IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ERIN M. DOHERTY and
KELLY M. DOHERTY,

OPINION AND ORDER

Plaintiffs,

12-cv-330-bbc

v.

STATE FARM LIFE AND ACCIDENT
ASSURANCE CO.,

Defendant.

- -

Plaintiffs Erin Doherty and Kelly Doherty are the daughters of William Doherty, who died in a skydiving accident near East Troy, Wisconsin. In this civil action, plaintiffs are seeking the proceeds of two life insurance policies William Doherty purchased from defendant State Farm Life and Accident Assurance Co. Jurisdiction is present under 28 U.S.C. § 1332 because plaintiffs' citizenship is diverse from defendant's and more than $75,000 is in controversy. (Plaintiff Erin Doherty is a citizen of Massachusetts and plaintiff Kelly Doherty is a citizen of Minnesota. Defendant is a Delaware corporation with its principal place of business in Illinois.)

After William Doherty's death, defendant paid plaintiffs limited benefits under the policies, but denied their request for full benefits on the ground that they were barred by the Aviation Limitation Endorsement in the policies. The endorsement limited coverage if death

"results . . . from descent from an aircraft while in flight." Plaintiffs responded with this lawsuit in which they contend that defendant misinterpreted the aviation endorsement and that it should not have been applied under the circumstances of Doherty's death.

Both sides have moved for summary judgment on the issue whether the policies' Aviation Limitation Endorsement limits plaintiffs' recovery. Plaintiffs contend that the aviation endorsement requires defendants to prove that William Doherty died because he jumped out of an airplane and for no other reason. Dkt. #10. They argue that because there is evidence that Doherty suffered a "medical event" during his descent from the aircraft, defendants cannot establish that his death was caused solely because he jumped from the aircraft. Defendant opposes plaintiffs motion. It maintains that the aviation endorsement limits coverage so long as defendant shows that Doherty died as a result of a risk inherent to jumping from an aircraft in flight, including the risk of a medical event that prevented him from deploying his parachute. Dkt. #27. Additionally, it contends that the record contains no evidence showing that Doherty's death was the result of anything other than massive trauma incurred from hitting the ground after descending from an airplane, a death that falls clearly within the aviation endorsement.

I conclude that plaintiffs' motion for summary judgment must be denied and defendant's must be granted. The Aviation Limitation Endorsement was intended to apply to situations like the one in which Doherty died as a result of risks inherent to descending from an aircraft in flight, including the risk that a sudden medical event would render him unable to deploy his parachute. Even if plaintiffs are correct that the Aviation Limitation

Endorsement was not intended to apply to situations in which a person dies as a result of a medical event that would have killed him instantly, wherever it occurred, there is no evidence in the record from which a jury could find reasonably that Doherty died before hitting the ground, as a result of a medical event. Rather, the evidence in this case establishes that Doherty died as a result of massive trauma suffered when he hit the ground after jumping from an airplane. Therefore, Doherty's death falls under the provisions of the Aviation Limitation Endorsement and plaintiffs are entitled to no additional benefits

UNDISPUTED FACTS

A. William Doherty's Death

William Doherty was a certified parachute instructor and an experienced parachutist with more than 5,000 successful jumps. He had no known health conditions that could cause sudden death. On September 20, 2008, Doherty went skydiving with Kay Skic and Thomas Burzynski at an airport in East Troy, Wisconsin. Doherty exited the aircraft at about 14,000 feet and was followed immediately by Skic and Burzynski jumping in tandem. The jump went as expected until about 9,000 feet. Doherty was performing movements, filming Skic and Burzynski and communicating with Burzynski. At about 9,000 feet, Doherty drifted to the left of Burzinski and Skic and his hands and head began shaking. His body became limp, his head and hands dropped down and he fell silent. Doherty began falling to the ground in a U-shaped position, with his back facing the ground and his arms and legs trailing upward and whipping around in the wind. He did not cry for help or make

any other sound. At about 5,900 feet, Burzinski deployed his parachute and lost sight of Doherty.

