



# Accidental Death & Dismemberment Insurance: Getting the Benefits You Deserve

A HAAS & CASTILLO EBOOK

By Marcus Castillo, B.C.S.

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## Introduction

If your spouse or a family member was tragically killed by accident, you probably would first think of life insurance as the means to financially survive the tragedy. Many don't know that Accidental Death & Dismemberment (AD&D) insurance can provide double the benefit if your loved one was covered. In an ideal world, insurance companies would pay an AD&D claim swiftly and without a fight. Unfortunately, many insurance companies choose to put profits ahead of the promises made to their insureds.

### What Is It?

AD&D insurance is also referred to as "double indemnity" insurance. It's a type of life insurance providing double benefits when death is caused by accident rather than disease or intentional means (e.g., suicide). The majority of AD&D insurance coverage is provided by employers as a type of employee benefit (although it's possible to purchase AD&D coverage privately through an agent).

### Preliminaries

At the heart of these cases is the question whether an "accident" occurred and, if so, whether a policy exclusion applies. Before we can jump into that analysis, we must address some preliminary issues. First, one must look to the policy to see how it defines whether the deceased person was covered. If the policy was issued by an employer, most of them will state that coverage ends upon termination of employment. Thus, if your loved one was fired prior to his (or her) death, there might not be coverage. Second, one must determine the benefit amount. That amount may be stated specifically or stated instead as a formula (e.g., percentage of earnings).

**In this brief guide we will lay out the issues at stake in an AD&D case and how you can fight back to defeat the carrier's bogus defenses. Along the way we'll provide several examples of how we've handled AD&D cases within our law firm.**

Third, it is critical to determine the deadline for submitting an AD&D claim. All insurance policies contain claim submission deadlines.

### Defining an Accident

Now we turn to whether an "accident" occurred. Specialists in AD&D law know that there are complicated legal tests used by judges and lawyers to resolve this issue. Where the case is filed can often determine the outcome. Some courts follow a "subjective" test, looking to whether the deceased person intended self-harm. In these states, benefits are usually payable unless the death was intended. Other states use an "objective" test that looks to the broader circumstances and, in many instances, imposes a judge's opinion whether the death was accidental. Still other states fall in between

these approaches with hybrid legal tests of their own. Practitioners know that some recurring fact patterns routinely fall into either payable claims or those excluded from coverage. Intoxication at the time of death is a prime example.

### CASE STUDY

**Our client's husband died from a pulmonary embolism days after he was struck on the leg while working on a utility pole. The insurance company claimed that his death was caused by arteriosclerosis due to obesity. We overcame this defense and recovered the full policy benefit for his widow.**

### Policy Exclusions

If you can prove your loved one died by accident, there is still work to be done. Most AD&D policies contain policy exclusions (i.e., grounds to throw out the case even if you can show your loved one died by accident). Some of the common exclusions found in AD&D policies include death by suicide, death caused by intoxication or overdose, and death in the course of or caused by a medical procedure or surgery.

### The Effect of ERISA

If a claim survives the “accident” definition and policy exclusion phases, the last consideration is the impact of ERISA. ERISA is a federal law governing most private sector insurance benefits. Unfortunately, ERISA is an insurance company-favorable law that gives carriers the benefit of the doubt, even when they get the policy decision wrong. AD&D insurance coverage lawyers are versed in ERISA and how to overcome its many legal hurdles.

### Dismemberment Claims

Before closing, let's not forget dismemberment claims. Dismemberment means: 1. Amputation or loss of use of a limb or 2. Loss of a sense (e.g., sight or hearing). Dismemberment claims are subject to the same considerations as accidental death claims defining an accident and overcoming a policy exclusion. Dismemberment benefit amounts are typically a percentage of benefits payable for death (e.g., 50% of the death benefit for loss of use of one arm).

### CASE STUDY

**Our client lost vision in one of her eyes following dialysis. The insurance carrier asserted a medical treatment policy exclusion after she submitted her AD&D claim. We were able to show that blindness was an unanticipated consequence of treatment and were able to settle the case without trial.**

## Steps to Take to Preserve Your AD&D Claim

Like any civil case, an AD&D case requires proof. If you are considering making an AD&D claim, take the following steps...

- Obtain a copy of the medical examiner's report, as well as any reports or records from any law enforcement agency investigating the death.
- Gather medical records regarding the decedent including prescription records.
- Inspect the decedent's cell phone for text messages near the time of death. If possible, also review emails or messages/posts on similar platforms (e.g., Facebook, Instagram, Messenger) for the same time frame.
- Review credit card statements and banking records which may reveal the whereabouts of the decedent shortly before death, as well as the possible purchase of alcohol or drugs.

Pursuing an AD&D claim is not a do-it-yourself project. You'll urgently need to preserve evidence. An attorney experienced in the AD&D practice can issue evidence preservation demands and take other steps to ensure the best possible chance of winning a case.

## Afterword

We hope you've found this eBook useful to understand the basic issues in an accidental death and dismemberment case. This is a highly specialized area of legal practice with its own set of rules. Most AD&D cases are litigated in federal court. Federal practice is more complicated than state civil court. These cases are very difficult to handle on your own. Consider hiring an attorney with experience handling AD&D cases.

## ABOUT THE AUTHOR



## Marcus Castillo, B.C.S.

Marcus is an AV-rated Florida SuperLawyer (Top 5% of all lawyers in the state) with substantial experience handling ERISA insurance cases. He leads our employment benefits practice including AD&D cases. His practice areas include:

**AD&D and Life Insurance Claims**  
**Criminal Attacks and Sexual Abuse**  
**Employment Litigation**  
**Premises Liability**  
**Whistleblower Claims**



Marcus is also co-founder of **TrialFocus, LLC**, which employs focus groups to test the strengths and weaknesses of civil litigation cases.



## **Haas & Castillo, PLLC is a law firm built on reputation and referrals, not advertising.**

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We are a law firm of specialists certified as experts in business litigation and labor and employment law by The Florida Bar and have worked in Tampa Bay for over 35 years.

Our business and construction litigation practice, led by Lee Haas, includes these types of disputes: contracts, collections, construction, real estate, corporate, trade secrets, noncompetition contracts, and landlord/tenant, as well as appeals of these cases.

Our accidental death and dismemberment (AD&D) and life insurance litigation practice, led by Marcus Castillo, is grounded in a deep understanding of this specialized practice area, decades of experience handling federal civil litigation and a long career handling ERISA cases. In addition to his AD&D and life insurance practice Marcus also handles employment law related matters both for plaintiffs and defendants. He also has substantial experience handling premises liability and negligent security/criminal attack cases representing injured victims.



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