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Notes

Accidental Death Insurance Coverage of Drunk Drivers

*Gaddy v. Hartford Life Insurance Co.*¹

I. INTRODUCTION

Drunk driving causes the deaths of thousands of Americans each year.² The drunk driver is often among those killed. This raises the question of whether the beneficiaries of an insured killed as a result of his own drunk driving can claim the proceeds of an accidental death and dismemberment insurance policy. The answer to this question depends on whether the drunk driver's death is considered an "accident" for first-party insurance coverage purposes. State and federal courts have largely split on this question. In *Gaddy v. Hartford Life Insurance Co.*, the United States District Court for the Eastern District of Missouri, applying Missouri law, concluded that such a death is not an "accident."³

II. FACTS AND HOLDING

Charles Gaddy was killed in an automobile accident on June 27, 1998.⁴ He was returning home from a grocery store when he lost control of his vehicle and drove off the road, overcorrected, and collided with an oncoming car.⁵ Both Gaddy and the other driver died at the scene.⁶ The Missouri State Highway Patrol tested blood drawn from Gaddy and determined that he was intoxicated at the time of the accident.⁷ His blood alcohol content measured 0.21 percent,

1. 218 F. Supp. 2d 1123 (E.D. Mo. 2002).

2. See NAT'L CENTER FOR STATISTICAL ANALYSIS, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS 2002: ALCOHOL, at iii (2002), available at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2002Final.pdf>. A study found that in 2002, 17,419 people were killed in automobile crashes involving alcohol. This represented forty-one percent of those killed in all automobile crashes that year. *Id.*

3. *Gaddy*, 218 F. Supp. 2d at 1128.

4. *Id.* at 1125.

5. *Id.*

6. *Id.*

7. *Id.* at 1126.

more than twice the legal limit at the time.⁸ The Highway Patrol concluded that Gaddy's intoxication caused the crash.⁹

Gaddy's children submitted a claim to Hartford Life Insurance Company ("Hartford") for the benefits of Gaddy's accidental death and dismemberment insurance policy.¹⁰ Hartford refused to pay the proceeds, arguing that Gaddy's death was not an "accident" because it was proximately caused by his driving while intoxicated.¹¹

In response, Gaddy's children filed a breach of contract action against Hartford in the Circuit Court for the City of St. Louis, claiming that they were entitled to the proceeds of his insurance policy.¹² Hartford removed the case to the United States District Court for the Eastern District of Missouri on diversity grounds.¹³ Both parties moved for summary judgment.¹⁴

Senior District Judge Stephen N. Limbaugh granted Hartford's motion for summary judgment.¹⁵ The court, applying Missouri law, concluded that there was no genuine issue of material fact and that Hartford was entitled to judgment as a matter of law.¹⁶ The court reasoned that Gaddy's death was not an accident because it was foreseeable that operating a motor vehicle in a state of intoxication could result in death.¹⁷ When an insured's death is proximately caused by his driving while intoxicated, the death is foreseeable and is therefore not an accident for first-party insurance coverage purposes.¹⁸

8. *Id.* The state statute at the time of the accident defined an intoxicated driver as one who operates a motor vehicle with a blood alcohol content of at least 0.10 percent. *Id.* at 1126 n.2. The General Assembly has since revised this statute to lower the legal limit to 0.08 percent. See MO. REV. STAT. § 577.012.1 (2000).

9. *Gaddy*, 218 F. Supp. 2d at 1126.

10. *Id.*

11. *Id.*

12. *Id.* at 1124.

13. *Id.*

14. *Id.*

15. *Id.* at 1129.

16. *Id.*

17. *Id.* at 1128.

18. *Id.*

III. LEGAL BACKGROUND

A. *The Meaning of "Accident" in Missouri*

1. Policies Covering Death by "Accidental Means"

To claim the proceeds of an accidental death policy in Missouri, the beneficiary must prove that the insured died as the result of an accident as a condition precedent to the insurance company's duty to pay.¹⁹ Missouri courts distinguish policies that provide coverage for "accidental" deaths from those that provide coverage for deaths that occur by "accidental means."²⁰ Under an "accidental means" policy, although an injury may be unusual or unexpected, it is not considered an accident if the "means causing the injury has been employed by the insured in the usual and expected way."²¹ The Missouri Supreme Court discussed this approach in 1924 in *Caldwell v. Travelers' Insurance Co.* where the plaintiff sought the benefits of her late husband's accidental death policy after he died during surgery.²² The policy covered death "from bodily injuries, effected directly and independently of all other causes, through external, violent, and accidental means."²³ The husband died after an obstruction of the bowel occurred during a skillfully performed hernia operation.²⁴

The *Caldwell* court examined the two different approaches that courts take in interpreting policies that provide coverage for deaths that occur by "accidental means."²⁵ The first approach distinguishes between "accidental means" and "accidental results." These courts hold that where an unusual or unexpected result occurs because of an intentional act by the insured, the resulting death is not caused by accidental means.²⁶ The means must have been accidental, and it is not sufficient that only the result was unusual, unexpected, or unforeseen.²⁷ The second approach does not distinguish "accidental means" from "accidental results"—where death is an unusual, unexpected, or unforeseen result of an intentional act, the death is by accidental means.²⁸ The *Caldwell*

19. *State Farm Mut. Auto. Ins. Co. v. Underwood*, 377 S.W.2d 459, 462 (Mo. 1964) (citing *Caldwell v. Travelers' Ins. Co.*, 267 S.W. 907 (Mo. 1924) (en banc)).

20. *See Caldwell*, 267 S.W. at 907.

21. *Applebury v. John Hancock Mut. Life Ins. Co.*, 379 S.W.2d 867, 870 (Mo. Ct. App. 1964).

22. *Caldwell*, 267 S.W. at 908.

23. *Id.* at 907.