Doherty hit the ground without deploying his parachute. He sustained massive damage to various parts of his body and his brain ruptured into multiple pieces. A bystander, Jim Haraldsen, saw Doherty hit the ground. According to Haraldsen, Doherty landed "feet first and facing the ground on about a 35-40 degree angle from [the] ground surface . . . He [] first hit the ground with his feet, leaving about 3 inch deep ruts in the ground as he proceeded to the bottom of [a] ditch where his body collapsed under his weight, leaving an impression in the packed soil of about 12-14 inches deep." Haraldsen Aff., dkt. #14.

B. Autopsy and Dr. Molot's Opinion

On September 22, 2008, Dr. David Molot performed an autopsy of Doherty. Molot is a physician and patholigist and deputy coroner for Walworth County who works under contract for the Walworth County Coroner's office. At the time he performed the autopsy, Molot had been told only that Doherty died in a skydiving incident after not deploying his parachute. No one told Molot about Doherty's behavior during the jump or that Doherty may have fainted or lost consciousness after he jumped.

Generally, in a non-traumatic autopsy, Molot dissects the brain to see whether there are any internal changes or injuries. Additionally, if there is a reason for Molot to believe that something is wrong with the brain, his protocol is to "fix the brain" by suspending it in

a bucket of formalin for a period of about a week. The formalin hardens the brain and preserves the tissue. This allows Molot to section the brain later and observe any abnormalities.

Molot could not perform a normal dissection of Doherty's brain because it was massively damaged. The blood vessels in the brain were macerated and Molot could not dissect any of the individual vessels as he normally would have done. However, Molot examined Doherty's brain for about 15 minutes. Because of the way the brain was macerated, he could see many of the internal parts of the brain, including white matter, gray matter, portions of the ventricle and portions of blood vessels. Nothing "suggested to [him] that there was any abnormality in any of the tissue that [he] evaluated grossly." Dep. of Mark Molot, dkt. #22, at 35.

Molot concluded that Doherty's cause of death was "massive trauma received in a parachuting incident." He believed that Doherty's death was "instantaneous" with his impact on the ground. Id. at 13. He based his opinion on the multiple injuries and massive trauma that he found, including a fractured skull, vertebrae, ribs, macerated lungs and brain and torn heart.

At his deposition, Molot testified that he saw no evidence of blood clots or other abnormality in plaintiff's brain that would have caused him to suspect that Doherty had a brain aneurysm, a tumor or anything other than trauma to his brain. Id. at 55, 61. He also saw nothing in Doherty's heart to suggest arrhythmia. Id. at 68. He stated that it would be speculation for him to conclude that Doherty lost consciousness for a medical reason, id. at

66, and that he would not have done anything differently during his autopsy had he known about plaintiff's possible fainting or unconsciousness. Id. at 62-63. Molot stated that it would have been difficult or impossible to see certain conditions that can cause unconsciousness, including small aneurysms or arrhythmia. Id. at 55, 63. He stated that he had no opinion one way or another as to whether Doherty fainted or lost consciousness after he exited the airplane and before striking the ground. Id. at 74.

C. Life Insurance Policy

At the time of his death, William Doherty had two life insurance policies issued by defendant: policy #AS-0068-2188 issued on December 28, 1999 and policy #AS-0041-8947 issued on February 24, 1991. Dkts. ##17-1, 17-2. Each policy identified plaintiffs as joint beneficiaries for payment of the death benefits in equal shares. When Doherty applied for the policies, he had to say in the application whether, in the previous three years, he had "engaged in avocations such as mountain or rock climbing, vehicle racing, scuba, skin, or sky diving," and if so, whether "such activity [was] planned in the next 6 months." Id. Doherty responded to the question by writing, "Issue w/skydiving exclusion. Insured makes about 200 jumps per year. Has been doing this for 14 years. . . ." Id.

Each policy was issued with an identical "Aviation Limitation Endorsement" containing the following language:

> **Limited Death Benefit.** If the Risks Not Assumed provision applies when the Insured dies, the proceeds will be limited to the greater of 1 or 2:
> (1) This amount will be the total premiums paid plus the cash value of any dividends added to the cash value less the total dividends paid less any

withdrawals. . . .
(2) This amount will be the cash value of this policy. . . .

