



12-1-1972

Where Emotional Stress and Strain Arising from an Automobile Accident Are Superimposed upon a Dormant Heart Condition So as to Cause Death, Recovery May Be Had under the Provisions of an Insurance Policy Insuring against Accidental Bodily Injury and Death.

Patricia Koch Irvine

Follow this and additional works at: <https://commons.stmarytx.edu/thestmaryslawjournal>



Part of the [Insurance Law Commons](#), and the [Torts Commons](#)

Recommended Citation

Patricia Koch Irvine, *Where Emotional Stress and Strain Arising from an Automobile Accident Are Superimposed upon a Dormant Heart Condition So as to Cause Death, Recovery May Be Had under the Provisions of an Insurance Policy Insuring against Accidental Bodily Injury and Death.*, 4 ST. MARY'S L.J. (1972).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol4/iss3/9>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact egoode@stmarytx.edu, sfowler@stmarytx.edu.

INSURANCE—RECOVERY FOR DEATH UNDER ACCIDENT POLICY WHEN DISEASE AND ACCIDENT COMBINE TO CAUSE DEATH—WHERE EMOTIONAL STRESS AND STRAIN ARISING FROM AN AUTOMOBILE ACCIDENT ARE SUPERIMPOSED UPON A DORMANT HEART CONDITION SO AS TO CAUSE DEATH, RECOVERY MAY BE HAD UNDER THE PROVISIONS OF AN INSURANCE POLICY INSURING AGAINST ACCIDENTAL BODILY INJURY AND DEATH. *Boring v. Haynes*, 496 P.2d 1385 (Kan. 1972).

H. O. Boring's medical history reveals that he suffered a heart attack on March 14, 1967, and following treatment, was released from the hospital on April 4, 1967. On July 17, 1967, the car which he was driving was struck in the rear by another vehicle. After the accident, Mr. Boring got out of his car and talked to some of the people involved. After ascertaining that there were no apparent injuries, he returned to his car to survey the damage and collapsed to the ground. He was pronounced dead on arrival at a nearby hospital.

This action was brought by the beneficiaries under the policy on Boring's life to recover death benefits.¹ Defendant insurer denied recovery on the basis that Boring's death was caused by the preexisting heart condition and not by the accident.² The district court granted summary judgment for defendant, and plaintiffs appealed. Held—*Reversed*. Where emotional stress and strain arising from an automobile accident are superimposed upon a dormant heart condition so as to cause death, recovery may be had under the provisions of an insurance policy insuring against accidental bodily injury and death.

A major problem in the field of accident insurance has been whether to allow recovery when disease and accident have combined to produce disability or death.³ "This interplay of accident and disease or bodily infirmity has brought conflicting decisions in every jurisdiction."⁴

Accident policy provisions commonly exempt the insurer from liability in the event an insured's death arises from, or is caused by, disease or bodily infirmity.

In order to define risk intended to be covered, the accident insurer provides under the insuring clause that the insurance is

¹ Boring had a group policy on his life in the sum of \$25,000 with the defendant company. The insurance policy specifically excluded bodily injury "caused directly or indirectly, wholly or partly . . . by disease." *Boring v. Haynes*, 496 P.2d 1385, 1387 (Kan. 1972).

² By deposition, a medical doctor testified speculatively that Boring's death "was caused by the influence of an episode of stress superimposed upon *already existing circulatory disease* . . . and a previous myocardial infarction," and that Boring's death "was actually precipitated by the superimposition of a stress episode." *Id.* at 1389-90 (emphasis added)

³ See Annot., 84 A.L.R.2d 169 (1962).

⁴ G. RICHARDS, 2 RICHARDS ON THE LAW OF INSURANCE § 226, at 771 (5th ed. W. Freedman 1952).

against losses resulting "solely" from accident or through accidental means, "independently" of all other causes. This insuring clause language serves in some measure to exclude losses not due to accident independent of all other causes but, rather, due in part to bodily infirmity or disease.⁵

The cases interpreting the typical contract requirement that the accident be the sole and exclusive cause of the injury and that the insurer is not liable if the injury is caused wholly or partially or contributed to by disease are often difficult to reconcile. There is agreement that the insurer is liable when the accident led to the disease resulting in injury or death.⁶ The courts have regarded this as a direct chain of causation set in motion by the accident, and have held the companies liable without hesitation.⁷ There is also agreement that when the insured suffered from a disease before the accident, but the accident would have caused death or disability even if the preexisting disease had not been present, the insured can recover.⁸

The incertitude arises when injury or death results from the combined effects of a *preexisting disease*⁹ and an accident. The terms "disease" and "infirmity" in accident insurance policies are generally construed liberally in favor of the insured and refer only to disease or infirmities of a somewhat chronic nature.¹⁰ Mr. Justice Cardozo

⁵ W. VANCE, HANDBOOK ON THE LAW OF INSURANCE § 188, at 976 (3d ed. B. Anderson 1951).

