IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OHIO NATIONAL LIFE ASSURANCE CORP., an Ohio Corporation,	)	
Plaintiff,	)	No. 07 C 4266
	)	Magistrate Judge Schenkier
v.	)	
LORI SOLDAT, Executor of the ESTATE OF KENNETH M. SOLDAT, Deceased,	)	
Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

On September 20, 2006, Kenneth Soldat died upon impact when he drove his car head-on into a concrete wall in the parking garage at Soldier Field. Exactly one year earlier, on September 20, 2005, Ohio National Life Assurance Corporation ("Ohio National") issued a Renewable Term Life Insurance Policy ("the Policy") to Mr. Soldat, as the insured, which provided for payment of a death benefit in the amount of $1,000,000.00. The Policy named Lori Soldat, Mr. Soldat's wife, as the Primary Beneficiary of the death benefit. The Policy also included a term titled "Suicide," which provided that if the insured died "within the first 2 contract years," by "suicide while sane or insane" or "by self-destruction while insane," then Ohio National would limit the death benefit to the "premiums . . . paid."

Ohio National has filed this action seeking a declaratory judgment against Ms. Soldat, as executor of Mr. Soldat's estate, that this "suicide exclusion" clause releases Ohio National of any

[1]On August 28, 2007, by joint consent of the parties and pursuant to 28 U.S.C. § 636(c), the Executive Committee transferred this case to this Court for all further proceedings, including the entry of final judgment (doc. ## 8, 10).

duty to pay the full death benefit of $1,000,000.00. On January 14, 2009, the parties agreed that this case should be decided as a bench trial on the papers pursuant to Fed.R.Civ.P. 52(a), and they have since so stipulated (doc. # 26, 30).

In its motion for judgment (doc. #39), Ohio National argues that the suicide exclusion applies because Mr. Soldat's death occurred within two years of the Policy's issuance, and the evidence shows that Mr. Soldat was conscious that his actions would lead to death and thus committed suicide and/or self-destruction within the meaning of the Policy. For her part, Ms. Soldat seeks a judgment in her favor, that the suicide exclusion does not apply, and that the estate is entitled to the full $1 million death benefit (doc. # 40, without separate motion). Although she concedes that Mr. Soldat's death was an act of self-destruction, Ms. Soldat argues that the evidence fails to show that Mr. Soldat was "insane" at the time of death; she also argues that Ohio National has failed to prove that Mr. Soldat committed suicide, because there is insufficient evidence of his intent to do so.

The parties have each submitted briefs seeking judgment in their favor pursuant to Rule 52(a) (doc. ## 39-40, 50, 54), together with a joint statement of material facts with evidentiary exhibits (doc. # 27-28). Ms. Soldat also has submitted a supplemental fact statement setting forth opinion evidence submitted by her experts (doc. # 31), to which Ohio National has responded by moving to exclude the experts' opinions (doc. # 41-42) and, in the alternative, disputing certain facts and admitting others (doc. # 43).

Under Rule 52(a), a court treats the evidentiary materials as the evidentiary record in the case, the fact submissions as proposed findings of fact, and the briefs as proposed conclusions of law. Rule 52(a) provides: "In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately." Consistent with Rule 52(a),

we set forth below the findings of fact and conclusions of law that form the basis for this Court's rulings. To the extent any finding of fact constitutes a conclusion of law, the Court adopts it as such; and, to the extent any conclusion of law constitutes a finding of fact, the Court adopts it as such. *See Miller v. Fenton*, 474 U.S. 104, 113-14 (1985) (discussing methodology for distinguishing questions of fact from questions of law). For the reasons that follow, the Court grants judgment for Ohio National.

I. FINDINGS OF FACT.

The following facts are taken from the parties' joint statement of material facts ("Joint Statement" or "JS"). Only those facts material to this Court's determination are made part of the Court's findings. All other undisputed facts in the Joint Statement remain a part of the record, but they are not a basis for this Court's judgment.

1. On September 20, 2005, Ohio National issued Renewable Term Life Insurance Policy number 6770777 ("the Policy") to the insured, Kenneth Soldat. The Policy names Lori Soldat the Primary Beneficiary, and provides for payment of a death benefit in the amount of $1,000,000.00 (JS at No. 1 (citing Joint Exhibit ("JX") A, Policy)). The terms of the Policy are governed by Illinois law (*Id.*). Ohio National is a citizen of the State of Ohio, and Ms. Soldat is a citizen of the State of Illinois (JS No. 5).

2. In a section titled "Suicide," the Policy provides as follows:

> If the insured dies by suicide while sane or insane or by self-destruction while insane, we will not pay any amount which has been in effect for less than 2 years. If the suicide or self-destruction is within the first 2 contract years, we will pay as death proceeds the premiums you paid.

(JS No. 2 (quoting JX A, Policy at 9)).

3. Mr. Soldat died on September 20, 2006 (JS No. 3), when he drove his car at a speed of 40-50 miles per hour head-on into a concrete wall in the parking garage at Soldier Field, dying upon impact (JS No. 6).

4. This death occurred exactly one year after the Policy was issued and thus within the first two contract years. Ms. Soldat concedes that Mr. Soldat died by self-destruction (Def.'s Reply Mem. at 11).

5. The last person to speak with Mr. Soldat prior to his death was Nicholas Stasinopoulos (JS No. 8). At the time, Mr. Stasinopolous was a parking lot supervisor who was sitting in an open vehicle at the East Entrance to the underground parking garage at Soldier Field. At approximately 2:15 p.m. on Wednesday, September 20, 2006, Mr. Soldat drove his car up to the east entrance to the underground parking garage at Soldier Field (*Id.* No. 9). Mr. Soldat had his passenger side window down and he was wearing his seatbelt when he approached (*Id.* No. 10).