24. *Id.* at 908.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

court noted that numerous Missouri cases had followed the latter line of cases,²⁹ but held that the former approach, distinguishing “accidental means” from “accidental results,” was the proper standard.³⁰ Applying this standard, the court held that in order to recover, the beneficiary had to show that something unforeseen, unusual, or unexpected and unintended happened during the operation and that this caused the insured’s death.³¹ The court concluded that the beneficiary had failed to meet this standard because she had merely shown that an unforeseen, unusual, and unexpected *result* occurred after the operation.³²

The St. Louis Court of Appeals later clarified the *Caldwell* holding in *Murphy v. Western & Southern Life Insurance Co.*,³³ where the insured died after taking an overdose of a prescription drug.³⁴ The court, consistent with *Caldwell*, held that in order to find accidental means, there must be “an element of unexpectedness in the means which produces the result.”³⁵ The court noted that the external force which causes the injury may be applied intentionally, with or without the insured’s consent.³⁶ The court concluded that the insured’s death was not by accidental means because he knew he was taking the prescription drug.³⁷ Although he may not have known he was taking an overdose, he did

29. *Id.* at 908-11 (citing *Beile v. Travelers’ Protective Ass’n of Am.*, 135 S.W. 497 (Mo. Ct. App. 1911); *Young v. Ry. Mail Ass’n*, 103 S.W. 557 (Mo. Ct. App. 1907); *Columbia Paper Stock Co. v. Fid. & Cas. Co.*, 78 S.W. 320 (Mo. Ct. App. 1904)).

30. *Id.* at 909. Missouri is in the minority of states on this issue. Most states have rejected the distinction between “accidental means” and “accidental results” and thus permit recovery if death is merely an unforeseen result. *See, e.g.*, *Botts v. Hartford Accident & Indem. Co.*, 585 P.2d 657 (Or. 1978); *see also* ROBERT H. JERRY, II, UNDERSTANDING INSURANCE LAW § 63B, at 477 (3d ed. 2002) (citing cases); Russell S. Baldwin, Comment, *Harrell v. Minnesota Mutual Life Insurance: Tennessee’s Emergence from the Serbonian Bog?*, 27 U. MEM. L. REV. 745, 753 (1997). The “means/results” distinction has been sharply criticized by scholars and courts alike as being an unworkable standard that is inconsistent with the insured’s expectations of coverage. *See* Peter Nash Swisher, *Judicial Interpretations of Insurance Contract Disputes: Toward a Realistic Middle Ground Approach*, 57 OHIO ST. L.J. 543, 580 (1996). The critics frequently cite a famous dissent by Justice Cardozo in which he criticized the “means/results” distinction and warned that it would “plunge this branch of law into a Serbonian Bog.” *Landress v. Phoenix Mut. Life Ins. Co.*, 291 U.S. 491, 499 (1934) (Cardozo, J., dissenting).

31. *Caldwell*, 267 S.W. at 921. The court relied on a similar holding by the United States Supreme Court in *United States Mutual Accident Ass’n v. Barry*, 131 U.S. 100 (1889). *Caldwell*, 267 S.W. at 920-21.

32. *Caldwell*, 267 S.W. at 921.

33. 262 S.W.2d 340 (Mo. Ct. App. 1953).

34. *Id.* at 341.

35. *Id.* at 343.

36. *Id.*

37. *Id.*

intentionally take the medicine; only the result, death, was unexpected.³⁸ The court noted that if the insured had slipped and accidentally swallowed more of the medicine than he intended, the death would have been by accidental means.³⁹

The accidental means analysis was applied in a different context in *Applebury v. John Hancock Mutual Life Insurance Co.*⁴⁰ where the insured died in an automobile accident during a high-speed chase with police.⁴¹ The insurance company denied benefits because it did not consider the death to be by accidental means.⁴² In affirming the judgment for the insurance company, the court held that knowingly running from the police is a “voluntary and wanton exposure to danger.”⁴³

2. “Accidental” Death Policies

For insurance policies that contain more general language covering all deaths that are “accidental,” a different, simpler analysis is used. In *Stogsdill v. General American Life Insurance Co.*,⁴⁴ the insured’s wife shot and killed him as he allegedly beat her and her children.⁴⁵ His beneficiary sought the proceeds of his accidental death policy.⁴⁶ The insurance company denied the benefits, arguing that the insured’s death was not an accident because, as an aggressor killed in the course of his aggression, he assumed the risk of death.⁴⁷ Determining if the death was accidental depended on whether his death was unforeseeable and unexpected or whether it was a natural or probable consequence of his actions.⁴⁸ The court concluded that where the danger of death the insured has exposed himself to is the result of his own aggression, the determination of whether death was foreseeable depends on the nature of his aggression and the resistance likely to be used to repel it.⁴⁹ If a beneficiary shows that the aggression was not of the type that would have made the insured anticipate deadly resistance, then the death was not foreseeable, and hence, the

38. *Id.*

39. *Id.*

40. 379 S.W.2d 867 (Mo. Ct. App. 1964).

41. *Id.* at 869. Witnesses estimated the insured’s speed at ninety to one hundred miles per hour. *Id.*

42. *Id.* at 870.

43. *Id.* at 874.

44. 541 S.W.2d 696 (Mo. Ct. App. 1976).

45. *Id.* at 699.

46. *Id.* at 698.

47. *Id.*

48. *Id.* at 699.

49. *Id.* (citing *Winston v. Gen. Am. Life Ins. Co.*, 469 S.W.2d 51 (Mo. Ct. App. 1971); *Perringer v. Metro. Life Ins. Co.*, 244 S.W.2d 607 (Mo. Ct. App. 1951); *Podesta v. Metro. Life Ins. Co.*, 150 S.W.2d 596 (Mo. Ct. App. 1941)).

death was the result of an accident.⁵⁰ Conversely, if the insured's attack would have made him expect the use of deadly force by the other party, the death was not accidental.⁵¹ In *Stogsdill*, the court concluded that whether the insured expected death was a question for the jury.⁵²

A similar case, *Herbst v. J.C. Penney Insurance Co.*,⁵³ held that the test was whether a *reasonable* person would expect that the action of the insured would result in death.⁵⁴ In *Herbst*, the insured was shot and killed by his wife after he threatened her with a severe beating.⁵⁵ His beneficiary claimed that his death was an accident and was not foreseeable because his drunken state prevented him from realizing that his wife might use force against him.⁵⁶ The court rejected this argument, holding that what could be anticipated was not based on what the drunken insured might have expected, but on what a reasonable person would ordinarily expect.⁵⁷