Risks Not Assumed. This endorsement will apply if the Insured's death results from any of the following:
(1) Flight in an aircraft while the Insured has duties on such aircraft.
(2) Flight in an aircraft as an instructor or student.
(3) Flight in an aircraft for the purpose of descent from such aircraft.
(4) Descent from an aircraft while in flight.
(5) Operating or riding in an aircraft controlled or chartered by a military service.

Id. at 16.

OPINION

All parties assume that Wisconsin law applies to the insurance policies at issue in this case, so I have done the same. RLI Insurance Co. v. Conseco, Inc., 543 F.3d 384, 390 (7th Cir. 2008) ("When neither party raises a conflict of law issue in a diversity case, the applicable law is that of the state in which the federal court sits."). Under Wisconsin law, the insured has the initial burden to show coverage, while the insurer has the burden of proving an exception to coverage. American Family Mutual Insurance Co. v. Schmitz, 2010 WI App 157, ¶ 8, 330 Wis. 2d 263, 269, 793 N.W.2d 111, 114. There is no dispute that William Doherty's two life insurance policies provided coverage for his death. However, defendant contends that the Aviation Limitation Endorsements in Doherty's life insurance policies limit the benefits owed to plaintiffs as Doherty's beneficiaries because Doherty's death resulted from "descent from an aircraft while in flight." The question to be resolved is the scope of this endorsement. Aul v. Golden Rule Insurance Co., 2007 WI App 165, ¶

17, 304 Wis. 2d 227, 241, 737 N.W.2d 24, 30 (contract interpretation is question of law to be resolved by court).

Under Wisconsin law, courts should interpret an insurance policy to give the policy's words their common, ordinary meaning, that is, what a reasonable person in the position of the insured would have understood the words to mean. Id.; Van Erden v. Sobczak, 2004 WI App 40, ¶ 22, 271 Wis. 2d 163, 180, 677 N.W.2d 718, 726. If the policy's terms are clear, courts should interpret the policy as written and avoid writing a better insurance policy than the one purchased. Hirschhorn v. Auto-Owners Insurance Co., 2012 WI 20, ¶ 24, 338 Wis. 2d 761, 773, 809 N.W.2d 529, 535; Siebert v. Wisconsin American Mutual Insurance Co., 2011 WI 35, ¶ 31, 333 Wis. 2d 546, 558, 797 N.W.2d 484, 490; Peace ex rel. Learner v. Northwestern National Insurance Co., 228 Wis. 2d 106, 121, 596 N.W.2d 429, 436 (1999) ("[T]his principle does not allow a court to eviscerate an exclusion that is clear from the face of the insurance policy."). However, when an ambiguity exists within an insurance contract, courts should construe the policy in favor of the insured, that is, in favor of coverage. Hirschhorn, 2012 WI 20, at ¶ 23. The test for ambiguity under Wisconsin law is whether the words or phrases at issue are "reasonably susceptible of more than one construction from the viewpoint of a reasonable person of ordinary intelligence in the position of the insured." Schroeder v. Blue Cross & Blue Shield, 153 Wis. 2d 165, 174, 450 N.W.2d 470, 473 (1989).

Plaintiffs interpret the Aviation Limitation Endorsement as precluding full benefits only if defendant can prove that Doherty's departure from the aircraft was the *sole* cause of

his death. According to plaintiffs, under their interpretation the exclusion would not bar coverage in situations in which Doherty suffered a medical event during his descent that prevented him from deploying his parachute. The medical event could be the type that (1) killed Doherty instantly, before he hit the ground; (2) did not kill Doherty instantly, but debilitated him and would have would have led to certain and imminent death if he had not hit the ground first; or (3) debilitated Doherty in a non-fatal way, rendering him unconscious and unable to deploy his parachute.