6. Mr. Soldat spoke with Mr. Stasinopoulos for about five minutes, remaining in the car the entire time (JS No. 10). During their conversation, Mr. Soldat "had a song playing on the radio that he just kept restarting to the beginning every couple of seconds" (*Id.* No. 12). Although Mr. Stasinopoulos characterized Mr. Soldat as "preoccupied" (JS No. 13), Mr. Stasinopoulos also said he did not notice anything unusual about Mr. Soldat's speech pattern (*Id.*). He also said Mr. Soldat did not appear intoxicated, agitated, nervous, confused, distracted, depressed, excited, cheerful, or incoherent (*Id.*). Mr. Stasinopoulos's testimony about Mr. Soldat's manner and appearance is consistent with what he told police

immediately after the crash, with one exception: Mr. Stasinopoulos told police that Mr. Soldat "appeared disoriented and confused" (JS No. 28).

7. During the conversation, Mr. Soldat said he had come to Soldier Field that day "to see the Bears go to the Super Bowl and Lovie Smith and Walter Payton" (JS No. 11). The Court takes judicial notice of the fact that the Chicago Bears football team – a team that plays its home games at Soldier Field in Chicago, Illinois – did reach the Super Bowl on February 5, 2007, at the end of the 2006 season. But, there was no football game or other event involving Lovie Smith (the Bears' head coach) or the Bears on September 20, 2006 (*Id.* No. 9). And, of course, Walter "Sweetness" Payton, the Bears' Hall of Fame running back, had retired from football after the 1988 season and had tragically died of liver disease in 1999 at the age of 45.

8. During his conversation with Mr. Stasinopoulos, Mr. Soldat stated that his "mother and sister died at a young age;" that "he never got to say good-bye to them;" that "his father's watch stopped at the time of his mother's death;" and that his father never wore the watch again (JS No. 14). Mr. Stasinopoulos said there was no particular reason this subject came up; rather, Mr. Soldat "just started talking" about it (*Id.* No. 15).

9. After commenting about his father never wearing the watch again, Mr. Soldat removed his own watch and put it on the dashboard of his car (JS No. 15). Mr. Soldat then turned his car radio off, and said to Mr. Stasinopoulos: "Thank you, I'm going to go in" (*Id.*). Mr. Stasinopoulos said he told Mr. Soldat to pull up to the booth and take a parking ticket (*Id.*).

10. Mr. Stasinopoulos then watched Mr. Soldat drive his car toward the northernmost gate entrance to the underground garage "at a normal speed like anybody else pulling into the

garage" (JS No. 16). At that time, there was no parking attendant in the booth and the gate was down (*Id.*). Mr. Stasinopoulos started toward the gate to tell Mr. Soldat that he needed to push a button to obtain a ticket (*Id.* No. 17). However, Mr. Soldat did not stop at the gate to take a ticket; instead, he continued to drive through the unopened gate, which slid up over his car (JS No. 17). Because Mr. Stasinopoulos had moved toward the ticket booth, he was in a position to observe what happened next.

11. To park a car after passing the ticket booth, a driver would turn left past the ticket booth and go up or down a ramp (JS No. 18). However, Mr. Soldat did not turn left to park, but rather drove straight ahead from the gate (*Id.*). In so doing, Mr. Soldat drove over a concrete median, and then picked up speed "slightly" (*Id.*). Mr. Soldat continued to accelerate, until he was "going faster than a vehicle would normally go in the garage" (*Id.* No. 19). Mr. Soldat continued driving straight ahead for 300 yards, reaching a speed of approximately 40-50 miles per hour (*Id.* No. 20). Mr. Soldat's journey ended when his car ran headlong into a concrete wall at the end of the parking garage (*Id.* Nos. 20-21).

12. From the time that he passed the ticket booth until the time of impact, Mr. Soldat's car did not swerve or stop; his brake lights never came on; and there was no screeching of tires that would suggest an attempt to stop (*Id.* No. 21). Likewise, photographs of the damage to the front of Mr. Soldat's car (*Id.* No. 24; *see also* JX 9A-E, G-H) do not suggest that Mr. Soldat took any evasive action to avoid a head-on crash with the concrete wall. Defendant does not contend that any mechanical malfunction of Mr. Soldat's car in any way caused or contributed to Mr. Soldat's death (JS No. 70).

13. Chicago Police arrived at the scene and an investigation commenced. The car's airbag deployed (JS No. 24), but it was not enough to save Mr. Soldat's life: he was pronounced dead by a medical examiner (*Id.* No. 22).

14. From the ouset, the police investigation treated Mr. Soldat's death as a possible suicide. The officer who arrived at the crash scene wrote a report dated September 20, 2006, in which he stated: "Victim drove vehicle into wall at a high rate of speed causing fatal injury" (JS No. 22). The reporting evidence technician prepared a "Crime Scene Processing Report," in which he stated that there was a "[d]eath investigation due to vehicle driving into concrete wall. Apparent [s]uicide" (*Id.* No. 23).

15. Police photographs taken at the scene show the parking garage entrance, the median that Mr. Soldat's car drove over, and the straight route leading to the concrete wall at the west end of the parking garage (JS No. 24). The photographs show marked parking spaces on the other side of the median that Mr. Soldat crossed. However, those parking spaces all face south, and Mr. Soldat's car was traveling in a westerly direction toward the concrete wall and not toward the parking spaces. The police investigation also found that there were no observable skid marks in the parking garage from Mr. Soldat's car (*Id.* Nos. 27, 31). That evidence is consistent with Mr. Stasinpoulos's observation that Mr. Soldat did not try to stop or take evasive action in order to try to avoid the impact.