*Cappo v. Allstate Life Insurance Co.*⁵⁸ provides another example where a court held that a reasonable person would have anticipated death. In *Cappo*, the insured was known by police to be involved in organized crime.⁵⁹ He had told his wife that he had large gambling debts before he went to meet with what he described as "some pretty bad people."⁶⁰ He made arrangements for his wife and his lawyer to take certain actions in the event that he did not return from the meeting, stating that they would know that the people at the meeting had "got" him.⁶¹ He never returned from the meeting.⁶² The court held that the insured's death was not accidental because it was clear that he consciously and voluntarily decided to go to the meeting and by doing so he expressly anticipated his death.⁶³ In other words, his death was a reasonable consequence of his decision to go to the meeting;⁶⁴ it was not unforeseen, unusual, or unexpected, and thus it was not an accident.

In Missouri, the meaning of accidental death depends on the language used in the particular insurance policy. For policies that cover deaths by "accidental

50. *Id.*

51. *Id.*

52. *Id.*

53. 679 S.W.2d 381 (Mo. Ct. App. 1984).

54. *Id.* at 383.

55. *Id.* at 382.

56. *Id.* at 383.

57. *Id.*

58. 809 S.W.2d 131 (Mo. Ct. App. 1991).

59. *Id.* at 134.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 135.

means," there must be something unexpected or unforeseeable in the means which results in death. It is not enough that the result itself is unforeseeable. For policies which simply cover "accidental" deaths, the question is whether a reasonable person would expect death to result.

B. Other States' Approaches to Drunk Driving

Several states have dealt with the question of whether the beneficiaries of an insured killed as a result of his drunk driving can claim the proceeds of an accidental death and dismemberment policy. These states have generally concluded that such deaths are accidental. In *Freeman v. Crown Life Insurance Co.*,⁶⁵ the Texas Court of Civil Appeals heard such a case. The insured died after a car crash.⁶⁶ At the time of the collision, his blood alcohol content was between 0.188 percent and 0.207 percent.⁶⁷ His insurance company refused to pay accidental death benefits, arguing that his death was non-accidental because he died while driving drunk.⁶⁸ Rejecting this argument, the court quoted Professor Appleman: "While drunken driving is dangerous (and should be prevented) the public still regards such an accident as "accidental". To rule to the contrary is to deny the terminology the ordinary meaning given by the public."⁶⁹ The court, relying on Texas case law, stated, "More is required than a simple showing that the insured could have reasonably foreseen that injury or death might result."⁷⁰ The *Freeman* court continued:

[T]he insured must have acted in such a way that he should have reasonably known that his actions would probably result in his death. Unquestionably, driving while intoxicated is a serious violation of the law and an extremely dangerous act, but we do not believe it is such an act that one who commits it can be said to reasonably know that it will probably bring about his own death.⁷¹

65. 580 S.W.2d 897 (Tex. Civ. App. 1979).

66. *Id.* at 899.

67. *Id.*

68. *Id.*

69. *Id.* (quoting 1A JOHN ALAN APPLEMAN & JEAN APPLEMAN, INSURANCE LAW AND PRACTICE § 467, n.76.25 (Supp. 1978)). This passage by Professor Appleman was also quoted approvingly in an Oregon case with similar facts. See *Harbeintner v. Crown Life Ins. Co.*, 612 P.2d 334, 335 (Or. Ct. App. 1980).

70. *Freeman*, 580 S.W.2d at 900 (citing *Releford v. Reserve Life Ins. Co.*, 276 S.W.2d 517 (Tex. 1955)).

71. *Id.*

The Alabama Supreme Court addressed the issue in *Hearn v. Southern Life Insurance Co.*⁷² In *Hearn*, the insured was involved in a high-speed chase with police.⁷³ His car crashed into a gully and caught fire.⁷⁴ He died of smoke inhalation while trying to escape through a jammed car door.⁷⁵ His blood alcohol content measured 0.11 percent.⁷⁶ The *Hearn* court reversed the trial court's directed verdict for the insurance company and refused to hold as a matter of law that the death was non-accidental.⁷⁷ Rather, the court held that the jury was free to reject the theory that he "intended to die from smoke inhalation while pinned in his car."⁷⁸

In *Fryman v. Pilot Life Insurance Co.*,⁷⁹ the Kentucky Supreme Court also found a drunk driver's death to be accidental.⁸⁰ The court held that a death is accidental "absent a showing that the death was a result of plan, design or intent on the part of the decedent."⁸¹ The United States Court of Appeals for the Sixth Circuit later relied on this holding in *American Family Life Insurance Co. v. Bilyeu*,⁸² a diversity case in which the court applied Kentucky law.⁸³ The court held that the insured's death was an accident even though at the time of the crash she had a blood alcohol content of 0.20 percent and was driving over fifty-five miles per hour in a thirty-five mile per hour zone.⁸⁴

The Tennessee Supreme Court, in *Harrell v. Minnesota Mutual Life Insurance Co.*,⁸⁵ rejected the state's longstanding distinction between "accidental means" and "accidental results."⁸⁶ The court also rejected the insurance company's argument that death is the foreseeable consequence of drunk driving, stating, "Where, as here, the insured died as the result of an intentional act, such as voluntary intoxication, but did not intend or expect death to result, such death is accidental for the purposes of an accidental death policy."⁸⁷

Insurance companies have sometimes argued that courts should deny payment of accidental death benefits to beneficiaries of drunk drivers on public

72. 454 So. 2d 932 (Ala. 1984).

73. *Id.* at 933.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 935.

78. *Id.*

79. 704 S.W.2d 205 (Ky. 1986).

80. *Id.* at 206.

81. *Id.*

82. 921 F.2d 87 (6th Cir. 1990).

83. *Id.* at 89.

84. *Id.* at 88-89.