⁶ *Id.* at 977. See also G. COUCH, 10 COUCH ON INSURANCE 2d § 41:77 (2d ed. R. Anderson 1962).

⁷ See, e.g., *Mutual Sav. Life Ins. Co. v. Hines*, 100 S.E.2d 466, 472 (Ga. Ct. App. 1957), where the insured received severe burns over 40 per cent of her body which caused complicating disease from which she ultimately died. See also *Barnett v. John Hancock Mut. Life Ins. Co.*, 24 N.E.2d 662 (Mass. 1939) where insured was injured in an automobile accident and as a result of such injury developed pneumonia, empyema and endocarditis which caused his death.

⁸ W. VANCE, HANDBOOK ON THE LAW OF INSURANCE § 188, at 977 (3d ed. B. Anderson 1951). See also *Kundiger v. Metropolitan Life Ins. Co.*, 15 N.W.2d 487, 490 (Minn. 1944) where the court stated:

Under a life insurance policy containing provisions for double indemnity if death be caused solely by accidental means but excepting death caused or contributed to by disease, liability exists if an accidental injury was of such a nature as to cause death solely and independently of a pre-existing disease.

⁹ "The term 'pre-existing disease or infirmity' means disease or infirmity which pre-exists the accident, not the entering into of the policy. . . ." Bronson & Fields, *The Problem of Concurrent Causation of Death under Health and Accident Policies: A Solution Found?* 32 INS. COUNSEL J. 241 n.2 (1965).

¹⁰ See *Bergeron v. Prudential Ins. Co.*, 75 A.2d 709, 711 (N.H. 1950) where the court defined disease and bodily infirmity as follows:

The words "disease" and "bodily infirmity" are construed to be practically synonymous and to refer only to some ailment or disorder of an established or settled character to which the insured is subject, an ailment or disorder which materially impairs, weakens, or undermines the condition of the insured and is so considerable or significant that it would be characterized as disease or infirmity in the common speech of men. These words do not include a mere frail general condition so that the powers of resistance are easily overcome, a tendency to disease, or temporary weakness nor a normal physical change that inevitably accompanies advancing years.

insisted upon a narrow definition of the word "disease."¹¹ In the fact situation involved, an ulcer was unknown and dormant before the accident and was activated to such an extent by the accident that it ruptured and caused death. Mr. Justice Cardozo decided that the ulcer was not a disease, and in reaching this conclusion, he stated:

A distinction, then, is to be drawn between a morbid or abnormal condition of such quality or degree that in its natural and probable development it may be expected to be a source of mischief, in which event it may fairly be described as a disease or an infirmity, and a condition abnormal or unsound when tested by a standard of perfection, yet so remote in its potential mischief that common speech would call it not a disease or infirmity, but at most a predisposing tendency.¹²

He further pointed out that an insurance policy "is not accepted with the thought that its coverage is to be restricted to an Apollo or a Hercules."¹³

One body of authority gives the exclusionary clause¹⁴ in the accident policy a literal construction so that any preexisting disability that contributes, however slightly, to the loss will be sufficient to bar recovery by the beneficiary.¹⁵ On this ground, recovery has been denied when an insured died from activation of brain cancer following an accidental fall,¹⁶ when insured stuck a pencil point in his hand while working and thereafter succumbed to infection,¹⁷ and when an accidental hip injury aggravated a prior sacroiliac condition.¹⁸

See also National Life & Acc. Ins. Co. v. Brogden, 322 S.W.2d 403 (Tex. Civ. App.—Fort Worth 1959, no writ).

¹¹ Silverstein v. Metropolitan Life Ins. Co., 171 N.E. 914, 915 (N.Y. 1930).

¹² *Id.* at 915.

¹³ *Id.* at 915.

¹⁴ The typical accident policy "provides that the accident must be the sole and exclusive cause of death. In addition, it specifically excludes coverage 'if death results either directly or indirectly, wholly or in part, from a pre-existing disease or infirmity.'" Bronson & Fields, *The Problem of Concurrent Causation of Death under Health and Accident Policies: A Solution Found?* 32 INS. COUNSEL J. 241 (1965).