16. The police further noted that Mr. Soldat's vehicle experienced "massive front end damage resulting from an obvious high speed, head-on collision" (JS No. 29). In deposition testimony, Chicago Police Detective Raymond Schnoor testified that driving a car at a high

rate of speed into a wall would be consistent with suicide; and, wearing a seatbelt does not rule out the possibility of suicide (*Id.*, No. 32).

17. The autopsy of Mr. Soldat was performed on September 21, 2006, by Dr. Adrienne Segovia, a forensic pathologist with the Cook County Medical Examiner's Office (JS. No. 33). The Medical Examiner's Report of Toxicologic Analyses reflects that Mr. Soldat's blood tested negative for carbon monoxide, benzoylecgonine, ethanol, and opiates (*Id.* No. 40). Dr. Segovia found the cause and manner of death to be "a) Multiple Injuries, b) Automobile Accident/Suicide." (*Id.* No. 25). In her Report of Postmortem Examination, Dr. Segovia determined the manner of Mr. Soldat's death to be suicide (*Id.* No. 34). On September 21, 2006, Dr. Segovia signed a Medical Examiner's-Coroner's Certificate of Death identifying Mr. Soldat's manner of death as suicide (*Id.* No. 35).

18. Dr. Segovia testified that she determined that Mr. Soldat committed suicide based on the "statements made about going to see dead relatives, a dead football player, and . . . accelerating rapidly into a wall" (JS No. 36). Dr. Segovia stated that she did not think Mr. Soldat's wearing his seatbelt said "anything . . . about . . . intent" (*Id.* No. 39).

19. During the investigation, police interviewed Ms. Soldat about her husband. The following sets forth the investigative summary of that interview:

> SOLDAT explained that the victim was an attorney and former Assistant in the DuPage County State's attorney's Office. SOLDAT stated that, although her husband had a high stress occupation, he handled the stress well and had never had depression issues or been treated for same. Approximately seven years ago the victim had been diagnosed with cancer but it had been successfully treated. However, earlier in this year the victim had suffered a Pulmonary Embolism and had struggled since. The victim was being treated by Dr. BHORADE from the University of Chicago Hospital.

> SOLDAT explained that the victim had been given a variety of prescription drugs to attempt to treat the issue. The victim was actively taking prescribed blood thinners and other items. On Friday, 15 Sep 06 the victim had been prescribed and had started taking Prednisone. SOLDAT stated that the victim almost immediately started having a severe mental reaction which included very anxious, almost manic behavior in a way that she had never observed the victim act before. On Sunday, 17 Sep 06 the victim quit taking the drug because of this adverse reaction.
>
> SOLDAT explained that the victim was due to have an appointment with Dr. BHORADE at 1:15 pm on 21 Sep 06. SOLDAT stated that the victim, apparently confused about the date, left to go to the doctor on the date of this incident.
>
> SOLDAT stated that she had attempted to contact the victim throughout the afternoon with negative results. SOLDAT became very concerned for the victim's safety, based on the reaction to the new prescription, and called his doctor. SOLDAT related that the doctor instructed her that the victim may be having a manic episode related to the prescription and should be taken to an Emergency Room as soon as he was located. SOLDAT stated that she then called the DuPage County Sheriff's Department to report the victim missing.

(JS No. 30).

20. On October 5, 2006, Ms. Soldat's attorney wrote to Dr. Segovia requesting that Dr. Segovia re-visit her findings regarding her determination as to the cause of death (JS No. 42). In her deposition in this case, Dr. Segovia testified that the information regarding the medications Mr. Soldat was taking at the time of the car accident did not change her opinion that Mr. Soldat's manner of death was suicide (JS No. 44).

21. However, in a letter dated November 16, 2006, Mr. Soldat's treating physician, Dr. Patrick Towne, a Board certified physician in Internal Medicine, wrote to Dr. Segovia to explain the call he received from Ms. Soldat on September 20, 2006. Dr. Towne opined that Mr. Soldat's erratic behavior and death resulted from severe sleep deprivation and a severe

reaction to oral steroids that he had recently been prescribed, which resulted in his having "no control over his actions at that time" (JS No. 46). In response to that letter, Dr. Segovia signed an Addendum to her Report of Postmortem Examination and Amended Medical Examiner's-Coroner's Certificate of Death, on November 28, 2006, which stated:

> In consideration of the letter received from Kenneth Soldat's physician, the manner of death is amended to undetermined.

(*Id.* No. 47).

22. Dr. Segovia testified that by changing the manner of death to "undetermined," she did not preclude the possibility that Mr. Soldat committed suicide (JS No. 50). Dr. Segovia stated that she changed her determination based on Dr. Towne's letter because it "raised the possibility that [Mr. Soldat's] behavior was altered by his use of the medication and therefore that – it raised a question, . . . as to whether or not he – he . . . did intend to kill himself . . . ." (*Id.* No. 51). Dr. Segovia also stated that she initially understood that both of Mr. Soldat's parents were dead, but she discovered, based on a letter from Ms. Soldat's counsel, that only one parent (his mother) had died (*Id.*).