85. 937 S.W.2d 809 (Tenn. 1996).

86. *Id.* at 810, 814.

87. *Id.* at 815.

policy grounds. In *Consumers Life Insurance Co. v. Smith*,⁸⁸ the Maryland Court of Special Appeals rejected an insurance company's argument that beneficiaries should not recover in such instances because the state legislature had acted to deter drunk driving.⁸⁹ The court noted that it found nothing in the enactments of the legislature pertaining to drunk driving and insurance benefits.⁹⁰ The Oklahoma Supreme Court also rejected such an argument in a recent case, *Cranfill v. Aetna Life Insurance Co.*⁹¹ While the court acknowledged that the state had a strong public policy against drunk driving, it did not believe that denying benefits to the beneficiaries of drunk drivers would further the policy.⁹² The *Smith* and *Cranfill* courts both found the drunk drivers' deaths to be accidental and thus covered under their insurance policies.⁹³

The few cases in which courts applying state law have denied coverage for the death of a drunk driver have involved policies stipulating that death must occur by "accidental means."⁹⁴ As such, these cases do not dispel the overwhelming trend of state courts to find drunk drivers' deaths "accidental."

C. Drunk Driving and Federal ERISA Cases

The question of whether the death of an insured caused by his driving while intoxicated is accidental has been addressed by federal courts in cases arising under the Employee Retirement Income Security Act of 1974 ("ERISA").⁹⁵ Federal courts look to federal common law in defining what constitutes an "accident" in ERISA cases.⁹⁶ Most of these courts have based their reasoning on *Wickman v. Northwestern National Insurance Co.*,⁹⁷ a 1990 First Circuit case that has been described as the "primary embodiment of federal common law in

88. 587 A.2d 1119 (Md. Ct. Spec. App. 1990).

89. *Id.* at 1122-23 (citing Maryland's drunk driving statutes).

90. *Id.* at 1123.

91. 49 P.3d 703 (Okla. 2002).

92. *Id.* at 709.

93. *Smith*, 587 A.2d at 1125; *Cranfill*, 49 P.3d at 709.

94. See *Buce v. Allianz Life Ins. Co.*, 247 F.3d 1133 (11th Cir. 2001) (denying coverage in ERISA case where contract stipulated application of Georgia law, which recognized "accidental means" distinction); *Smith v. Life Ins. Co. of N. Am.*, 872 F. Supp. 482 (W.D. Tenn. 1994) (applying Tennessee law). At the time of the *Smith* case, Tennessee recognized the "means/results" distinction. *Id.* at 482-83. However, the Tennessee Supreme Court later abandoned the distinction in *Harrell v. Minn. Mut. Life Ins. Co.*, 937 S.W.2d 809 (Tenn. 1996).

95. 29 U.S.C. §§ 1001-1461 (2000).

96. See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 56 (1987). See generally Jeffrey A. Brauch, *The Federal Common Law of ERISA*, 21 HARV. J.L. & PUB. POL'Y 541 (1998).

97. 908 F.2d 1077 (1st Cir. 1990).

the area of accidental death benefits.⁹⁸ In *Wickman*, the insured parked his car on a ninety-foot bridge, climbed over the guardrail and held on with one hand, and fell to the ground.⁹⁹ He later died from his injuries.¹⁰⁰ His insurance company denied accidental death coverage on the grounds that his death was a suicide.¹⁰¹ The *Wickman* court rejected any test relying on the distinction between “accidental means” and “accidental results,”¹⁰² and instead formulated a three-step test to determine whether an insured’s death is an accident. The test first asks whether the insured reasonably expected an injury similar to the one that occurred.¹⁰³ If the insured did not expect such an injury, the court then asks whether his belief that injury would not result was reasonable.¹⁰⁴ Reasonableness is to be analyzed first from the perspective of the insured, “taking into account [his] personal characteristics and experiences.”¹⁰⁵ In the event that the insured’s subjective expectations cannot be ascertained, the court asks whether a reasonable person, with the same background and characteristics as the insured, “would have viewed the injury as *highly likely* to occur as a result of the insured’s intentional conduct.”¹⁰⁶ Applying this test, the *Wickman* court affirmed the magistrate’s conclusion that the insured’s death was not accidental because he “knew or should have known that serious bodily injury or death was a probabl[e] consequence substantially likely to occur as a result of his volitional act in placing himself on the outside of the guardrail and hanging on with one hand.”¹⁰⁷

Federal courts have since applied the *Wickman* test in the drunk driving context. Generally, these courts have construed the test in terms of the “quasi-objective” aspect of step three.¹⁰⁸ This focuses on what someone similar to the insured would have expected to result from the insured’s act. In *Miller v. Auto-Alliance International, Inc.*,¹⁰⁹ the insured driver died in an automobile accident while he was intoxicated.¹¹⁰ His insurance company denied accidental death

98. *Bevans v. Iron Workers’ Tri-State Welfare Plan*, 971 F. Supp 357, 361 (C.D. Ill. 1997).

99. *Wickman*, 908 F.2d at 1079-80.

100. *Id.* at 1080.

101. *Id.* at 1081.

102. *Id.* at 1086.

103. *Id.* at 1088.

104. *Id.*

105. *Id.*

106. *Id.* (emphasis added).

107. *Id.* at 1089.

108. See Adam F. Scales, *Man, God and the Serbonian Bog: The Evolution of Accidental Death Insurance*, 86 IOWA L. REV. 173, 296 (2000).

109. 953 F. Supp. 172 (E.D. Mich. 1997).

