

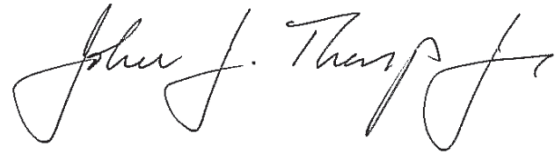


Because Dr. Yasko's death was an "Accident" as defined by the Policy, it was covered *unless* the Policy's exclusion that denies coverage for "any loss ... to which sickness, disease, or myocardial infarction, including medical or surgical treatment thereof, is a contributing factor" applies. With respect to that question, the Court concluded as a matter of law that Dr. Yasko's surgery in February 2010 was not a contributing factor to his death within the meaning of the Policy. The Court also concluded that "the evidence leans strongly toward the conclusion that after his surgery, Dr. Yasko did not have active lung 'cancer;'" and on the basis of that discussion, the Court now finds that the evidence on this point supports a judgment (under the preponderance standard) in favor of the plaintiff. Concluding that Dr. Yasko did not have active lung cancer at the time of his death necessarily means that cancer could not have been a contributing factor in his death.

Even if the Court found that Dr. Yasko still had some degree of active cancer when he died, that fact would still not establish that lung cancer was a contributing factor in his death. As the Summary Judgment Order noted, Reliance has not adduced "any evidence of the mechanism by which cancer can cause an embolism, or that this mechanism actually occurred in Dr. Yasko's case." It is Reliance's burden to establish that a Policy exclusion applies and in this case it has not met that burden. Accordingly, the Court finds that neither lung cancer, nor the surgery Dr. Yasko underwent, was a contributing factor in his death and the "contributing factor" Policy exclusion therefore does not apply.

\* \* \*

For the reasons set forth above, judgment is entered in favor of the plaintiff and against the defendant pursuant to Fed. R. Civ. P. 52. This case is terminated.

A handwritten signature in black ink, reading "John J. Tharp, Jr." with a stylized flourish at the end.

Entered: August 20, 2014

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John J. Tharp, Jr.

United States District Judge