23. After reviewing the investigation reports as well as the medical evidence, Dr. Towne expressed the opinion that "Mr. Soldat was 'insane at the time of his death'" and thus he "did not have the capacity to commit suicide" (JS Nos. 60-61). Dr. Towne opined that a person who is "insane" is "[s]omeone who lacks the capacity to understand their actions" (*Id.* No. 60). According to Dr. Towne, Mr. Soldat "did not know what he was doing at the time he drove his car into the wall," and he "was not able to appreciate the nature and quality of his acts" (*Id.* No. 61).

24. Dr. Towne also opined that Mr. Soldat's insanity was "temporary." Dr. Towne explained that Mr. Soldat was being treated for respiratory problems and a history of insomnia (JS No. 55). Dr. Towne testified that "mania" is a potential reaction to Medrol, one of the drugs he had prescribed for Mr. Soldat (*Id.* No. 17). Dr. Towne opined that, at the time he drove into the concrete wall, Mr. Soldat was "suffering from an acute psychiatric problem, 'steroid induced psychosis exacerbated by the insomnia,' as distinguished from an underlying psychiatric illness" (*Id.* No. 62). However, Dr. Towne admitted that he was not a psychiatrist, and thus not qualified to render that professional opinion (*Id.*).

25. Ms. Soldat testified that Mr. Soldat "wasn't himself" in the days just prior to his death due to the medications he was taking (JS No. 74). For example, on September 16, 2006, Mr. Soldat exhibited signs of being jittery, very high-strung, having racing thoughts and acting out of character and "really euphoric" (*Id.* No. 71); and, on Sunday, September 17, during a family party at their home, Mr. Soldat was "jittery, having racing thoughts, jumping from subject to subject, and said he was not feeling well and went upstairs" (*Id.* No. 72).

26. Ms. Soldat testified further that, after the party, Mr. Soldat "was sitting in bed very shaky" and that "he was almost too happy about having seen everybody but at the same time saying that he had just gotten so tired and that he just didn't feel well" (*Id.* No. 73). Ms. Soldat said that Mr. Soldat then went to the basement, which was decorated with Chicago Bear's memorabilia, and began moving pictures around (*Id.*).

27. There is also evidence that Mr. Soldat stopped taking the medications by September 17 or 18, 2006, and that the medication would remain in his system for two days thereafter (JS Ex.

2 (attachment)).[2] Ms. Soldat said that on the morning of September 20, Mr. Soldat "was a little hyper, but nothing alarming" (JS No. 76). She said that Mr. Soldat "still wasn't himself, but it just didn't seem as bad to me at that point as it had been earlier" (JS No. 74).

II. CONCLUSIONS OF LAW.

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds $75,000. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391.

2. The parties agree that Illinois law governs the interpretation of the Policy (JS No. 1). That is consistent with the rule that "[w]hen sitting in diversity, we must apply the substantive law of the state as we believe the highest court of that state would apply it when faced with the same issue." *Officer v. Chase Ins. Life and Annuity Co.*, 541 F.3d 713, 715 (7th Cir. 2008).

3. Under Illinois law, the terms of an insurance policy are governed by the same rules of interpretation that generally apply to contracts. Courts are to construe an insurance policy according to the plain, ordinary and popular meaning of the policy's terms. *Valley Forge Ins. Co. v. Swiderski Electronics, Inc.*, 860 N.E.2d 307, 314 (Ill. 2006); *Outboard Marine Corp. v. Mut. Ins.*, 607 N.E.2d 1204, 1212 (Ill. 1992). The insurer bears the burden of establishing that a claim falls within a provision of the policy that limits or excludes coverage. *Universal Cas. Co. v. Lopez*, 876 N.E.2d 273, 278 (Ill. App. 2007).

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[2]The ambiguity is due to the fact that this exhibit – a "health history" apparently prepared by Ms. Soldat – refers to the date as "Monday, 09/17/06." Thus, it is unclear whether she meant to say Sunday, September 17 or Monday, September 18.

4. When interpreting a suicide exclusion clause, we are mindful that there is a presumption against suicide in Illinois where circumstances are such that death might have resulted from negligence or accident. But, "[i]t has been uniformly held that the legal presumption against suicide vanishes when contradictory evidence is produced, and thereafter, the question is to be decided on the evidence without resort to the presumption." *Kettlewell v. Prudential Ins. Co of America,* 122 N.E.2d 817, 819 (Ill. 1954).

5. In this case, the presumption against suicide has been overcome. As we have found, there is no evidence that any vehicle malfunction caused the crash (Finding No. 12). Nor is there any evidence that Mr. Soldat tried to apply the brakes or engage in evasive maneuvers to attempt to avoid the crash (Findings Nos. 12, 15). Rather, he drove through a ticket gate, over a median, and accelerated to a speed of 40-50 miles per hour before crashing head-on into a concrete wall (Findings Nos. 10-11). This and other evidence that we discuss below is inconsistent with the proposition that Mr. Soldat's crash was the result of accident or negligence. Thus, in line with *Kettlewell*, we conclude that the presumption against suicide has vanished, and we decide this case without resort to that presumption.

6. At the threshold, we note that the parties disagree on two key legal questions in this case. *First*, the parties disagree on the interpretation of the suicide exclusion. *Second*, the parties disagree about the burden of proof that Ohio National must meet in order to demonstrate that the suicide exclusion applies. We address these legal questions in Parts A and B below. In Part C, we then apply the policy terms to the facts as we have found them.

A.