110. *Id.* at 173.

benefits, and his beneficiaries filed suit.¹¹¹ The court granted the insurance company's motion for summary judgment, accepting its argument that the insured should have foreseen the dangers of driving while intoxicated because they are well-known and widely publicized.¹¹² This rationale has been used by federal courts in several decisions.¹¹³

However, there are two ERISA cases where courts have interpreted *Wickman* to support the proposition that the death of an insured caused by his drunk driving is accidental. In *Metropolitan Life Insurance Co. v. Potter*,¹¹⁴ the court denied the insurance company's motion for summary judgment, which claimed that the insured's death was non-accidental because it was caused by her drunk driving and was therefore reasonably foreseeable and expected.¹¹⁵ The *Potter* court criticized the reasoning used in *Miller* and other ERISA drunk driving cases as misapplication of the *Wickman* test.¹¹⁶ The court asserted that a death is non-accidental under *Wickman* only when the insured expected to die, or where a reasonable person in the insured's position would have seen death as "highly likely to occur" and that "any other expectation would be unreasonable."¹¹⁷ In *Potter*, the court concluded that there was insufficient evidence to make a determination under the *Wickman* test.¹¹⁸ The court found no evidence of the insured's subjective expectations and, more significantly, refused to find as a matter of law that death was "highly likely to occur" as a result of driving while intoxicated.¹¹⁹ The court supported this conclusion by pointing out that many drunk drivers do not die in car accidents.¹²⁰

A recent decision, *West v. Aetna Life Insurance Co.*,¹²¹ expounded on the *Potter* court's criticism of the way federal courts have applied the *Wickman* test in the drunk driving context. The *West* court criticized other courts' reliance on vague arguments based on "common knowledge," "the media," "drunk driving laws," and extremely high blood alcohol content levels to conclude that death is

111. *Id.*

112. *Id.* at 176-77.

113. See *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775, 781 (E.D. Mich. 1997); *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419, 1422 (M.D. Fla. 1997); *Nelson v. Sun Life Assurance Co. of Can.*, 962 F. Supp. 1010, 1012-13 (W.D. Mich. 1997); *Fowler v. Metro. Life Ins. Co.*, 938 F. Supp. 476, 480 (W.D. Tenn. 1996).

114. 992 F. Supp. 717 (D.N.J. 1998).

115. *Id.* at 721, 730.

116. *Id.* at 729.

117. *Id.* (quoting *Wickman v. N.W. Nat'l Ins. Co.*, 908 F.2d 1077, 1088-89 (1st Cir. 1990)).

118. *Id.*

119. *Id.* at 729-30.

120. *Id.* at 730.

121. 171 F. Supp. 2d 856 (N.D. Iowa 2001).

“highly likely” to result from driving drunk.¹²² The court acknowledged that these things show that drunk driving is “irresponsible and dangerous,” but maintained that driving drunk is not “highly likely” to result in the driver’s death.¹²³ To support this, the court noted a study indicating that in a year where there were over a million drunk driving arrests, there were only 17,218 deaths from drunk driving accidents.¹²⁴

Federal courts have largely relied on the test set forth in *Wickman v. Northwestern National Insurance Co.*¹²⁵ in determining if the death of an insured proximately caused by his driving while intoxicated is accidental under insurance policies governed by ERISA. Although most courts applying this test have found such deaths to be non-accidental, some courts have applied the *Wickman* test to conclude that a reasonable person would not view death as “highly likely” to result from driving drunk. The divergence of federal courts’ approaches to drunk driving in accidental death insurance cases is largely based on differing views of what reasonable people would anticipate.

IV. INSTANT DECISION

In *Gaddy v. Hartford Life Insurance Co.*, the United States District Court for the Eastern District of Missouri, applying Missouri law, concluded that when an insured’s death is proximately caused by his driving while intoxicated, the death is foreseeable and is therefore non-accidental for first-party insurance coverage purposes.¹²⁶ The court acknowledged that no Missouri courts had addressed the issue.¹²⁷ Accordingly, as a federal court sitting in diversity, the

122. *Id.* at 901 (criticizing *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104 (7th Cir. 1998); *Mullaney v. Aetna U.S. Healthcare*, 103 F. Supp. 2d 486 (D.R.I. 2000); *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775 (E.D. Mich. 1997); *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419 (M.D. Fla. 1997); *Nelson v. Sun Life Assurance Co. of Can.*, 962 F. Supp. 1010 (W.D. Mich. 1997); *Miller v. Auto-Alliance Int’l, Inc.*, 953 F. Supp. 172 (E.D. Mich. 1997); *Cates v. Metro. Life Ins. Co.*, 14 F. Supp. 2d 1024 (E.D. Tenn. 1996)).

123. *Id.* at 904 (emphasis added).

124. *Id.* The court noted a study conducted by the Federal Bureau of Investigation that was admitted as a plaintiff’s exhibit. *Id.*

125. 908 F.2d 1077 (1st Cir. 1990).

126. *Gaddy v. Hartford Life Ins. Co.*, 218 F. Supp. 2d 1123, 1128-29 (E.D. Mo. 2002). This is to be contrasted with the meaning of “accident” for liability insurance policies. Indeed, even though *Gaddy*’s death was not considered an “accident” for his first-party policy, the death of the other driver in the crash was covered as “accidental” under *Gaddy*’s liability policy. For a discussion of the meaning of the word “accident” in first-party and third-party liability policies, see LEE R. RUSS, COUCH ON INSURANCE § 139:5 (3d ed. 2001).

127. *Gaddy*, 218 F. Supp. 2d at 1127.

court had the duty to predict how the Missouri Supreme Court would rule on the matter.¹²⁸

The court noted that Gaddy's beneficiaries carried the burden of proving that his death was an accident in order for Hartford's duty to pay to arise.¹²⁹ The court then cited numerous cases in which the Missouri Court of Appeals determined whether deaths were "accidental" for first-party insurance coverage purposes.¹³⁰ Although Gaddy's policy covered "accidental" deaths, the court also cited Missouri cases that involved "accidental means" policies.¹³¹

The court concluded that accidental death insurance benefits are not required to be paid when the insured's death results unexpectedly from an affirmative choice to expose himself to a "known peril" that a reasonable person would consider dangerous.¹³² The court applied an objective standard to the question of whether the insured should have appreciated the danger of the situation.¹³³ If a reasonable person would have expected serious injury or death, then the beneficiaries of the insured cannot recover.¹³⁴ The court recognized that in this type of analysis, Missouri courts trace "the chain of causation back to the last intentional act of the insured."¹³⁵ If the resulting injury or death was a "probable and natural consequence" of the insured's intentional act, it was not an accident.¹³⁶

Applying these principles, the court concluded that Gaddy's death was not an accident for first-party insurance coverage purposes.¹³⁷ The court pointed out that Gaddy voluntarily decided to drive his car while he was drunk.¹³⁸ A reasonable person, the court asserted, appreciates that driving while intoxicated

128. *Id.* (citing *ANR W. Coal Dev. Co. v. Basin Elec. Power Co-op.*, 276 F.3d 957, 964 (8th Cir. 2002); *Lincoln Benefit Life Co. v. Edwards*, 243 F.3d 457, 465 (8th Cir. 2001)).