Plaintiffs make three arguments in support of their interpretation. First, plaintiffs argue that the Wisconsin Supreme Court has determined that the phrase "results from" is ambiguous as a matter of law and must be construed in favor of the insured. Plaintiffs cite Olson v. Farrar, 2012 WI 3, 338 Wis. 2d 215, 809 N.W.2d 1 in support of their argument. In that case, the Wisconsin Supreme Court considered whether a provision in a farm owner's insurance policy that provided coverage for property damage "result[ing] from . . .a mobile home trailer" provided coverage for damage that resulted when the farm owner was moving a mobile home trailer, using his tractor, when the tractor stalled, causing the trailer to strike a vehicle owned by the plaintiff, the owner of the motor home. Id. at ¶ 51. The insurer argued that the damage "resulted from" the tractor, not the motor home trailer, because the tractor's stalling was the catalyst for the damage. Id. The court rejected the insurer's argument, concluding that in the context of the policy, the phrase "results from" was ambiguous because it was susceptible to more than one reasonable construction. Id. at ¶ 53. The phrase could mean the primary cause of the damage or it could mean any contributing

factor. Id.

Although the court concluded that "results from" was ambiguous in the policy at issue in Olson, the court did not conclude that the phrase "results from" is inherently ambiguous, as plaintiffs suggest. In interpreting the policy, the court considered the phrase in the context of the policy and as applied to the facts of the case. The court's conclusion that "results from" was ambiguous in one policy does not mean that the phrase is ambiguous when used in combination with different terms in a different policy. Estate of Sustache v. American Family Mutual Insurance Co., 2008 WI 87, ¶ 19, 311 Wis. 2d 548, 560, 751 N.W.2d 845, 850 ("An insurance policy is not interpreted in a vacuum or based on hypotheticals. It is tested against the factual allegations at issue.") (citation omitted); Sprangers v. Greatway Insurance Co., 182 Wis. 2d 521, 537-38, 514 N.W.2d 1, 7 (1994) (court "must examine the context in which the word [] is used in the policy to determine" meaning)(internal citations and quotation marks omitted). Thus, the court's holding in Olson is not enough by itself to support plaintiffs' narrow interpretation of the Aviation Limitation Endorsement in this case.

This leads to plaintiffs' second argument, which is that the phrase "death [that] results from . . . [d]escent from an aircraft while in flight" is ambiguous as used in the policies at issue in this case. Plaintiffs say that phrase could be interpreted to mean death caused by the hazards of parachuting together with any other cause, as defendant suggests. On the other hand, the phrase could reasonably be interpreted to mean death caused solely by descending from an aircraft while in flight. Plaintiffs say that because the phrase is

subject to more than one reasonable interpretation, the court should construe the phrase narrowly, in favor of coverage. Plaintiffs cite the well-established legal principle that exclusion provisions should be "narrowly or strictly construed against the insurer if their effect is uncertain." American Family Mutual Insurance Co. v. American Girl, Inc., 2004 WI 2, ¶ 24, 268 Wis. 2d 16, 33, 673 N.W.2d 65, 73.

There is also a well-established legal principle that insurance policies should not be interpreted to provide an unreasonable or absurd result, Kopp v. Home Mutual Insurance Co., 6 Wis. 2d 53, 57, 94 N.W.2d 224, 226 (1959), and defendant contends that plaintiffs' proposed interpretation leads to arbitrary and unreasonable results. I agree. For example, plaintiffs contend that under their proposed interpretation, the aviation exclusion would apply and preclude full benefits in situations in which Doherty hit an airplane during his descent, landed among power lines or had technical problems with his parachute. Because those risks are inherent in skydiving, plaintiffs argue that they qualify the words, "resulting from descent from an aircraft," and they would be the sole cause of his death. Plts.' Br., dkt. #11, at 14. However, as defendant points out, the risk of suffering a medical event that renders a person unable to deploy his parachute is as much a risk inherent in skydiving as the risk of an equipment failure. Dft.'s Br., dkt. #30, at 9. Jumping out of an airplane while it is in flight is dangerous because small errors, equipment failures, momentary illness or just plain bad luck may result in massive deadly trauma if the skydiver's parachute does not open before he strikes the ground. It would be unreasonable to interpret the aviation exclusion as applying only to certain risks inherent in skydiving and not others.