7. Ohio National seeks to exclude coverage based on the legal theory that Mr. Soldat's act of driving into the concrete wall of the Soldier Field parking garage, which resulted in his death, falls within the Policy's exclusion for death by "suicide, while sane or insane or by self-destruction, while insane." Ohio National does not ask us to determine whether Mr. Soldat was sane or insane at the time of his actions, or instead was insane. While Ohio National allows that "[p]erhaps" Mr. Soldat was insane or that he "might" not have been "cognizant of the physical consequences of his actions" (Pl.'s Mem. at 12), Ohio National does not attempt to overcome the presumption of sanity by offering proof that he was insane at the time of death. *See Royal Circle v. Achterrath,* 68 N.E. 492 (Ill. 1903) (absent evidence of insanity, Illinois requires courts to presume sanity). Rather, Ohio National's position is that by excluding coverage for suicide (synonymous in Illinois with self-destruction) whether sane or insane, the Policy renders it unnecessary to answer that question. Ohio National argues that the Policy requires us to decide only whether Mr. Soldat died as a result of his own voluntary physical action – irrespective of whether sane or insane at the time.

8. Ms. Soldat takes a very different view of the suicide exclusion. She argues that there exists a mental state between sanity and insanity that is not covered by the suicide exclusion clause. Thus, Ms. Soldat argues that Mr. Soldat was not insane at the time of his actions, because he "did not suffer from any mental disorder" (Def.'s Mem. at 9).[3] At the same time, Ms.

[3]The dictionary definition of "insane," says Ms. Soldat, is the one we must use in this case. She provides two definitions, one that indicates insanity is a "more or less permanent derangement of one or more psychical functions," THE LIVING WEBSTER ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE, pg. 497 (1975), and one that indicates that this "more or less permanent derangement" is "due to disease of the mind." THE RANDOM HOUSE DICTIONARY, pg. 735 (1966) (Def.'s Mem. at 9).

Soldat does not argue that Mr. Soldat was sane at the time of his actions. Rather, she seeks to thread a needle between sanity and insanity by characterizing Mr. Soldat as suffering from a temporary condition: a "steroid psychosis" as a result of a "Medrol Induced Mania" (*Id.* at 9).

9. For the reasons that follow, we agree with Ohio National's position that the suicide exclusion applies.

10. More than 130 years ago, the United States Supreme Court made clear that the term "suicide" – in "the popular, as well as the legal, sense" – means "the death of a party by his own voluntary act," when the person is "conscious of the physical nature of his act, and intended by it to cause his death." *Bigelow v. Berkshire Life Ins. Co.*, 93 U.S. 284, 287 (1876). The Illinois Supreme Court has applied this definition in the leading cases on the issue of suicide exclusion clauses insurance cases. *See Supreme Lodge Mut. Protection v. Gelbke,* 198 Ill. 365, 64 N.E. 1058 (1902) (following and interpreting *Bigelow*); *see also Seitinger v. Modern Woodmen of America,* 68 N.E.478 (1903) (following and interpreting *Bigelow*).

11. The United States Supreme Court has held that the act of self-destruction is synonymous with "suicide" (as used in insurance policies). *Bigelow,* 93 U.S. at 286-87 ("[t]he expression 'dying by his own hand,' is, in fact, no more than the translation into *English* of the word of *Latin* origin, "suicide.'"). Again, Illinois courts have adopted that interpretation. *See Gelbke,* 198 Ill. at 370 ("[t]he word 'suicide,' and the words 'to die by his own hand,' or 'by

his own act,' or 'to take his own life,' mean the same thing, and each conveys the idea of voluntary, intentional self-destruction").[4]

12. Since *Bigelow,* it has also been the law that the question of whether a person intended to commit suicide is separate from the question of sanity and insanity when the life insurance policy excludes benefits for suicide, while sane or insane. "Nothing can be clearer than that the words, 'sane or insane,' were introduced for the purpose of excepting from the operation of the policy any intended self-destruction, whether the insured was of sound mind or in a state of insanity." *Bigelow*, 93 U.S. at 287.

13. In *Gelbke,* the Illinois Supreme Court followed this analysis in *Bigelow. Gelbke* teaches that, in a case involving an exclusion for death due to a suicidal act, whether sane or insane, the critical inquiry is whether the insured took his or her own life voluntarily and with knowledge that the act causing death would achieve this result:

> The agreement in this case . . . provides for exemption from liability if the death of Gelbke should be caused by his own suicidal act, whether sane or insane, *leaving nothing open, by its terms, except the question whether it was his act.* The act . . . would be his in fact if it was the result of his volition, *although under a delusion.* The suicidal act of an insane man is intentional if it is voluntary, with the purpose to take his own life, and with the knowledge that such will be the effect of the act.

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[4]One might wonder why, if "suicide" and self-destruction" mean the same things under Illinois law, the Policy excludes suicide "while sane or insane" but only self-destruction "while insane." Ohio National states that it does so because, unlike Illinois, a minority of states distinguish self-destruction from suicide based on whether the insured intended to end his life (Pl.'s Resp. at 11 n.4). In any event, the Policy clauses addressing suicide and self-destruction are expressed in the disjunctive; death benefits are unavailable in the event of either suicide or self destruction. Since we conclude that Mr. Soldat committed suicide while sane or insane, within the meaning of the Policy under Illinois law, we need not address further the separate exclusion for self-destruction while insane. *See People v. Vraneck,* 125 N.E.2d 513 (1955) ("the word 'or' marks an alternative indicating that the various members of the sentence which it connects are to be taken separately").

198 Ill. at 369 (emphasis added). The *Gelbke* court explained that the only mental condition that would defeat a clause that excludes coverage for suicide, sane or insane, is where the insured "was in such a state of mind as to be unconscious of the physical nature of the act which caused his death." *Id.* The *Gelbke* court rejected the proposition that "intent" meant rational cognition or choice, since insanity, by definition, presumes a lack of rationality. *Id.* at 370.