129. *Id.* (citing *State Farm Mut. Auto. Ins. Co. v. Underwood*, 377 S.W.2d 459, 462 (Mo. 1964)).

130. *Id.* (citing *Cappo v. Allstate Life Ins. Co.*, 809 S.W.2d 131 (Mo. Ct. App. 1991); *Piva v. Gen. Am. Life Ins. Co.*, 647 S.W.2d 866 (Mo. Ct. App. 1983); *Stogsdill v. Gen. Am. Life Ins. Co.*, 541 S.W.2d 696 (Mo. Ct. App. 1976)).

131. *See* *Applebury v. John Hancock Mut. Life Ins. Co.*, 379 S.W.2d 867 (Mo. Ct. App. 1964); *Murphy v. W. & S. Life Ins. Co.*, 262 S.W.2d 340 (Mo. Ct. App. 1953).

132. *Gaddy*, 218 F. Supp. 2d at 1128 (citing *Applebury*, 379 S.W.2d at 871).

133. *Id.* (citing *Herbst v. J.C. Penney Ins. Co.*, 679 S.W.2d 381, 383 (Mo. Ct. App. 1984)).

134. *Id.* (citing *Herbst*, 679 S.W.2d at 383).

135. *Id.*

136. *Id.* (citing *Cappo v. Allstate Life Ins. Co.*, 809 S.W.2d 131 (Mo. Ct. App. 1991); *Herbst*, 679 S.W.2d at 381; *Stogsdill v. Gen. Am. Life Ins. Co.*, 541 S.W.2d 696 (Mo. Ct. App. 1976); *Applebury*, 379 S.W.2d at 867; *Murphy*, 262 S.W.2d at 340).

137. *Id.* at 1128-29.

138. *Id.* at 1128.

poses a serious risk of injury or death.¹³⁹ Therefore, Gaddy's death was a foreseeable result of his intentional act of driving while he was intoxicated.¹⁴⁰ The court noted that this conclusion was consistent with the majority of federal courts.¹⁴¹

Further evidence that a reasonable person would have known of the serious danger of death, the court maintained, was the fact that Gaddy could have been charged with driving while intoxicated¹⁴² and involuntary manslaughter had he survived.¹⁴³ The court reasoned that since state statutes have specified that driving drunk and causing injury is a "felonious, intentional act," Missouri courts would not consider the death of a drunk driver to be accidental.¹⁴⁴

In sum, the *Gaddy* court concluded that the death of an insured proximately caused by his driving while intoxicated is not an accident under insurance coverage because death or serious bodily harm is foreseeable to a reasonable person.¹⁴⁵

V. COMMENT

The *Gaddy* court held that Gaddy's death was foreseeable because he intentionally faced a known peril that a reasonable person would expect to cause death or serious injury.¹⁴⁶ This is similar to the reasoning of the federal courts that have interpreted ERISA to find that drunk driving deaths are non-accidental because a reasonable person would view death as a likely result.¹⁴⁷ Critics argue that this rationale is not consistent with reality or with what reasonable people

139. *Id.* (citing *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104, 1110 (7th Cir. 1998); *Nelson v. Sun Life Assurance Co. of Can.*, 962 F. Supp. 1010, 1012 (W.D. Mich. 1997)).

140. *Id.*

141. *Id.* (citing *Baker v. Provident Life & Accident Ins. Co.*, 171 F.3d 939, 943 (4th Cir. 1999); *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775, 782 (E.D. Mich. 1997); *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419, 1422 (M.D. Fla. 1997); *Miller v. Auto-Alliance Int'l, Inc.*, 953 F. Supp. 172, 176 (E.D. Mich. 1997)).

142. *Id.*; see MO. REV. STAT. § 577.012 (2000).

143. *Gaddy*, 218 F. Supp. 2d at 1128; see MO. REV. STAT. § 565.024.1(2) (2000).

144. *Gaddy*, 218 F. Supp. 2d at 1128.

145. *Id.*

146. *Id.*

147. See, e.g., *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775 (E.D. Mich. 1997); *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419 (M.D. Fla. 1997); *Nelson v. Sun Life Assurance Co. of Can.*, 962 F. Supp. 1010 (W.D. Mich. 1997); *Miller v. Auto-Alliance Int'l, Inc.*, 953 F. Supp. 172 (E.D. Mich. 1997).

think.¹⁴⁸ As discussed earlier, the court in *West v. Aetna Life Insurance Co.*¹⁴⁹ supported its conclusion that death is not “highly likely” to result by noting a survey showing a great disparity between the number of drunk driving arrests and the number of deaths caused by drunk driving.¹⁵⁰ Indeed, a more recent survey conducted by the National Highway Traffic Safety Administration indicated that although approximately 1.4 million people are arrested for drunk driving each year, only 8,474 intoxicated drivers died in automobile crashes in 2002.¹⁵¹ Further, as the *West* court noted, not every drunk driver is arrested each time they drive while intoxicated.¹⁵² Therefore, even as impressive as these statistics are, they still overstate the likelihood that drunk drivers will die as a result of their own drunk driving. Indeed, the *West* court had it right when it stated:

What “common knowledge” should actually tell a person driving while intoxicated is that he or she is far more likely to be arrested for driving while intoxicated than to die or be injured in an alcohol-related automobile crash, and far more likely to arrive home than to be either arrested, injured, or killed.¹⁵³

The argument that most people would not view death as likely to result from driving while intoxicated is supported by other statistics as well. For example, a recent survey indicated that about twenty-one percent of driving-age Americans reported that they had operated an automobile shortly after drinking in the past year.¹⁵⁴ About nine percent of the time, the respondents estimated that their blood alcohol content was 0.08 percent or above.¹⁵⁵ Studies estimate that drivers with a blood alcohol content of 0.08 percent or higher make nearly ninety-four million driving trips each year.¹⁵⁶ Such a high number of Americans admitting

148. See, e.g., *West v. Aetna Life Ins. Co.*, 171 F. Supp. 2d 856, 903-04 (N.D. Iowa 2001).

149. *Id.*

150. *Id.* at 904.

