court of New South Wales. Judgment 28 September 1982.
Extracts from judgment below.

Personal accident insurance — Death by asphyxia following hanging accidentally induced — Deceased engaged in act of sexual gratification — Whether death by accidental means within terms of policy.

The plaintiff's husband ("the deceased") was found suspended by ropes and a harness slung over some pipes. The coronial inquest specified the cause of death as asphyxia following hanging accidentally induced. The plaintiff claimed under a personal disability policy taken out with the defendant insurer and effected on the life of the deceased. The policy provided for payment of benefits upon, inter alia, death occurring within twelve months of sustaining bodily injury, which was defined in the policy as "injury caused solely and directly by violent, accidental, external and visible means".

The plaintiff contended that the deceased had been engaged in giving his back traction to relieve pain caused by disc degeneration. The defendant contended that, although the deceased may have from time to time given himself traction, on the occasion in question he had been engaged in an act of sexual gratification known as auto-erotic sado-masochism, and, in inducing in himself a state of hypoxia, had over-reached himself and brought about his death.

His Honour reviewed the evidence and concluded that the probabilities favoured the defendant's contention, in particular on the basis of the following: the deceased had had a belt designed to support the head tied around his neck, which was not a recognised form of traction; he had had a belt tied around his scrotum and penis, which, together with the belt around the neck, two eminent psychiatrists deposed were recognised symptoms of those seeking sexual gratification in that fashion; the deceased had not been engaged in orthodox methods of suspension and traction on the relevant occasion; and because of his training and career, he must have appreciated the dangers of the enterprise on which he had embarked.

The question to be decided therefore was whether the death resulted from accidental means within the terms of the policy.

Held: **for the defendant insurer.**

The question is not whether the death was accidental in the sense that it was not foreseen or anticipated, but whether the means by which the fatal injury was caused were accidental means.

The insurer is liable only if the injury is caused by an involuntary act of the assured which he did not intend to perform, or if the injury is brought about by some intervening and unexpected occurrence not reasonably foreseen. Since the deceased's enterprise was not involuntary and since there was no intervening event, the insurer was not liable. Dennis v. City Mutual Life Assurance Society Limited (1979) 1 ANZ Insurance Cases ¶60-003; 1979 V.R. 75 followed.

Before: Rogers J.

Rogers J.: The plaintiff sues the defendant on a personal disability policy. The life assured died on 23 April 1978. The policy provides for payment of the benefits therein enumerated upon the occurrence of any of the events stated. One of the prescribed events is death occurring within twelve calendar months of sustaining bodily injury. The definition provisions of the policy provide that bodily injury means "injury caused solely and directly by violent, accidental, external and visible means". Notwithstanding the date of death, the present action was not commenced until 21 February 1982. The only relevance of that is that it is not to be thought that proceedings in this particular jurisdiction occupy the length of time which might otherwise be thought to have been taken.

...