

"ACCIDENTAL MEANS" DEFINITION.<sup>1</sup>

An [injury] [death] results from accidental means when the sole cause<sup>2</sup> of it is unusual, unforeseeable and unexpected.

"Accidental means" refers to the occurrence or happening which produces the result, not the result itself. An intentional act that produces an unusual or unexpected result, with no mischance,

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<sup>1</sup>Various kinds of life and accident insurance policies contain language requiring that the insured event occur by accidental means. Illustrative clauses are: coverage "against loss resulting directly and independently of all other causes from bodily injuries sustained during the term of this policy, and effected solely through accidental means," *Henderson v. Hartford Accident & Indem. Co.*, 268 N.C. 129, 131, 150 S.E.2d 17, 19 (1966); benefits for death resulting from "accidental bodily injuries effected solely through external violent and accidental means," *Collins v. Life Ins. Co.*, 99 N.C. App. 567, 568, 393 S.E.2d 342, 343 (1990); double indemnity coverage if the insured "sustained bodily injury resulting in death within ninety days thereafter through external, violent and accidental means, death being the direct result thereof and independent of all other causes . . .," *Chesson v. Pilot Life Ins. Co.*, 268 N.C. 98, 150 S.E.2d 40 (1966). Obviously, the actual instruction given must be rooted in the policy language. However, the most commonly litigated phrase in such cases involves "accidental means." The words "external" and "violent" are also commonly used in "accidental means" clauses. See, e.g., *Collins*, 99 N.C. App. at 568, 393 S.E.2d at 343; *Brendle v. Shenandoah Life Ins. Co.*, 76 N.C. App. 271, 273, 332 S.E.2d 515, 516 (1985); see also *Weaver v. Home Sec. Life Ins. Co.*, 20 N.C. App. 135, 201 S.E.2d 63 (1973) (finding death by "internal," not "external," means); 1A-19 Appelman on Insurance § 363 (discussing the policy language, "external, violent and accidental means").

<sup>2</sup>If the facts involve the relationship between accidental means and a diseased condition, see N.C.P.I. Civil 870.21.

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slip or mishap occurring, is not caused by accidental means.<sup>3</sup> The emphasis is upon the accidental nature of the cause of the [injury] [death], that is, whether the occurrence or happening was unusual, unforeseeable, unexpected, and the sole cause of the [injury] [death].<sup>4</sup>

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<sup>3</sup>Occasionally, it may be desirable to instruct that whether the means is accidental is to be viewed from the perspective of the victim of a deliberate act. See, e.g., *Davis v. Colonial Life*, 28 N.C. App. 44, 220 S.E.2d 149 (1975).

<sup>4</sup>See *Henderson*, 268 N.C. at 132, 150 S.E.2d at 19; *Collins*, 99 N.C. App. at 569-60, 393 S.E.2d at 343; *Linder v. Prudential Ins. Co.*, 39 N.C. App. 486, 490, 250 S.E.2d 662, 665 (1979).