151. NAT’L CENTER FOR STATISTICAL ANALYSIS, *supra* note 2.

152. *West*, 171 F. Supp. 2d at 904.

153. *Id.*

154. JAMES H. HEDLUND & ANNE T. MCCARTT, PREUSSER RESEARCH GROUP, INC., AAA FOUNDATION FOR TRAFFIC SAFETY, DRUNK DRIVING: SEEKING ADDITIONAL SOLUTIONS, at v (May 2002) available at <http://www.aaafoundation.org/pdf/DrunkDriving-SeekingAdditionalSolutions.pdf>.

155. *Id.* at 8.

156. THE GALLUP ORGANIZATION, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., VOLUME 1: SUMMARY REPORT—NAT’L SURVEY OF DRINKING AND DRIVING—ATTITUDES AND BEHAVIORS (2003), available at <http://www.nhtsa.dot.gov/people/injury/alcohol/marvin-drink-drive01/vol1Sum.pdf>.

to driving after drinking strongly supports the proposition that a reasonable person would not anticipate death as a result.

However, other statistics could be used to support the argument that a reasonable person would expect death or injury. A Gallup survey indicated that ninety-seven percent of the driving-age public view drinking and driving by others as a threat to their personal safety.¹⁵⁷ Another study found that Americans rank drunk driving as their top highway safety concern.¹⁵⁸ These statistics make it clear that Americans are certainly afraid of being killed or injured by the drunk driving of another. However, they do not directly answer whether Americans are afraid of dying as a result of their *own* drunk driving.

Notably, there is a clear split between state and federal courts on this issue.¹⁵⁹ While courts applying state law have largely found such deaths to be accidental,¹⁶⁰ federal courts interpreting ERISA have generally found them to be non-accidental.¹⁶¹ Why is this?

One explanation might be the view that federal courts are generally more favorable to insurance companies in interpreting insurance contracts.¹⁶² Another might be the “extremely deferential”¹⁶³ standard of review that federal courts often apply to denials of insurance benefits in ERISA claims. In ERISA cases, federal courts apply a *de novo* standard of review “unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.”¹⁶⁴ When the administrator or fiduciary has such discretion, the deferential arbitrary and capricious standard of review applies.¹⁶⁵ Federal courts frequently use this standard in ERISA drunk driving cases.¹⁶⁶ Indeed, the Oklahoma Supreme Court partly attributed the split

157. *Id.*

158. ALLSTATE-MADD SURVEY (1997), available at <http://www.madd.org/stats/0,1056,3726,00.html>.

159. See *Cranfill v. Aetna Life Ins. Co.*, 49 P.3d 703, 707 (Okla. 2002) (“[T]he split is between the federal courts on one hand and state courts on the other.”).

160. See, e.g., *Harrell v. Minn. Mut. Life Ins. Co.*, 937 S.W.2d 809 (Tenn. 1996).

161. See, e.g., *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104 (7th Cir. 1998). *But see* *West v. Aetna Life Ins. Co.*, 171 F. Supp. 2d 856 (N.D. Iowa 2001); *Metro. Life Ins. Co. v. Potter*, 992 F. Supp. 717 (D.N.J. 1998).

162. See *Scales*, *supra* note 108, at 292 (citing Catherine L. Fisk, *Lochner Redux: The Renaissance of Laissez-Faire Contract in the Federal Common Law of Employee Benefits*, 56 OHIO ST. L.J. 153, 211 (1995)) (“Many ERISA courts, perhaps skeptical of the creative interpretations insurance contracts generally receive at the state level, have committed themselves to a stricter, so-called plain meaning standard of interpretation.”).

163. *Cozzie*, 140 F.3d at 1107.

164. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).

165. *Cozzie*, 140 F.3d at 1107.

166. See *id.* at 1108; *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775, 779 (E.D. Mich. 1997); *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419, 1421 (M.D. Fla. 1997);

between state and federal courts to the federal courts' use of arbitrary and capricious review.¹⁶⁷ Notably, several federal courts have found the deaths of drunk drivers to be non-accidental even on de novo review.¹⁶⁸ However, these courts based their conclusions on the federal common law on the subject of drunk drivers, which had been created by courts applying the highly deferential arbitrary and capricious standard of review.¹⁶⁹ Because the federal courts which have found the deaths of drunk drivers to be non-accidental have done so by either using the arbitrary and capricious standard or by relying on cases which did, the *Gaddy* court's use of these cases as support for the proposition that death in this circumstance is "reasonably foreseeable" is somewhat less convincing.

Additionally, even though *Gaddy* was decided by a federal district court, it was based on state law. Because courts applying state law have overwhelmingly held that the death of a drunk driver is accidental,¹⁷⁰ the *Gaddy* court's conclusion that such deaths are not accidental makes the case somewhat of an outlier.