¹⁵ *See* Bewley v. American Home Assurance Co., 450 F.2d 1079 (10th Cir. 1971); Holstine v. Connecticut Gen. Life Ins. Co., 338 F. Supp. 817 (E.D. Tex. 1972); Mutual Benefit Health & Acc. Ass'n v. Hudman, 398 S.W.2d 110 (Tex. Sup. 1965); Great Am. Health & Life Ins. Co. v. Lothringer, 422 S.W.2d 543 (Tex. Civ. App.—Corpus Christi 1967, writ ref'd n.r.e.); Combined Am. Ins. Co. v. Jordan, 403 S.W.2d 811 (Tex. Civ. App.—Amarillo 1966, writ ref'd n.r.e.); Republic Nat'l Life Ins. Co. v. Bullard, 399 S.W.2d 376 (Tex. Civ. App.—Houston 1966, writ ref'd n.r.e.); Tix v. Employers Cas. Co., 368 S.W.2d 105 (Tex. Civ. App.—Houston 1963, no writ).

¹⁶ Minyen v. American Home Assurance Co., 443 F.2d 788 (10th Cir. 1971).

¹⁷ Holstine v. Connecticut Gen. Life Ins. Co., 338 F. Supp. 817 (E.D. Tex. 1972). Insured was afflicted with lymphoma, a disease of bone marrow, when he was injured.

¹⁸ Crowder v. General Acc., Fire & Life Assurance Corp., 21 S.E.2d 772 (Va. 1942). The strict construction approach is further illustrated by Penn v. Standard Life & Acc. Ins. Co., 73 S.E. 99 (N.C. 1911), *petition for rehearing dismissed*, 76 S.E. 262 (N.C. 1912). In the Penn case the court stated that if without the presence of an "ordinary disease," the accident itself would not have been sufficient to have caused the death or injury, there could be no recovery. *Id.* at 101.

Directly opposed to this view are the jurisdictions which follow the rule that if the accident is shown to be the cause of the injury for which the action is brought, plaintiff can recover.¹⁹ In a Washington Supreme Court case, the insured suffered a cerebral hemorrhage which was induced by fright suffered following a near head-on collision.²⁰ The court ruled that the evidence was sufficient to support the findings that the accident was the cause of injury, and stated:

[T]he injury must stand out as the predominant factor in the production of the result. . . . People differ so widely in health, vitality, and ability to resist disease and injury that what may mean death to one man would be comparatively harmless to another. . . .²¹

Many courts have introduced the doctrine of proximate cause in cases where the insured would not have sustained the loss except for the preexisting disease.²² These holdings, in effect, place the burden upon the judge or jury to weigh the preexisting infirmity against the accident and decide which is the proximate cause. Usually, under this approach, the court strives to discover whether the accidental means or the preexisting disease plays the larger role in bringing about the death or disability of the insured.²³ If the accident was the proximate cause, recovery is allowed;²⁴ if the preexisting disease was the proxi-

¹⁹ See *New York Life Ins. Co. v. McGehee*, 260 F.2d 768 (5th Cir. 1958); *Commercial Travelers Ins. Co. v. Walsh*, 228 F.2d 200 (9th Cir. 1955); *McMackin v. Great Am. Reserve Ins. Co.*, 99 Cal. Rptr. 227 (Dist. Ct. App. 1971); *Williams v. Benefit Trust Life Ins. Co.*, 434 P.2d 765 (Kan. 1967); *Richard v. Southern Farm Bureau Cas. Ins. Co.*, 128 So. 2d 806 (La. Ct. App. 1961); *Mutual Benefit Health & Acc. Ass'n v. Ratliff*, 440 S.W.2d 119 (Tex. Civ. App.—Eastland 1969, no writ); *Pierce v. Pacific Mut. Life Ins. Co.*, 109 P.2d 322 (Wash. 1941).

²⁰ *Pierce v. Pacific Mut. Life Ins. Co.*, 109 P.2d 322 (Wash. 1941).

²¹ *Id.* at 328. It is immaterial that because of a disease or condition from which the insured is suffering, the consequences of the accident are more injurious than they would otherwise be. The total ultimate harm sustained is still regarded as caused by the accident although the harm would not have been so severe had it not been for the disease. See, e.g., *Commercial Cas. Co. v. Stinson*, 111 F.2d 63 (6th Cir.), *cert. denied*, 311 U.S. 667 (1940).