14. Thus, under Illinois law, where an insurer specifically excludes coverage for suicide, sane or insane, the question of suicide (that is, whether the insured died by his own voluntary act) is not determined by whether the person is sane or insane. Indeed, that is the whole point of broadly wording the exclusion to encompass suicide while sane or insane: to take out of play any need to try to ascertain "the line between sanity and insanity [which] is often shadowy and difficult to define." *Bigelow*, 93 U.S. at 287. This inquiry also eschews any analysis of whether an insured acted pursuant to some permanent or temporary condition or was able to appreciate criminal or moral responsibility for his action. The *Bigelow* court put it as follows:

> Bigelow knew that he was taking his own life, and showed sufficient intelligence to employ a loaded pistol to accomplish his purpose; but he was unconscious of the great crime he was committing. His darkened mind did not enable him to see or appreciate the moral character of his act, but still left him capacity enough to understand its physical nature and consequences.

93 U.S. at 288. Likewise, under *Gelbke*, the proper inquiry is whether the insured (irrespective of whether sane or insane) was conscious of the act being taken; that he or she voluntarily took it; and that the insured knew that taking the act would lead to death.

15. One year after the *Gelbke* decision, the Illinois Supreme Court in *Seitinger v. Modern Woodmen of America,* 68 N.E. 478 (Ill. 1903), again confronted a clause in an insurance policy that excluded suicide while sane or insane. In *Seitinger,* the pleadings admitted that the insured took his own life and at the time he did so was "unconscious of the manner of his death, and by reason of his total insanity was incapable of forming an intention of taking his life, and did not comprehend the physical nature and results of his act." *Id.* at 478. The Illinois Supreme Court noted that this case presented a different factual scenario than had *Gelbke*, where the defendant had argued that the exclusion should apply if the insured "was capable of forming an intention, and if he did intentionally commit suicide." 68 N.E. at 480. By contrast, *Seitinger* presented a question not decided by *Gelbke*, namely, whether the exclusion would apply "even though the degree of insanity was such that he was wholly insane, totally unconscious of the manner of his death, and wholly and totally incapable, by reason of such insanity, of forming an intention of taking his life, and did not at the time comprehend or understand the physical nature and result of his act, and did not attempt to take his life. *Id.*

16. Even under these more extreme facts, the *Seitinger* court held that the exclusion applied. The Illinois Supreme Court found "a general consensus of opinion in the several courts of last resort in this country in which the question has arisen . . . that the word insane implies every degree of unsoundness of mind, and the liability of the insurer is not affected by the degree of insanity." *Seitinger,* 68 N.E. at 480. The *Seitinger* court explained that any other approach would cause the court to "lose [itself] in the consideration of the different phases of insanity" or "split it into degrees" for the purpose of trying to determine intent. *Id.* at 481.

The court declined to embark down that path. The court stated that the insurance policy clause before it excluded suicide whether the insured was sane or insane, "with no qualification of the varying degrees of sanity." *Id.* The court concluded that "[n]othing can be clearer than that the words 'sane or insane' were introduced in the certificate by the insurer for the purpose of excepting from its operation any self-destruction, whether the insured was of sound mind or in a state of insanity." *Id.*

17. Thus, the fact that the insured did not understand the physical nature of his act did not end the matter. It was enough for the *Seitinger* court that the insured took an action causing his own death, and the action was voluntary (*i.e.*, not the result of an *external* compulsion from someone or something else) and conscious (*i.e.*, aware of the actions he was taking, even if unable to appreciate their consequences).

18. This controlling Illinois law undermines Ms. Soldat's arguments that we must determine whether Mr. Soldat was "sane" at the time of his death; or was "insane;" or, instead, was in some temporary mental state that does not meet a dictionary definition of insanity but is not quite sane. In both *Gelbke* and *Seitinger*, the Illinois Supreme Court upheld the right of an insurer to eliminate the need for that kind of inquiry by broadly stating in the policy language that the exclusion applies if suicide is committed – where the insured is sane or insane. The mere age of those precedents in no way undermines their continuing validity.

19. Ms. Soldat argues that *Seitinger* "has no precedential value," because it has been supplanted by *Kettlewell*, which Ms. Soldat reads as mandating that we consider evidence of mental state and other life circumstances in determining whether the insured intended to commit suicide (Def.'s Resp. 2-7). We disagree that *Kettlewell* sounded the death knell of *Seitinger*.

To begin with, *Kettlewell* did not cite, much less discuss, *Seitinger* (or, for that matter, *Gelbke*). The proposition that the Illinois Supreme Court reversed *sub silento* its own long-standing precedents in *Gelbke* and *Seitinger,* without even mentioning them by name, let alone analyzing why those cases were no longer the governing law in Illinois, is a non starter. Moreover, in *Kettlewell*, the Illinois Supreme Court was not called upon to interpret the meaning of a clause that excluded suicide "while sane or insane." Rather, *Kettlewell* addressed a different, and antecedent, question: that is, whether to uphold a jury verdict that the insured had not committed suicide at all. The court upheld as reasonable a jury verdict that Mr. Kettlewell could have died as a result of accident or gross negligence rather than suicide, which rendered the suicide exclusion inapplicable.