Doherty's application for the insurance policy establishes that both defendant and Doherty understood that the Aviation Endorsement Limitation was intended to preclude coverage for risks inherent in Doherty's skydiving activities. In his application, Doherty described his frequent skydiving activities and stated that the policy should be issued with a "skydiving exclusion." The language of the application and exclusion suggests that Doherty understood that defendant was excluding from coverage all risks associated with Doherty's skydiving activities. That included activities involving "[f]light in an aircraft while the Insured has duties on such aircraft;" "[f]light in an aircraft as an instructor or student"; "[f]light in an aircraft for the purpose of descent from such aircraft" and "[d]escent from an aircraft while in flight." Under the circumstances, it would be improper to construe the aviation endorsement in a way that provided coverage for risks obviously inherent in skydiving. Estate of Sustache, 2008 WI 87, at ¶ 19, 751 N.W.2d 845 ("We do not construe policy language to cover risks that the insurer did not contemplate or underwrite and for which it has not received a premium."); Sprangers, 182 Wis. 2d at 537-38, 514 N.W.2d at 7 ("The mere fact that a word has more than one dictionary meaning, or that the parties disagree about the meaning, does not necessarily make the word ambiguous if the court concludes that only one meaning applies in the context and comports with the parties' objectively reasonable expectations.").

This conclusion is supported by the decisions in several cases considering the applicability of aviation exclusions to situations in which the insured died from drowning or exposure after surviving a crash over water. In these cases, the courts concluded that the

risk of the insured's losing his life in the water as a result of engine trouble or adverse weather conditions was a normal, anticipated risk contemplated by the terms of the aviation exclusion clauses. The subsequent drowning or death from exposure was not an "independent cause but a link in the unbroken chain of causation . . . [c]learly . . . the result of the aerial flight." Elliott v. Massachusetts Mutual Life Insurance Co., 388 F.2d 362, 368 (5th Cir. 1968). See also Rauch v. Underwriters at Lloyd's of London, 320 F.2d 525 (9th Cir. 1963); Hobbs v. Franklin Life Insurance Company, 253 F.2d 591 (5th Cir. 1958); Order of United Commercial Travelers of America v. King, 161 F.2d 108 (4th Cir. 1947), aff'd, 333 U.S. 153; Green v. Mutual Benefit Life Insurance Co., 144 F.2d 55 (1st Cir. 1944); Neel v. Mutual Life Insurance Co. of New York, 131 F.2d 159 (2d Cir. 1942); Goforth v. Franklin Life Insurance Co., 449 P.2d 477 (Kan. 1969); Wendorff v. Missouri State Life Insurance Co., 1 S.W.2d 99 (Mo. 1927).

However, plaintiffs have an arguable point when they say that the parties may not have understood the aviation endorsement as excluding coverage for death from something completely unrelated to skydiving that would have caused the skydiver's death even if he had not been descending from a plane. For example, in Bull v. Sun Life Assurance Co. of Canada, 141 F.2d 456, 459 (7th Cir. 1944), the court of appeals held that an aviation exclusion did not apply in a case in which the insured was flying a plane during a battle, crash-landed in the ocean and was subsequently killed by enemy gunfire. The court concluded that the insured had ceased any aviation activities at the time he was killed and thus, his death did not "result from" his aviation activities. Similarly, in Eschweiler v.

General Accident Fire & Life Assurance Corp., 241 F.2d 101, 103 (7th Cir. 1957), the court of appeals concluded that an aviation exclusion clause did not bar recovery when the insured crash-landed on an ice-covered lake and escaped without injury from the plane, but subsequently died of cardiac failure while struggling to safety in a snowstorm. The aviation exclusion in that case barred recovery only for injuries sustained while "in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith or while operating or handling any such vehicle or device." Id. at 102. The court found no evidence that the insured's death from heart failure occurred while he was in or operating his plane; rather, the insured died after he had brought his plane and had it safely.

Applying the reasoning and conclusions of these cases to the present case, I conclude that the phrase "results from . . . descent from an aircraft while in flight" in the Aviation Limitation Endorsement cannot be interpreted as narrowly as plaintiffs suggest, but must be interpreted to preclude full recovery of benefits if Doherty's death was caused by risks inherent in descending from an aircraft while in flight. This includes the risk that Doherty would suffer a medical event, such as fainting, that would render him unable to deploy his parachute. Whether it would include a risk that he would suffer a medical or other event unrelated to skydiving that would cause his death is a separate question that need not be reached in this case because the record contains no evidence to support the finding that such an event was the cause of Doherty's death.