The reasoning of courts that hold that the death of a drunk driver is not "accidental" is frustrating, in part because it is often unnecessary. Accidental death policies usually include specific provisions that exclude certain conduct from coverage. These provisions often exclude coverage for injuries or deaths that occur while the insured is committing a crime.¹⁷¹ Many policies also contain broad provisions that exclude coverage if injury or death is a consequence of the insured's intoxication.¹⁷² Some policies even contain clauses that specifically

Miller v. Auto-Alliance Int'l, Inc., 953 F. Supp. 172, 175 (E.D. Mich. 1997); *Cates v. Metro. Life Ins. Co.*, 14 F. Supp. 2d 1024, 1027 (E.D. Tenn. 1996); *Fowler v. Metro. Life Ins. Co.*, 938 F. Supp. 476, 479 (W.D. Tenn. 1996). *But see* *Poeppel v. Hartford Life Ins. Co.*, 273 F. Supp. 2d 714, 717 (D.S.C. 2003) (de novo review); *Mullaney v. Aetna U.S. Healthcare*, 103 F. Supp. 2d 486, 490 (D.R.I. 2000) (de novo review); *Nelson v. Sun Life Assurance Co. of Can.*, 962 F. Supp. 1010, 1012 (W.D. Mich. 1997) (de novo review).

167. *See* *Cranfill v. Aetna Life Ins. Co.*, 49 P.3d 703, 707 (Okla. 2002) (acknowledging split between state and federal courts and observing that "in most ERISA cases, the federal courts must affirm the denial of benefits unless the decision to deny benefits was arbitrary and capricious").

168. *See* *Poeppel*, 273 F. Supp. 2d at 714; *Mullaney*, 103 F. Supp. 2d at 486; *Nelson*, 962 F. Supp. at 1010.

169. *See* *Poeppel*, 273 F. Supp. 2d at 719-20; *Mullaney*, 103 F. Supp. 2d at 493-94 (citing *Cozzie*, 140 F.3d at 1104; *Walker*, 24 F. Supp. 2d at 775; *Cates*, 14 F. Supp. 2d at 1024; *Schultz*, 994 F. Supp. at 1419); *Nelson*, 962 F. Supp. at 1012 (citing *Fowler*, 938 F. Supp. at 476).

170. *See, e.g.*, *Fryman v. Pilot Life Ins. Co.*, 704 S.W.2d 205 (Ky. 1986).

171. *See, e.g.*, *McDaniel v. Sierra Health & Life Ins. Co.*, 53 P.3d 904 (Nev. 2002) (holding that death of an insured caused by drunk driving was not covered by policy because of provision that precluded coverage if the insured died while committing a felony).

172. *See* RUSS, *supra* note 126, at § 142:46.

preclude coverage for deaths that result from the insured's driving while intoxicated. Ironically, Charles Gaddy's policy contained such a provision.¹⁷³ However, the *Gaddy* court did not address the validity of this provision because it found, more generally, that Gaddy's death was not an accident because it was a "probable and natural consequence" of his driving while intoxicated.¹⁷⁴ This reasoning is frustrating, not only because it is contrary to the expectations of the public, but also because it was probably unnecessary, as Gaddy's policy would have likely excluded coverage based on the drunk driving provision.¹⁷⁵ Oftentimes, courts will not have to make such leaps of logic to conclude that deaths are non-accidental because exclusionary clauses will deny coverage anyway. If insurance companies want to exclude drunk driving deaths, they should include such provisions in their policies.¹⁷⁶ Indeed, several courts have said as much in cases where they have concluded that the death of a drunk driver was accidental.¹⁷⁷

Critics have asserted that the cases that hold a drunk driving death to be non-accidental base their reasoning on normative views rather than reasonable expectations.¹⁷⁸ The critics argue that the courts equate "accidental" with "innocent."¹⁷⁹ Drunk driving is a violation of social mores. It is also a crime.¹⁸⁰ Courts' conclusions that driving while intoxicated would make a reasonable person believe death was likely may be based on normative views that drunk driving is a bad thing that should be discouraged, rather than on the true expectations of reasonable people.¹⁸¹

173. *Gaddy v. Hartford Life Ins. Co.*, 218 F. Supp. 2d 1123, 1126 (E.D. Mo. 2002).

174. *Id.* at 1127-29.

175. The same was true in *Nelson v. Sun Life Assurance Co. of Canada*, 962 F. Supp. 2d 1010 (W.D. Mich. 1997), where the court found a drunk driver's death to be non-accidental even though the insurance policy contained an exclusion for deaths resulting from the commission of a crime. *Id.* at 1013.

176. Insurance companies should use specific provisions denying coverage for deaths resulting from drunk driving. Courts have not always found such deaths to be covered by general "commission of crime" exclusions. See *Adkins v. Home Life Ins. Co.*, 372 N.W.2d 671, 673 (Mich. Ct. App. 1985) (holding that drunk driving did not fall under crime exclusion because exclusion was ambiguous as to whether it covered driving while intoxicated).

177. See, e.g., *Am. Family Life Assurance Co. v. Bilyeu*, 921 F.2d 87, 89 (6th Cir. 1990) ("[A]n explicit provision excluding alcohol-related accidents would have been an obvious option if American Life did not wish to provide coverage for such accidents."); *Freeman v. Crown Life Ins. Co.*, 580 S.W.2d 897, 901 (Tex. Civ. App. 1979) (stating that if insurance company desired to exclude drunk driving deaths from coverage, "it could have easily done so by inserting in the policy an appropriate exclusion").

178. See Scales, *supra* note 108, at 298-99.

179. *Id.* at 299.

180. See MO. REV. STAT. § 577.012 (2000).

181. See Scales, *supra* note 108, at 299.

VI. CONCLUSION

Drunk driving is, to be sure, a foolish and reckless act. However, when an insured dies as a consequence of his driving while intoxicated, his death should still be considered “accidental” because a reasonable person would not view death as a natural and probable consequence of drunk driving. This notion is supported by both survey data and traffic statistics. In *Gaddy v. Hartford Life Insurance Co.*,¹⁸² the court nevertheless found such a death to be non-accidental. Courts applying state law that examine this issue in the future should view *Gaddy* as an outlier and should follow the reasoning of all of the other state court decisions, which have found these types of deaths to be “accidental.” Federal courts applying ERISA in this context should follow *Potter* and *West* rather than the other ERISA drunk driving cases, which have made unrealistic and unsupported assertions of what reasonable people would expect. In any event, courts should not stretch logic in order to support the conclusion that the death of a drunk driver is not “accidental.”

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182. 218 F. Supp. 2d 1123 (E.D. Mo. 2002).