20. *Kettlewell* thus did not overrule or chart a different course than *Seitinger*. Under *Seitinger*, the relevant inquiry is whether Mr. Soldat was conscious of the physical actions he was taking and took those actions voluntarily. It is irrelevant whether he was sane or insane when he acted.[5]

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[5]In aid of her argument, Ms. Soldat submitted a Supplemental Statement of Facts (doc. # 31) based on opinions by two retained experts. Dr. James O'Donnell, a pharmacologist, opined that Mr. Soldat drove into the concrete wall due to a "severe psychiatric toxic reaction to Methylprednisolone, which was enhanced by the concurrent use of Biaxin (clarithromycin)" (Suppl. St., Ex. B at 4). Dr. Alberto Goldwaser, a psychiatrist, opined that at the time of his death, Mr. Soldat did not suffer from any psychiatric illness, any major psychiatric disorder, or "any mental disorder that posed a significant risk of suicide" (*Id.* Ex. D at 2). He opined that, instead, Mr. Soldat suffered instead from a "Substance-Induced Mood Disorder," which "mimics Bipolar Disorder" but is a temporary rather than chronic condition (*Id.* Ex. D at 22-23). As part of his opinion, Dr. Goldwaser stated that Mr. Soldat did not exhibit any "static" (chronic) or "dynamic" (acute) symptoms or signs linked to suicide (*Id.* Ex. D at 24). Dr. Goldwaser also commented that the insanity "is not a medical (psychiatric) term," but instead is a "legal term of art used exclusively in criminal law and refers to the state of mind of an individual while in the course of carrying out an unlawful act" (*Id.* at 26). Because the Chicago Police labeled Mr. Soldat's actions as non-criminal, Dr. Goldwaser opined that "there is no place for consideration of the insanity criterion" (*Id.*).

Ohio National seeks to exclude these reports from evidence, arguing that they do not meet the standards for admissibility of expert testimony pursuant to Fed. R. Evid. 702 and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). In light of our foregoing interpretation of the suicide exclusion clause under Illinois law, we deny these motions as moot because, even assuming the opinions expressed in the reports pass muster under *Daubert* and Rule 702,

B.

21. That brings us to the measure by which Ohio National must prove the applicability of the exclusion. Ohio National argues that it needs do so only by a preponderance of the evidence (Pl.'s Resp. at 2-8). Ms. Soldat, by contrast, argues that Ohio National's burden is proof by clear and convincing evidence (Def.'s Mem. at 1-2).

22. Ms. Soldat has the better of this point. The Illinois Supreme Court has held that an insurer who seeks to argue that coverage is barred by an insured having committed suicide must prove that exclusion by clear and convincing evidence. *Kettlewell v. Prudential Ins. Co. of America*, 122 N.E.2d 817, 818 (Ill. 1954).

23. Ohio National acknowledges that this is the holding of the Illinois Supreme Court in *Kettlewell*, and it does not point to any subsequent Illinois Supreme Court decision overturning or casting doubt on *Kettlewell*. Nevertheless, Ohio National seeks to dismiss the clear and convincing evidence standard in *Kettlewell* as "an outdated relic from the development of early insurance law" (Pl.'s Resp. at 4), and devotes some six pages of its 13-page response to a detailed public policy argument about why the preponderance of the evidence standard should apply, and why this Court thus should disregard *Kettlewell* (*Id.* at 2-8).

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we do not consider this evidence material. To say that Mr. Soldat acted while under a toxic reaction to medication (as Drs. O'Donnell and Goldwaser opine) does not speak to whether he was conscious of the physical actions he was taking and took those actions voluntarily, as defined by Illinois law. Nor is the fact that Mr. Soldat's mental state may have been a temporary one (as Dr. Goldwaser opined) relevant to those inquiries. And, of course, Dr. Goldwaser's statement that a suicide exclusion contained in a civil insurance contract cannot apply because there was no determination that Mr. Soldat's action was criminal ventures into the realm of legal opinion that he plainly is not qualified to offer.

24. As federal court sitting in diversity, we are not at liberty to disregard undisturbed decisions of the Illinois Supreme Court. Nor, for that matter, is Ohio National entitled to pick and choose among longstanding Illinois Supreme Court decisions, embracing those (such as the 1903 decision in *Seitinger*) that support its position and shunning those (such as the 1954 decision in *Kettlewell*) that do not. Whether *Kettlewell* is an "outdated relic" is for the Illinois Supreme Court to decide. Maybe the Illinois Supreme Court will agree with Ohio National's argument; maybe not. But, for now, *Kettlewell* remains the controlling law in Illinois, and we therefore are bound to respect and follow it. We therefore conclude that Ohio National must prove the applicability of the suicide exclusion by clear and convincing evidence.

C.

25. With the foregoing legal principles established, we now assess whether Ohio National has proven the applicability of the suicide exclusion by clear and convincing evidence. We conclude that Ohio National has done so. Under *Seitinger*, the evidentiary record clearly and convincingly establishes that Mr. Soldat committed suicide within the meaning of the exclusion.

26. *First*, Mr. Soldat was conscious of his actions. Mr. Soldat consciously left his home on the morning of September 20, 2006, for a 1:15 p.m. doctor's appointment he believed he had at the University of Chicago Hospital's Pulmonology Clinic. When he arrived, he was told by the clinic that his scheduled appointment was for a different day. At approximately 12:30 p.m., he spoke to his wife on the phone from outside the Hospital cafeteria. He arrived at the Soldier Field parking lot at about 2:15 p.m. There is no evidence that Mr. Soldat arrived

there by mistake. Instead, we can infer that he consciously drove to that location from the uncontested fact that, when he arrived at Soldier Field and first spoke to Mr. Stasinopoulos, Mr. Soldat stated that he had come to that location for a reason: to see the Bears go to the Super Bowl, Lovie Smith and Walter Payton (Finding No. 7).