Plaintiffs' final argument is that Wisconsin's doctrine of "independent concurrent causes" applies. "The independent concurrent cause rule provides that '[w]here a policy

expressly insures against loss caused by one risk but excludes loss caused by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributory cause.'" Siebert, 2011 WI 35, at ¶ 40, 797 N.W.2d 484 (citing Kraemer Bros., Inc. v. United States Fire Insurance Co., 89 Wis. 2d 555, 570, 278 N.W.2d 857 (1979)). Plaintiffs contend that because Doherty's life insurance policies would have provided full coverage for death caused by medical events such as an aneurism or stroke, if such a medical event contributed to Doherty's death, plaintiffs are entitled to benefits even if Doherty's "descent from an aircraft" was a contributory cause. In other words, if Doherty suffered a medical event that was an "independent concurrent cause" of his death, the fact that he was skydiving at the time should not preclude coverage.

Plaintiffs cite no cases in which the independent concurrent cause doctrine has been applied to life insurance policies such as those at issue in this case. In all of the cases I have found that address the doctrine, the courts were interpreting property insurance policies that contained provisions expressly providing coverage for damages or injury caused by a specific risk and excluding coverage for damages or injury caused by a different risk. E.g., Schmitz, 2010 WI App 157, at ¶ 3, 793 N.W.2d 111 (homeowner's insurance policy expressly covered damaged caused by use of defective methods of construction but excluded damages caused by water damage or earth movement); Benke v. Mukwonago-Vernon Mutual Insurance Co., 110 Wis. 2d 356, 359, 329 N.W.2d 243, 245 (Ct. App. 1982) (property insurance policy expressly covered loss caused by wind but excluded loss caused by snow and ice).

However, I will assume for the purpose of deciding this case that the independent concurrent cause doctrine could apply to the life insurance policies at issue in this case. In order to trigger the doctrine, plaintiffs would have to show that Doherty would have died from an independent concurrent cause from which they could have recovered full benefits, regardless whether he had descended from an airplane. That is because "to trigger coverage [under the independent concurrent cause doctrine], the 'independent concurrent cause must provide the basis for a cause of action in and of itself and must not require the occurrence of the excluded risk to make it actionable.'" Siebert, 2011 WI 35, at ¶ 40, 797 N.W.2d 484 (quoting Estate of Jones v. Smith, 2009 WI App 88, ¶ 5, 320 Wis. 2d 470, 768 N.W.2d 245). See also Smith v. State Farm Fire & Casualty Co., 192 Wis. 2d 322, 332, 531 N.W.2d 376 (Ct. App. 1995). In other words, the independent concurrent cause doctrine applies only if the covered risk would have been sufficient by itself to cause Doherty's death.

As discussed above, plaintiffs propose three possible "medical events" that may have caused Doherty's death: (1) an event that killed Doherty instantly, before he hit the ground; (2) an event that debilitated Doherty and would have killed him eventually had he not hit the ground; or (3) an event that debilitated Doherty in a non-fatal way, rendering him unconscious and unable to deploy his parachute. Plaintiffs contend that any one of these three events would qualify as an independent concurrent cause that would be covered by the policy, but they are wrong. They did not have a cause of action until Doherty died. To qualify as an independent concurrent cause, the "medical event" must have caused Doherty's death, and thereby provided a cause of action, regardless whether Doherty was skydiving.