²² *Weber v. Continental Cas. Co.*, 379 F.2d 729 (10th Cir. 1967); *McMackin v. Great Am. Reserve Ins. Co.*, 99 Cal. Rptr. 227, 234 (Dist. Ct. App. 1971); *Tix v. Employers Cas. Co.*, 368 S.W.2d 105 (Tex. Civ. App.—Houston 1963, no writ); *Pierce v. Pacific Mut. Life Ins. Co.*, 109 P.2d 322, 327 (Wash. 1941).

²³ In *Tix v. Employers Cas. Co.*, 368 S.W.2d 105 (Tex. Civ. App.—Houston 1963, no writ), insured died from heart failure following an accident where her car bumper had interlocked with that of another car in a parking lot. The court held that the exertion and emotional stimulus caused by the locked bumper incident were either not a cause of her death or were but remote causes.

The opposite result was reached, however, in *Richard v. Southern Farm Bureau Cas. Ins. Co.*, 128 So. 2d 806 (La. Ct. App. 1961) where a fatal heart attack resulting from a minor automobile collision acting upon a preexisting high blood pressure was within the terms of the accident policy insuring against death caused by accident, directly and independently of all other causes.

²⁴ *Valenta v. Life Ins. Co. of N. Am.*, 196 N.W.2d 393 (N.D. 1972). See also *Richard v. Southern Farm Bureau Cas. Ins. Co.*, 128 So. 2d 806 (La. Ct. App. 1961) where the court stated:

[I]f the accident is the proximate cause of the death and sets in motion or starts a

mate cause, recovery is denied.²⁵ "Both the courts and the parties are here concerned with which of two necessary conditions, together sufficient to produce an injury or death, should be considered the cause contemplated by the parties under the terms of their contract."²⁶

The court in *Boring v. Haynes*²⁷ recognized the existence of a conflict in this area of insurance law and applied the doctrine of proximate cause to the facts. They held the better reasoned rule to be that "where an accidental injury aggravates or energizes a dormant disease or physical ailment the accident may be said to have been the *proximate cause* of the resulting disability within the terms and meaning of the ordinary accident insurance policy."²⁸

The record in the *Boring* case revealed that the emotional stress and strain arising from the automobile accident were superimposed upon the dormant heart condition and precipitated Boring's death. In holding the insurer liable under the policy, the court stated that "this fortuitous event constitutes accidental bodily injury within the meaning of the policy provisions . . ."²⁹

Predicting the construction of a particular accident policy in a given case is far from being simple. "It is difficult to avoid an undesirable polarity in the dilemma of accidental as opposed to pathological causation . . ."³⁰

Several solutions have been proposed to resolve the conflict. One article suggests that the exclusionary clause in the insurance policy be expanded to exclude "death resulting directly or indirectly, wholly or in part from any pre-existing disease or infirmity *even though the proximate or precipitating cause of death is accidental bodily injury.*"³¹ The article also proposes that the emphasis be shifted from the dominant cause of death to the role that the preexisting disease played in bringing about the death.³² These proposed solutions would be advantageous to the insurer.

A second proffered solution is to permit recovery when an accident

latent or dormant disease, and such disease merely contributes to the death after being so precipitated by the accident, it is not a proximate cause of the death nor a contributing cause within the meaning of the terms of the policy. *Id.* at 808.

²⁵ Republic Nat'l Life Ins. Co. v. Bullard, 399 S.W.2d 376 (Tex. Civ. App.—Houston 1966, writ ref'd, n.r.e.).

²⁶ Comment, *Pre-existing Disease and Accident Insurance: Pathology and Metaphysics in the Common Speech of Men*, 21 U. CHI. L. REV. 266, 269 (1954).

²⁷ 496 P.2d 1385 (Kan. 1972).

²⁸ *Boring v. Haynes*, 496 P.2d 1385, 1392 (Kan. 1972), citing *Williams v. Benefit Trust Life Ins. Co.*, 434 P.2d 765, 768 (Kan. 1967).

²⁹ *Boring v. Haynes*, 496 P.2d 1385, 1393 (Kan. 1972).

³⁰ Comment, *Pre-existing Disease and Accident Insurance: Pathology and Metaphysics in the Common Speech of Men*, 21 U. CHI. L. REV. 266, 274 (1954).

³¹ Bronson & Fields, *The Problem of Concurrent Causation of Death Under Health and Accident Policies: A Solution Found?* 32 INS. COUNSEL J. 241, 244 (1965) (original emphasis).

³² *Id.* at 245.