27. After the conversation, Mr. Soldat consciously drove at a normal rate of speed to and through a ticket booth and over a concrete median. Mr. Soldat then accelerated the speed of his car (rather than stopping it) until he reached a speed of 40-50 miles per hour and crashed headlong into a concrete wall (Finding No. 11). There is no evidence that the car spontaneously accelerated through some defect; and, there is no evidence that Mr. Soldat attempted to avoid the impact by applying the brakes or engaging in evasive maneuvers (Findings Nos. 12, 15).

28. Ms. Soldat offers evidence that at the time of his action, Mr. Soldat was acting under a temporary "steroid psychosis" (Def.'s Mem. at 9). However, the fact that Mr. Soldat may have acted under a temporary delusion and/or altered mental state is not inconsistent with Mr. Soldat being conscious of the actions he took. While Mr. Stasinopoulos related comments by Mr. Soldat that certainly were unusual, the fact remains that Mr. Soldat made his way from the University of Chicago to Soldier Field, expressed a reason to do so, proceeded past the ticket booth after speaking with Mr. Stasinopoulos, and drove over a median and then drove for another 300 yards to reach the wall into which he crashed. This evidence strongly supports the proposition that Mr. Soldat acted consciously – although tragically. The evidence clearly and convincingly shows that Mr. Soldat consciously drove into the wall.

29. *Second*, the evidence also clearly and convincingly shows that Mr. Soldat did so voluntarily. There is no evidence that Mr. Soldat's crash was accidental. To the contrary, the evidence supports the conclusion that Mr. Soldat voluntarily drove through a ticket booth without taking a ticket; drove over a median; and voluntarily accelerated into a concrete wall. The fact that he may have done so under an altered mental state does not diminish the voluntariness of his act. *Seitinger*, 68 N.E. at 68. The evidence clearly and convincingly shows that Mr. Soldat voluntarily drove his car in the wall.

30. Thus, the evidence offered by Ohio National satisfies the *Seitinger* standard for application of the suicide exclusion, requiring judgment in Ohio National's favor.

31. However, we note that even if the additional factor in *Gelbke* applied – that the insured knew that his actions were calculated to cause his death – the result would obtain. There is no evidence that Mr. Soldat was so delusional that he did not understand that driving a car into a concrete wall at 40-50 miles per hour likely would result in his death. We have considered Ms. Soldat's arguments that Mr. Soldat did not intend to kill himself, but find them unpersuasive.

32. Ms. Soldat argues that there is no evidence Mr. Soldat was fixated with death (Def.'s Mem. at 10-11). We disagree. At the outset, we note that Mr. Soldat told Mr. Stasinopoulos that he was at Soldier Field to see Walter Payton – who had died some seven years earlier. The passing of Walter Payton was the subject of extensive media coverage, and thus was well known even to those who were not avid football fans. Surely, that fact was well known to Mr. Soldat, whose basement was filled with Chicago Bears pictures and memorabilia (Finding No. 26).

33. In addition, Mr. Soldat's comments to Mr. Stasinpoulos about deceased family members (Finding No. 8) further reflects a preoccupation with death. Mr. Soldat engaged a complete stranger in a discussion about deceased family members. He related a story about how his father's watch stopped at the moment of his mother's death, and how his father never again wore that watch (*Id.*). Mr. Soldat then placed his own watch on the dashboard of the car, and immediately thereafter drove through the ticket booth en route to crashing into the wall (*Id.* No. 9). That evidence surely shows that death was on Mr. Soldat's mind. It also clearly and convincingly shows that Mr. Soldat was aware, and intended, that crashing the car into a concrete wall likely would result in his death.

34. Ms. Soldat also argues that Mr. Soldat did not intend his actions to result in his death because he did not disable his airbags and he used his seat belts (Def.'s Mem. at 5). We disagree. There is no evidence concerning the ease or difficulty in disengaging airbags, and so we do not ascribe any significance to Mr. Soldat's failure to do so. As for his use of seat belts, we do not believe the evidence shows that Mr. Soldat was so delusional that he failed to appreciate that, even when wearing a seat belt, driving a car into a concrete wall at 40-50 miles per hour was likely to result in his death. To the contrary, his comments about Walter Payton, his discussion of his mother's and sister's passing, and the placement of his own watch on the dashboard after discussing how his father's watch stopped when his mother died, all point to the conclusion that Mr. Soldat knew that he likely would die when he crashed into the wall, and that – unfortunately – he intended that result.

CONCLUSION

Our hearts go out to Mr. Soldat's family. We have no doubt that they suffered greatly from Mr. Soldat's untimely demise, and that they continue to suffer from his absence. In denying death benefits under the Policy, we do not sit in moral judgment of Mr. Soldat for his actions on September 20, 2006. We simply conclude that under well-settled Illinois law, which we are not at liberty to alter, Ohio National's suicide exclusion applies.

We therefore grant Ohio National's motion for judgment (doc. #38), and we deny Ms. Soldat's request for judgment (doc. #40) (memorandum without separate motion). We further deny as moot Ohio National's motions *in limine* (doc. ## 41, 42). We enter a declaratory judgment that the suicide exclusion clause in the Policy applies, and that the death benefit payable under that Policy is limited to the amount of premiums paid. The Clerk of the Court is directed to enter judgment for Ohio National pursuant to Fed.R.Civ.P. 52(a). This case is terminated.

ENTER:

SIDNEY I. SCHENKIER
United States Magistrate Judge

Dated: October 29, 2009