Only under the first scenario in which Doherty died suddenly and in mid-fall would plaintiffs have a basis for a cause of action without the occurrence of the excluded risk of Doherty's descending from an aircraft while in flight. The other two scenarios could not provide a cause of action. In those, it was Doherty's impact with the ground that caused his death. Even if one assumes that Doherty did not deploy his parachute because he fainted, fainting "in and of itself" could not cause the massive trauma that resulted in Doherty's death without the occurrence of the excluded risk. Siebert, 2011 WI 35, at ¶ 41, 797 N.W.2d 484 (holding that independent concurrent cause doctrine did not apply because the non-excluded risk, negligent entrustment of vehicle, would not be actionable without occurrence of excluded risk, negligent operation of vehicle); Bankert by Habush v. Threshermen's Mutual Insurance Co., 110 Wis. 2d 469, 483, 329 N.W.2d 150, 156 (1983) (same); Schmitz, 2010 WI App 157, at ¶ 26, 793 N.W.2d 111 (independent concurrent cause doctrine did not apply because "the covered risk (defective methods of construction) clearly would not have been actionable without the occurrence of the excluded risk (surface water washing out the earth underneath the home)"); Smith, 192 Wis. 2d at 331-33, 531 N.W.2d 376 (independent concurrent cause rule did not apply because snowmobile driver's intoxication and failure to put helmet on passenger could not be cause of action independent of crashing of snowmobile itself because "[w]ithout the operation of the snowmobile . . . injury would not have occurred").

In sum, I reach the same conclusion about the Aviation Limitation Endorsement under both plaintiffs' ambiguity argument and their argument under the independent

concurrent cause doctrine. The Aviation Limitation Endorsement is not ambiguous. A reasonable insured would interpret the provision as precluding full benefits if the insured died as a result of risks inherent in descending from an aircraft during flight, including medical events that rendered the insured incapable of deploying a parachute while skydiving. This means that so long as defendant can show that Doherty died as a result of a risk inherent in skydiving, plaintiffs are not entitled to full benefits. However, if the evidence shows that Doherty died from a medical event unrelated to skydiving, plaintiffs might be entitled to full benefits. Similarly, under the independent concurrent cause doctrine, plaintiffs are not entitled to full benefits unless they can prove that Doherty died from an independent medical event that would have killed him even if he had deployed his parachute.

This leads to the final question in the case: whether there is a genuine dispute of material fact about whether Doherty died as a result of a medical event before he hit the ground. Defendants have moved for summary judgment on this issue, contending that their evidence establishes that Doherty died as a result of hitting the ground, not as a result of an independent medical event. Plaintiffs have not managed to produce any evidence from which a reasonable jury could conclude that William Doherty died from anything other than the massive trauma he incurred after jumping out of an airplane at 14,000 feet and hitting the ground without deploying a parachute.

It is undisputed that Doherty was alive and not in any apparent ill health when he jumped from the aircraft, as well as during his free fall to about 9,000 feet. Doherty had no

known medical condition that could cause sudden death. Plaintiffs speculate that Doherty suffered an unspecified fatal illness in the short time before striking the ground, but they have not cited any evidence to support their speculation. Although there is evidence that Doherty went silent, limp and may have fainted during his descent, there is no evidence from which a jury could reasonably infer, and not simply guess, that Doherty was silent and limp because he was dead. Plaintiffs submitted no expert testimony explaining the possible causes of Doherty's behavior, let alone expert testimony suggesting that Doherty's behavior was the result of sudden death. Hanners v. Trent, 674 F.3d 683, 692 (7th Cir. 2012) (mere speculation is not enough to avoid summary judgment).

The only medical expert to provide an opinion in the case was Dr. Molot, who gave the opinion that Doherty died as a result of massive trauma incurred after hitting the ground. Dr. Molot stated repeatedly that he saw no evidence that Doherty suffered an aneurysm, stoke, arrhythmia or any other medical event or health condition that would have caused him to die instantly. He also stated that to suggest otherwise would be pure speculation.

In sum, the only medical evidence in the case establishes that Doherty's death resulted from the massive trauma of striking the ground while descending from an aircraft in flight. Therefore, the Aviation Limitation Endorsement applies and the limited death benefit it describes is the sole benefit payable under the policies. Accordingly, I am denying plaintiffs' motion for summary judgment and granting defendant's motion.

ORDER

IT IS ORDERED that

1. The motion for summary judgment filed by plaintiffs Erin Doherty and Kelly Doherty, dkt. #10, is DENIED.

2. Defendant State Farm Life and Accident Assurance Co.'s motion for summary judgment, dkt. #27, is GRANTED.

3. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 4th day of February, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge