Missouri Law Review

Volume 71
Issue 2 *Spring 2006*

Article 6

Spring 2006

Alcohol-Related Car Accidents - The Eighth Circuit Moves toward Policy Change in ERISA Litigation

Marcus Wilbers

Alcohol-Related Car "Accidents"? The Eighth Circuit Moves toward Policy Change in ERISA Litigation

King v. Hartford Life and Accident Insurance Company[1]

I. INTRODUCTION

According to the National Center for Statistics and Analysis,[2] the 16,694 alcohol-related fatalities in 2004 accounted for 39% of all traffic deaths.[3] Although declining slightly from previous years,[4] alcohol-related driving deaths are tragic, and their devastating effects on families are readily apparent. Although typically dubbed "drunk-driving accidents," courts have traditionally refused to describe these deaths as "accidental."[5] This is particularly true when decedents or their beneficiaries attempt to collect accidental death benefits under the Employment Retirement Income Securities Act ("ERISA").[6] Focusing on the previously mentioned statistics, courts have often reflected the social intolerance for drunk driving in their decisions.[7]

Courts, however, have shown signs of bending on this nearly universal rule, particularly in light of the fact that alcohol-related fatalities occur in only 7% of all car wrecks and the rate of alcohol-related fatalities is roughly one for every 200 million vehicle miles traveled.[8] Other commentators have also noted that of the approximately 1.4 million drivers arrested in 2002, only 8,474 drunk drivers died in an automobile crash, and that drunk drivers make

---

1. 414 F.3d 994 (8th Cir. 2005).

2. A division of the National Highway Transportation Safety Administration ("the Administration"), the National Center for Statistics and Analysis' ("the Center") mission is to "[s]ave lives, prevent injuries, [and] reduce vehicle-related crashes." National Highway Transportation Safety Administration Homepage, http://www.nhtsa.dot.gov. The Center also conducts research about driver behavior and safety. *Id.* (follow "about NHTSA" hyperlink; then follow "Who We Are and What We Do" hyperlink). The Administration was established under the United States Department of Transportation in 1970. *Id.*

3. 2004 TRAFFIC SAFETY FACTS: ALCOHOL 1, http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2004/809905.pdf [hereinafter *Traffic Safety*].

4. *Id.* (stating that alcohol related fatalities fell by 2.4% from 2003 to 2004).

5. *See infra* Part III.B.

6. 29 U.S.C. §§ 1001-1461 (2000); *see infra* Part III.B.

7. *See infra* Part III.B.

8. *Traffic Safety*, *supra* note 3, at 1 (stating that the national rate of alcohol-related fatalities to all motor vehicle crashes is 0.57 to 100 million vehicle miles traveled).

94 million driving trips each year.[9] Given this, some courts have concluded that, objectively, it is not highly likely for an impaired driver to die in an alcohol-related wreck, and those deaths are therefore accidents.[10] While not addressing this question directly, the Eighth Circuit in *King v. Hartford Life and Accident Insurance Co.* took a small step away from the universal denial of accidental death benefits and toward the contrary holding.[11]

II. FACTS AND HOLDING

Treasure Island, a resort and casino in Minnesota, held a group insurance policy for its employees as part of an employee benefit plan.[12] Hartford Life and Accident Insurance Company ("Hartford") provided this plan, which included provisions for accidental death benefits.[13] As an employee of Treasure Island, Martin Schanus was covered by this employee benefit plan.[14]

In June of 2000, Schanus died when the motorcycle he was driving veered off the road and hit a fence.[15] The force of the collision threw Schanus from his motorcycle, and he suffered fatal head injuries.[16] After the accident, medical examiners determined that Schanus was legally intoxicated at the time of the accident and listed "acute alcohol intoxication" as a significant contributing factor to his death.[17]

Shortly after the accident, Schanus's daughter, Amber Schanus, submitted an accidental death claim with Hartford.[18] Hartford awarded Amber the standard death benefit[19] but denied her accidental death claim[20] in a letter dated December 26, 2000.[21] Citing the definition of "accident" in Black's

---

9. Michael E. Gardner, Note, *Accidental Death Coverage of Drunk Drivers*, 69 MO. L. REV. 235, 249 (2004) (citing National Highway Traffic Safety Administration statistics for 2002).

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

11. *See infra* Parts IV.A., V.A.

12. King v. Hartford Life & Accident Ins. Co., 414 F.3d 994, 996 (8th Cir. 2005). The particular benefit plan here is governed by the Employee Retirement Income and Security Act ("ERISA"). *Id.* at 997; *see* 29 U.S.C. §§ 1001-1461(2000).

13. *King*, 414 F.3d at 996.

14. *Id.* at 996-97.

15. *Id.* at 997.

16. *Id.*

17. *Id.* Mr. Shanus's blood alcohol level was 0.19%. *Id.*

18. *Id.* at 1000. Amber's claim was submitted by Alane King, Amber's mother and appellant in this action. *Id.* at 997.

19. *Id.* at 1000. The standard death benefit was $42,916.04. *Id.*

20. *Id.* The accidental death benefits would have "doubled the life insurance benefit paid to Amber." *Id.* at 997.

21. *Id.* at 1000. Since Hartford issued two denial letters, this December 26, 2000, letter will be referred to as "the first denial letter."

Law Dictionary[22] as something "happening by chance . . . or unexpectedly," Hartford reasoned that by driving drunk, Schanus "voluntarily exposed himself to an unnecessary danger" that ultimately resulted in his death.[23] More specifically, Hartford argued that since Schanus was intoxicated, his injuries and death were not unexpected; in fact, a person driving while intoxicated should reasonably expect driving in such a reckless manner to produce serious bodily injury.[24] Alternatively, Hartford argued that since serious bodily injuries could be expected from driving in such a state, and since Schanus voluntarily became intoxicated, Schanus's death was a "self-inflicted injury."[25]

Hartford's plan contained a provision allowing denied claimants the right to "appeal to the Insurance Company for a full and fair review."[26] Under this provision, Hartford was to provide a "written decision [including] specific reasons for the decision and specific references to the plan provision on which the decision is based."[27] Amber exercised her right under this provision on February 21, 2001, arguing that "Hartford's denial was 'unreasonable and not supported by the evidence.'"[28]

Hartford responded on June 14, 2001, again denying accidental death benefits.[29] In this letter, Hartford referenced its December 26 letter, stating that it "lists the evidence" that formed the basis of the denial.[30] Hartford explained, "a reasonable person would have known that death or serious injury was a reasonably foreseeable result of driving while intoxicated."[31] Since a "death is not accidental when it is a foreseeable result of the insured's voluntary act of becoming intoxicated," Hartford concluded Schanus's death was not accidental.[32]

Amber sued Hartford in a Minnesota state court, alleging the denial was "arbitrary, capricious, and not a fair or logical reading of the policy language."[33] Hartford promptly removed the action to federal court.[34] Despite admitting new evidence to support Amber's claim,[35] the United States Dis-

22. Hartford cited to the Sixth Edition, 1990. *Id.*
23. *Id.*
24. *Id.* at 1000-01.
25. *Id.* at 1001.
26. *Id.* (quoting the language of the benefit plan).
27. *Id.* (quoting the language of the benefit plan).
28. *Id.* (citation omitted).
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 997. (citation omitted) (quotation marks omitted).
34. *Id.* Amber's claim invoked federal court jurisdiction because her claim arose under ERISA. *Id.*
35. *Id.* The appellate court noted that this procedure violated "the general rule that a challenge to the decision of a benefits administrator under ERISA should be decided based on the evidence presented to the administrator." *Id.*

trict Court for the District of Minnesota granted Hartford's motion for summary judgment because it found "neither Hartford's definition of its plan terms nor its application of those terms to the facts can be considered either arbitrary or capricious."[36]

On appeal, an Eighth Circuit panel reversed the grant of summary judgment and remanded for further proceedings,[37] adopting the applicable test for an accident as "whether Schanus's death was 'highly likely to occur' as a result of his drunk driving."[38] The Eighth Circuit subsequently granted a rehearing en banc, vacated the panel's decision, and reversed the district court on "narrower ground[s] than . . . the panel."[39] In reversing, the Eighth Circuit stated that Schanus's death was not an intentional self-inflicted injury, and that Hartford's denial letters articulated two different interpretations of "accidental bodily injury."[40] Accordingly, the appropriate remedy was to return the case to the plan administrator for reconsideration under a consistent definition of accident using a "reasonably foreseeable standard."[41]

III. LEGAL BACKGROUND

In 1974, Congress enacted the Employee Retirement Income Security Act ("ERISA")[42] in response to massive growth in employee benefit plans and the corresponding economic impact.[43] ERISA governs a vast array of employee benefit plans covering medical, surgical and hospital care, sickness, vacation benefits, apprenticeship or training programs, day care centers, scholarship funds, prepaid legal services, and accidental death and disability insurance.[44] Although Congress regulates some terms of these benefit plans,[45] it gives fiduciary insurance companies wide discretion to define many policy

36. *Id.* The district court did express hesitation in its ruling, however, and indicated that since the arbitrary and capricious standard is an "extraordinarily hard rule of law . . . [i]t would be very pleasing . . . [for] the court of appeals to take a very careful look at this." *Id.*

37. King v. Hartford Life & Accident Ins. Co., 357 F.3d 840, 846 (8th Cir. 2004).

38. *King*, 414 F.3d at 997-98 (quoting *King*, 357 F.3d at 844).

39. *Id.* at 998.

40. *Id.* at 1000-01.

41. *Id.* at 1005.

42. 29 U.S.C. §§ 1001-1461 (2000).

43. *Id.* § 1001. Congress declared three main policy objectives in enacting the statute: (1) protecting interstate commerce, (2) protecting federal taxing power, and (3) protecting the beneficiaries of employee benefit plans by setting standards of conduct for fiduciaries of the plans. *Id.*

44. *Id.* § 1002(1)(A).

45. *Id.* § 1002. Section 1002, entitled "Definitions," defines such pertinent terms as "vested liabilities," "normal service cost," "accrued liability," "normal retirement benefit," and "accrued benefit," to name a few. *Id.* §§ 1002(22), (23), (25), (28), (29).

terms. One particularly problematic term not defined by Congress has been "accident," as used in employee accident and disability plans.[46] The term has generated substantial disagreement between employee claimants and insurance company carriers.[47]

In the event of a disagreement, a claimant has a predetermined dispute resolution process. ERISA mandates that all employee benefit plans have two essential features for resolving claim disputes.[48] First, the plan must provide written notice to a denied claimant, and "set[] forth the specific reasons for such denial."[49] Second, a plan must "afford a reasonable opportunity" for denied claimants to seek "a full and fair review by the appropriate named fiduciary of the decision denying the claim."[50] ERISA does not explicitly mandate that claimants exhaust these administrative remedies before they file suit to collect benefits due under a plan.[51] Nonetheless, courts have consistently required denied claimants to exhaust all administrative remedies before suing to recover benefits.[52] Courts apply the exhaustion doctrine to give effect to congressional intent that ERISA develop its own body of substantive case law and to give effect to the claims procedure outlined in section 1133.[53]

This uniformly enforced exhaustion requirement can act as a substantial barrier to denied claimants because courts typically apply an "arbitrary or

---

46. *See* Ronald S. Buhite & H. Maggie Marrero-Ladik, *Drugs, Alcohol, and Accidental Death Coverage*, 39 TORT TRIAL & INS. PRAC. L.J. 985, 985 (2004) ("Few issues have confounded litigants and courts more than whether a death is an accident for purposes of accidental death insurance coverage.").

47. *See generally id.*

48. 29 U.S.C. § 1133 (2000).

49. *Id.* § 1133(1).

50. *Id.* § 1133(2).

51. Amato v. Bernard, 618 F.2d 559, 566 (9th Cir. 1980); *see also* Andrew M. Campbell, Annotation, *Exhaustion of Administrative Remedies as a Prerequisite to Suit under Employee Retirement Income Security Act of 1974 (29 U.S.C. §§ 1001 et seq.)*, 162 A.L.R. FED. 1, 1 (2000).

52. Campbell, *supra* note 51, at 1. Section 1132 gives denied claimants the right to bring a civil action "to recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132 (a)(1)(B).

53. *See Amato*, 618 F.2d at 566-67. The Amato court explained that "in the field of labor law," most courts require exhaustion of an administrative remedy where one is available. *Id.* at 566. The court articulated four reasons to apply the exhaustion requirement to ERISA cases. When taken together, Congress's intent to create a substantive body of case law along with its intent that ERISA cases be treated similarly to those under the Labor-Management Relations Act, indicate that courts should apply the exhaustion rule as they do in Labor-Management Relations Act cases, where they have "long fashioned federal common law." *Id.* at 567. Third, the court noted that ERISA itself provides guidelines on administrative remedies within the plan and the exhaustion requirement would further those guidelines. *Id.* Finally, the court noted that imposing an exhaustion requirement would assist the courts when they are called on to adjudicate disputes by "refining and defining the problem." *Id.* at 568.

capricious" or "abuse of discretion" standard of review when reviewing a plan administrator's construction of plan terms.[54] Although *de novo* review may be warranted in some instances,[55] courts usually only look to the facts available to the administrator at the time the claim is reconsidered.[56] Therefore, when adjudicating these disputes, courts are typically constrained by the standard of review they apply and by the facts the administrator considered. This process, however, is more complex when a given term is undefined or vaguely defined in the benefit plan itself and is later defined or interpreted by the administrator. How does a court determine if an administrator's construction is arbitrary or capricious when the applicable term is undefined or vaguely defined within the benefit plan?

A. Definition of "Accident" within Benefit Plans

The problem of undefined or vaguely defined terms within benefit plans is not new, particularly when the term at issue is "accident."[57] In fact, federal courts have developed a substantial amount of case law to "fill in" the meaning of "accident."[58]

---

54. *See* Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109-15 (1989). The court in *Bruch* held that when reviewing a denial of ERISA benefits, courts are to apply a *de novo* standard, unless the plan gives the administrator the power to construe plan terms and determine eligibility for benefits. *Id.* at 115. If the plan does confer such power, a heightened standard of review is warranted. *Id.* In practice, however, nearly all plans stipulate that the administrator's determinations will be given such deference, so courts almost uniformly give heightened review. *See* Heaser v. Toro Co., 247 F.3d 826, 833 (8th Cir. 2001) (stating that courts "ordinarily review the administrator's decision for abuse of discretion"); *see also* Cozzie v. Metro. Life Ins. Co., 140 F.3d 1104, 1107 (7th Cir. 1998) (noting since the plan gave the administrator the authority to "determine[ ] conclusively" all issues relating to the plan so that its decisions are "not subject to further review," the court was obliged to apply the "'arbitrary and capricious standard'").

55. *See supra* note 54. In addition, courts have also determined a less deferential standard of review is available if the denied claimant demonstrates "a palpable conflict of interest . . . caused a serious breach of the plan administrator's fiduciary duty." West v. Aetna Life Ins. Co., 171 F. Supp. 2d 856, 870 (N.D. Iowa 2001) (quoting Woo v. Deluxe Corp., 144 F.3d 1157, 1160 (8th Cir. 1998)) (quotation marks omitted).

56. Short v. Cent. States, Se. & Sw. Areas Pension Fund, 729 F.2d 567, 571 (8th Cir. 1984).

57. *See* Buhite & Marrero-Ladik, *supra* note 46 (stating that "accident" is undefined in many death coverage plans); *see also* Buce v. Allianz Life Ins. Co., 247 F.3d 1133, 1146 (11th Cir. 2001) (stating "unexpected, external, violent, and sudden event" has been "charitably described as [a] 'somewhat less than dispositive'" description of accident). For a discussion of courts interpreting "accident" under Missouri state law, see Gardner, *supra* note 9, at 237-41.

58. *See* Buhite & Marrero-Ladik, *supra* note 46, at 986-87 (describing the different approaches courts have taken in determining the existence of a covered accident).

There are two main approaches.[59] The first and older approach focuses on the distinction between accidental means and accidental results.[60] This approach, outlined by the United States Supreme Court in *Landress v. Phoenix Mutual Life Insurance*, extends coverage to only those injuries resulting from accidental means.[61] In *Landress*, the Court upheld a benefit denial after a golfer suffered a sunstroke because his death "result[ed] from voluntary exposure" to the sun.[62] Justice Cardozo sharply criticized this approach in his dissent, arguing that the proper scheme would focus on the average man's perspective because "the man who takes out a policy of accident insurance" would clearly view the golfer's demise as an accident.[63] This approach has widely fallen out of favor,[64] partly due to Cardozo's dissent and his prediction that following such an approach would "plunge this branch of law into a Serbonian Bog."[65]

The second, and widely followed, approach was articulated by the First Circuit in *Wickman v. Northwestern National Insurance Co.*[66] In *Wickman*, a beneficiary wife sued for benefits due under her deceased husband's ERISA-governed accidental death plan.[67] While inexplicably walking on the outside of a forty- to fifty-foot bridge and holding on with one hand, the husband fell and later died in the hospital.[68] After unsuccessfully trying to determine why the husband was walking on the outside of a bridge, the court engaged in an objective analysis of the situation and, in doing so, formulated a new approach to defining "accident."[69]

The First Circuit examined and rejected the "accidental means" test in favor of a two-tiered approach.[70] In the first tier, the fact-finder examines the insured's personal expectations and determines if those personal expectations were reasonable.[71] This step is essentially an examination of the insured's

59. Wickman v. Nw. Nat'l Ins. Co., 908 F.2d 1077, 1085 (1st Cir. 1990).

60. *Id.*

61. Landress v. Phoenix Mut. Life Ins., 291 U.S. 491, 496-97 (1934).

62. *Id.* at 497.

63. *Id.* at 499 (Cardozo, J., dissenting).

64. *Wickman*, 908 F.2d at 1086 (noting that "[i]n recent years, courts consistently have rejected the distinction between accidental means and accidental results").

65. *Landress*, 291 U.S. at 499 (Cardozo, J., dissenting).

66. 908 F.2d 1077 (1st Cir. 1990).

67. *Id.* at 1079. The plan defined accident as "an unexpected, external, violent and sudden event." *Id.* at 1081 (quotation marks omitted). The plan also contained an exclusion "if the loss was either directly or indirectly caused by 'suicide or intentionally self-inflicted injury, whether . . . sane or insane.'" *Id.* (alteration in original).

68. *Id.* at 1079-80.

69. *Id.* at 1088.

70. *Id.*; Buhite & Marrero-Ladik, *supra* note 46, at 987.

71. *Wickman*, 908 F.2d at 1088.

subjective intent, asking "whether the person really meant to do himself in."[72] If the answer is "no," or if the evidence is "insufficient to accurately determine the insured's subjective expectation," the court looks to see "whether the suppositions which [sic] underlay that expectation were reasonable."[73] This second tier of the analysis involves "an objective analysis of the insured's expectations."[74] The court explained that in this analysis, "one must ask whether a reasonable person, with background and characteristics similar to the insured, would have viewed the injury as highly likely to occur."[75] Using this approach, many courts have addressed the situation in which an insured employee is killed or injured in an alcohol-related incident.

B. Alcohol-Related Car "Accidents"?

Driven by public awareness of drunk-driving, courts have traditionally been unsympathetic to the argument that drunk driving deaths are accidents.[76] The majority of courts applying the *Wickman* standard to alcohol-related injuries have either held that injuries are to be expected when the insured drives while intoxicated, or that injuries sustained when driving while intoxicated are self-inflicted.[77]

Fowler v. Metropolitan Life Insurance Company exemplifies the first approach.[78] In *Fowler*, a father beneficiary sued for benefits due under his son's employee accidental death plan.[79] Although the plan administrators paid the standard death benefits, they denied accidental death benefits because the insured died in a single-car accident while intoxicated.[80] The plan used standard language providing for accidental death benefits where "injuries [were] effected through external, violent and accidental means, and independently of all other causes."[81] The plan also contained provisions excluding benefits for

72. Buhite & Marrero-Ladik, *supra* note 46, at 987. The petitioner wife in *Wickman* argued for a definition of "accident" that classified "anything short of specifically intended injury [as] an accident." *Wickman*, 908 F.2d at 1086. The lower court disagreed, however, holding that "even if Wickman did not intend to kill or injure himself, he did not die accidentally." *Id.*

73. *Wickman*, 908 F.2d at 1088. While seemingly objective in nature, the court added this caveat to "prevent unrealistic expectations from undermining the purpose of accident insurance." *Id.*

74. *Id.*

75. *Id.*

76. *See id.*

77. *See* Buhite & Marrero-Ladik, *supra* note 46, at 987.

78. Fowler v. Metro. Life Ins. Co., 938 F. Supp. 476 (W.D. Tenn. 1996).

79. *Id.* at 477-78.

80. *Id.* at 478-79 (noting that the decedent's blood alcohol content was .26%, while Tennessee law creates the presumption of intoxication at .10%).

81. *Id.* at 478.

self-inflicted injuries.[82] Applying *Wickman*[83] and using an "arbitrary or capricious" standard, the United States District Court for the Western District of Tennessee denied the plaintiff's claim, stating, "the hazards of drinking and driving are widely known and widely publicized. It is clearly foreseeable that driving while intoxicated may result in death or bodily harm."[84]

Similarly, in *Schultz v. Metropolitan Life Insurance Co.*, a mother beneficiary sued to recover accidental death benefits denied after her son died after overturning his car.[85] As in *Fowler*, Metropolitan Life denied accidental death benefits under a similar accident plan,[86] because the insured was intoxicated at the time of death.[87] In upholding the denial under an "arbitrary and capricious" standard, the United States District Court for the Middle District of Florida applied *Wickman* and echoed the logic of *Fowler*.[88] The court stated that since the "horrors associated with drinking and driving" were well publicized, the insured "knew, or should have known, . . . he was risking his life in a real and measurable way."[89]

At least two courts have used a self-inflicted injury exclusion as a basis for denying accidental death benefits in these situations. For example, the court in *Nelson v. Sun Life Assurance Co. of Canada* faced facts similar to those of *Schultz*.[90] The benefit plan at issue had standard language,[91] including a self-inflicted injury exclusion.[92] Using the "arbitrary and capricious" standard, the court upheld the benefit denial on different grounds than *Fowler* and *Schultz*.[93] Stating that the hazards of driving while intoxicated are well

82. *Id.* at 479.

83. The court also discussed the Tennessee common law definition of accident, noting that it had "consistently held that bodily injury or death are foreseeable results of voluntarily driving while intoxicated." *Id.* at 480. Although the court did not explicitly state it, the Tennessee approach is similar to *Wickman*, in that both approaches look to the objective reasonableness of an actor's appreciation for expected injuries. *See supra* note 71 and accompanying text.

84. *Fowler*, 938 F. Supp. at 480.

85. *Schultz v. Metro. Life Ins. Co.*, 994 F. Supp. 1419, 1419-20 (M.D. Fla. 1997).

86. *See supra* notes 80-81 and accompanying text. Although the court did not provide the actual plan language, it summarized that an accidental death must be free from all independent causes and must not be self-inflicted or caused during the commission of a felony or serious assault. *Schultz*, 994 F. Supp. at 1420.

87. *See Schultz*, 994 F. Supp. at 1420 (explaining that the insured had a blood alcohol content of .29%, more than three and a half times the legal limit in Florida, and there were traces of cocaine and barbiturates in his bloodstream).

88. *Id.* at 1421-22.

89. *Id.* at 1422.

90. *Nelson v. Sun Life Assurance Co. of Canada*, 962 F. Supp. 1010, 1010 (W.D. Mich. 1997). *Nelson* involved the denial of accidental death benefits when the insured died in a car wreck while intoxicated. *Id.*

91. *See supra* note 81 and accompanying text.

92. *Nelson*, 962 F. Supp. at 1012.

93. *See supra* notes 78-89 and accompanying text.

known, the court applied the self-inflicted injury exclusion, holding that application of the clause was "eminently reasonable."[94]

Although facing similar facts,[95] the court in *Mullaney v. Aetna U.S. Healthcare* reviewed the plan administrator's determination *de novo*.[96] The court noted that even if the decedent did not intend or foresee any harm from driving drunk, "a reasonable person surely would have known that such conduct would likely result in serious bodily harm or death."[97] The court acknowledged the applicability of the self-inflicted injury exclusion by saying that "any injuries or death resulting from driving while intoxicated can be classified as 'intentionally self-inflicted.'"[98] While *Mullaney* strongly disagreed with any suggestion that drunk-driving accidents could ever be classified as "accidents," other courts have not been so absolute.

The Seventh Circuit dealt with a similar case in *Cozzie v. Metropolitan Life Insurance Co.*[99] In *Cozzie*, a beneficiary wife sued to recover accidental death benefits after her insured husband died after he rolled his car several times.[100] Finding that the husband was intoxicated at the time of the wreck, Metropolitan Life denied accidental death benefits because it was "reasonably foreseeable" that Mr. Cozzie would suffer a fatal injury if he "got behind the wheel . . . in such a state."[101] Reviewing under an "arbitrary and capricious" standard, the court hesitated to uphold Metropolitan Life's denial. The court elaborated that although "MetLife's definition of 'accident' is [not] downright unreasonable . . . [w]e do not mean to suggest that MetLife could sustain a determination that all deaths that are causally related to the ingestion of alcohol, even in violation of law, could reasonably be construed as not accidental."[102]

Although the holding of *Cozzie* was the same as previous similar cases, it was the first case to suggest that drunk-driving deaths could be considered accidental in some situations. At least one court has followed *Cozzie's* suggestion, holding that a fatal accident is not necessarily a foreseeable consequence of driving while intoxicated.[103]

---

94. *Nelson*, 962 F. Supp. at 1013.

95. 103 F. Supp. 2d 486 (D.R.I. 2000). The decedent's speeding truck left the road and struck a tree, and the decedent apparently made no attempt to apply the brakes. *Id.* at 488. The medical examiner determined that at the time of death, the decedent's blood alcohol content was nearly four times the legal limit. *Id.*

96. *Id.* at 490 (stating that since the "plan at issue . . . does not specifically grant discretionary authority to the plan administrator," *de novo* review was appropriate).

97. *Id.* at 494.

98. *Id.* at 495.

99. 140 F.3d 1104 (7th Cir. 1998).

100. *Id.* at 1106. Cozzie did not die on impact; the coroner determined that he was asphyxiated after the car came to rest on top of him. *Id.*

101. *Id.* at 1108.

102. *Id.* at 1110.

103. *See* West v. Aetna Life Ins. Co., 171 F. Supp. 2d 856 (N.D. Iowa 2001).

C. Breaking from Prior Decisions

In *West v. Aetna Life Insurance Co.*, the court faced remarkably similar facts to the previous line of cases: an intoxicated driver in a single-car crash, resulting in the driver's death.[104] After noting that the appropriate standard of review in the Eighth Circuit was somewhat unclear,[105] the court applied an "abuse of discretion" standard[106] and broke from precedent in holding that the intoxicated driver's death was an accident.[107]

In its analysis, the court discussed the application of *Wickman* to intoxicated-driver cases.[108] The court argued that many cases such as *Fowler*, *Nelson*, and *Cozzie*, were wrongly decided because they "misapplied the second prong of the *Wickman* test."[109] The court specifically noted that these cases softened the language of the test by focusing on whether it is foreseeable that injuries while driving intoxicated *may* occur.[110] Furthermore, the court noted many of these decisions circumvented "the complete absence of any evidence establishing actual probability" by "substitut[ing] for actual proof . . . 'common knowledge'" and media accounts that "higher blood alcohol content . . . increases the probability of injury or death."[111] The court concluded that "decisive and consistent as these decisions are, this court does not find them persuasive."[112]

While the majority of cases have held that an intoxicated driver's death is not an accident, the *West* court plainly rejected that line of reasoning, focusing instead on the statistical probability of serious injury in applying *Wickman*.[113] With this background, the Eighth Circuit addressed similar issues in the instant case.

---

104. *West*, 171 F. Supp. 2d at 860. The insured driver was on his way home from a Christmas party when he missed a turn in the road, struck a tree, and flipped his car. *Id.* "The parties d[id] not dispute that West was intoxicated at the time of the crash." *Id.*

105. *Id.* at 868-70 ("It is not surprising that there is some blurring of the applicable standards in the parties' submissions, because the distinction . . . has not always been articulated so distinctly.").

106. Although the court noted the confusion within the circuit as to the applicable standard, it muddied the waters itself by stating that "even under the most deferential standard of review, Aetna's definition is 'unreasonable,' and hence, 'arbitrary and capricious.'" *Id.* at 897. The court applied a test articulated in *Finley v. Special Agents Mutual Benefit Ass'n*, 957 F.2d 617 (8th Cir. 1992), to "determine the 'reasonableness' of Aetna's interpretation of the plan term 'accident.'" *West*, 171 F. Supp. 2d at 877.

107. *West*, 171 F. Supp. at 905.

108. *Id.* at 889-902.

109. *Id.* at 901.

110. *Id.*

111. *Id.*

112. *Id.* at 902.

113. *See supra* notes 109-10 and accompanying text.

IV. INSTANT DECISION

A. Majority Opinion[114]

The *King* court began its discussion by noting that since the plan at issue gave the administrator discretionary power to construe uncertain terms, "the administrator's decision is reviewed only for 'abuse . . . of his discretion.'"[115] The court noted the key principle in determining an abuse of discretion: "where plan fiduciaries have offered a 'reasonable interpretation' of disputed provisions, courts may not replace [it] with an interpretation of their own."[116]

This deferential treatment is not without limits, however. The court reasoned that, since ERISA requires plan administrators to "provide adequate notice" to denied claimants setting forth specific reasons for denial, "a reviewing court 'must focus on the evidence available to the plan administrators at the time of their decision and may not admit new evidence or consider *post hoc* rationales.'"[117] Explaining that "we have refused to allow claimants 'to be sandbagged by after-the-fact plan interpretations devised for purposes

---

114. Judges Lay, Bright, Wollman, Murphy, Bye, Melloy, Smith and Benton joined in Judge Colloton's majority opinion. King v. Hartford Life & Accident Ins. Co., 414 F.3d 994, 996 (8th Cir. 2005). The court was careful to point out the "unusual procedure" of King's presenting evidence at trial that was not before the ERISA benefits administrator at the time of the benefit denial. *Id.* at 997. This new evidence consisted of statistical evidence about the frequency of drunk-driving deaths. *Id.* 997 n.1. This was contrary to "the general rule that a challenge to the decision of a benefits administrator under ERISA should be decided based on the evidence presented to the administrator." *Id.* at 997.

115. *Id.* at 998-99 (alteration in original) (quoting Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989)).

116. *Id.* at 999 (alteration in original) (citation omitted). The court also discussed *Finley v. Special Agents Mutual Benefit Ass'n*, 957 F.2d 617 (8th Cir. 1992), an Eighth Circuit case that listed several factors to consider when reviewing an ERISA plan administrator's decision. *King*, 414 F.3d at 999. The "*Finley* factors" include whether the interpretation "is consistent with the goals of the Plan[,] renders any language of the Plan meaningless or internally inconsistent[,]conflicts with the substantive or procedural requirements of the ERISA statute[,] is contrary to the clear language of the plan[,]" and whether plan administrators have interpreted the words at issue consistently. *Id.* (quoting *Finley*, 957 F.2d 617).

117. *King*, 414 F.3d at 999 (quoting Conley v. Pitney Bowes, 176 F.3d 1044, 1049 (8th Cir. 1999)). The court was careful to point out the "unusual procedure" of King's presenting evidence at trial that was not before the ERISA benefits administrator at the time of the benefit denial. *Id.* at 997. This new evidence consisted of statistical evidence about the frequency of drunk-driving deaths. *Id.* 997 n.1. This was contrary to "the general rule that a challenge to the decision of a benefits administrator under ERISA should be decided based on the evidence presented to the administrator." *Id.* at 997.

of litigation,'" the court surmised that the administrator "must articulate its reasons for denying benefits when it notifies the participant."[118]

Applying these principles to the present case, the Eighth Circuit noted that Hartford's two denial letters used slightly different language in explaining why Schanus's death was not an accident.[119] In the first letter, Hartford denied Amber's claim because Schanus's death did not "happen[] by chance, or unexpectedly."[120] The second letter reasoned that Schanus's death could not have been an accident because "a reasonable person would have known that death . . . was a reasonably foreseeable result of driving while intoxicated."[121] Despite this discrepancy, Hartford maintained that its denials were not inconsistent because "although the decision denying . . . her administrative appeal applied a 'reasonably foreseeable' standard, the initial denial letter cited *Black's Law Dictionary*, which defined 'accidental' as 'happening unexpectedly.'"[122] Hartford argued that, when read together, these definitions made it clear that Hartford was applying "the *Wickman* standard during the administrative process."[123]

The majority flatly rejected this contention.[124] The court reasoned that applying *Wickman* would necessarily involve discussing whether Schanus's death was "highly likely to occur."[125] Noting the obvious difference in the language used, the court reasoned that the phrase "could be expected" merely "begs the question whether 'expected' means 'reasonably foreseeable' or 'highly likely.'"[126] The court concluded that "this case falls in the category where an administrator offers a *post hoc* rationale during litigation to justify a decision reached on different grounds during the administrative process."[127]

Hartford alternatively argued that their denial was justified under the policy exclusion for intentional self-inflicted injury.[128] The court rejected this argument for two reasons. First, the court explained that this would be an unreasonable interpretation of the plan because it "renders meaningless other important policy language";[129] namely, the exclusion for injuries incurred

---

118. *King*, 414 F.3d at 1000 (quoting Marolt v. Alliant Techsystems, Inc., 146 F.3d 617, 620 (8th Cir. 1998)).

119. *Id.* at 1000-01.

120. *Id.* at 1000.

121. *Id.* at 1001 (quotation marks omitted).

122. *Id.* at 1003.

123. *Id.*

124. *Id.*

125. *Id.* at 1006.

126. *Id.* at 1003.

127. *Id.*

128. *Id.* at 1004. The policy provided, "[n]o benefit will be paid for a loss caused or contributed to by . . . (6) any intentionally self-inflicted injury, suicide, or attempted suicide, whether sane or insane." *Id.* (alteration in original) (quotation marks omitted).

129. *Id.*

while under the influence of drugs.[130] Second, the court dismissed Hartford's argument as "another effort to uphold the administrator's decision with a *post hoc* rationale."[131] The initial denial letter described Schanus's conduct as becoming voluntarily drunk and exposing himself to an unnecessary danger.[132] The court reasoned that it was inconsistent to argue that becoming intoxicated was the cause of death since the "unnecessary danger" Hartford referred to was Schanus's resulting head injury – something Schanus exposed himself to rather than something he inflicted on himself.[133]

After rejecting Hartford's arguments for affirming the district court's decision, the majority concluded that "the proper remedy is to return the case to the administrator for reevaluation of the claim."[134] The court noted that, although ERISA gives courts the authority for a wide range of remedial powers,[135] most courts have determined that "the better course . . . is to return the case to the administrator, rather than to conduct *de novo* review under a plan interpretation offered for the first time in litigation."[136]

B. Concurring Opinion[137]

The concurrence had two main objectives: (1) to bolster the majority's determination that remanding the case to the plan administrator was the proper remedy,[138] and (2) to counter the dissent's contention that the court should not disturb the administrator's denial unless the underlying definition of "accident" was unreasonable.[139]

---

130. *Id.* at 1005. The drug exclusion stated "no benefit will be paid for a loss caused or contributed to by (7) taking drugs, sedatives, narcotics, barbiturates, amphetamines or hallucinogens unless prescribed for or administered to you by a licensed physician." *Id.* (quotation marks omitted).

131. *Id.* at 1004.

132. *Id.* at 1000.

133. *See id.* at 1005.

134. *Id.*

135. *Id.* (citing 29 U.S.C. § 1132(a) (2000)). A denied claimant may bring suit "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (2000).

136. *King*, 414 F.3d at 1005. The court cited *Schadler v. Anthem Life Insurance Co.* for this proposition, even though footnote 11 of that case states that "we do not intend to create a steadfast rule that de novo review is never appropriate." 147 F.3d 388, 398 n.11 (5th Cir. 1998). *Schadler* stated that de novo may be appropriate "where the administrator, despite repeated opportunities to do so, refuses to make a ruling on an issue or where the administrator so delays making a decision that such delay amounts to a failure to decide the issue." *Id.*

137. Judges Lay and Bye joined in Judge Bright's concurring opinion. *King*, 141 F.3d at 1006 (Bright, J., concurring).

138. *See id.*

139. *See id.* at 1007-08.

In supporting the majority's remand to the plan administrator, the concurrence argued that since Hartford did not have the benefit of the statistical evidence now before the court,[140] the administrator "should be given an opportunity to correct its previous faulty administrative decision."[141] The concurrence specifically noted that this evidence tended to show that drunk-driving deaths occur in less than one percent of all people arrested for drunk driving.[142] The concurrence argued that on remand, Hartford could apply the correct standard: "[w]hether a reasonable person, with background and characteristics similar to the insured, would have viewed Schanus's injuries and death as highly likely to occur as a result of Schanus's conduct."[143]

Next, the concurrence countered the dissent's argument that Hartford's definition of "accident" was reasonable, stating that the dissent "d[id] not consider the startling implications of this definition."[144] The concurrence pointed out that Hartford's and the common law definition of "accident" were "at opposite poles."[145] Hartford's definition asked whether "the victim could reasonably have expected to *suffer* the injury," whereas the common law typically asked whether "the victim could reasonably have expected to *escape* the injury."[146] The distinction is the focus of what is foreseeable: if "one can reasonably expect to *escape* injury," then under the common law definition, resulting injuries would be an accident "so long as the injury is not 'substantially certain.'"[147] Under Hartford's definition, however, no reasonably foreseeable injuries are accidents.[148] Since a definition of accident must be applied in all circumstances, this type of definition "would deceive employees" with illusory benefits because "people buy accident insurance to protect themselves against their own negligence."[149] The concurrence concluded that

---

140. *Id.* at 1007.

141. *Id.* at 1006. Judge Bright stated: "I am quite sure that Hartford has spent considerably more to defend its denial of Schanus's claim than it would have cost to pay the claim itself. It is time now to reasonably and properly conclude Schanus's claim on all the facts and the correct law." *Id.* at 1007.

142. *Id.* at 1007.

143. *Id.* (citing Wickman v. Nw. Nat'l Ins. Co., 908 F.2d 1077, 1088 (1st Cir. 1990)). This is essentially the *Wickman* test tailored to the facts of this case.

144. *Id.* at 1007-08.

145. *Id.* at 1008.

146. *Id.*

147. *Id.* (quoting Todd v. AIG Life Ins. Co., 47 F.3d 1448, 1456 (5th Cir. 1995)).

148. *Id.* The concurrence demonstrated this concept by way of a few examples. First, if a person is standing on a shaky stool while searching in a top shelf of a cupboard, "it is reasonably foreseeable that she will fall and . . . break her neck." *Id.* Also, if a utility worker relies on his partner to cut the power to an electricity pole, "it is reasonably foreseeable that he will be electrocuted." *Id.* Finally, if a man breaks the speed limit while rushing his pregnant wife to the hospital, it is reasonably foreseeable that he will crash the car resulting in injuries. *Id.* None of these would be covered under the administrator's definition of accident. *Id.*

149. *Id.*

denying coverage for all accidents except those resulting from bizarre circumstances would be inconsistent with the goals of an accident insurance plan.[150]

C. Dissenting Opinion[151]

The dissent conceptualized this case in terms of "one relatively straightforward issue": whether Hartford abused its discretion in denying Amber's claim.[152] In reaching an alternate result, the dissent argued that the majority "confused the issue . . . by asserting that the *Wickman* test of 'highly likely to occur,' rather than a 'reasonably foreseeable' standard, should govern" in reviewing the claim denial.[153] The dissent advanced two arguments to support its position: (1) that the majority "misread[] the test set forth in *Wickman*," and (2) that the majority "read[] too much into Hartford's reliance on *Wickman* during litigation of this case."[154]

The dissent argued that "the *Wickman* test" was not a test at all.[155] Given that "accident" was already defined in the insurance policy and that definition was bolstered by "fairly consistent" case law, "[t]he focus of *Wickman* was not to formulate a generally applicable definition of accident."[156] "Rather, the central issue in *Wickman* was whether the magistrate judge erroneously applied the policy's definition of accident . . . ."[157] Thus, the dissent characterized *Wickman* as "an analysis that gives 'substance' to a fact-finder's application of the definition of accident by focusing on the reasonable expectations of the insured."[158] This analysis, the dissent argued, did not focus on the likelihood of harm, but on whether an objectively reasonable person "would have expected the result."[159]

As a corollary to its first argument, the dissent asserted that Hartford could not apply the *Wickman* test in denying Amber's claim because Hartford also recognized that *Wickman* did not adopt a specific definition of acci-

---

150. *Id.* at 1009.

151. Judges Morris, Shepard, Arnold, Riley, and Chief Judge Loken joined in Judge Gruender's dissenting opinion. *Id.* (Gruender, J., dissenting).

152. *Id.*

153. *Id.* at 1010 (citation omitted).

154. *Id.*

155. *See id.*

156. *Id.*

157. *Id.* The plan at issue in *Wickman* defined accident as an "unexpected, external, violent and sudden event." Wickman v. Nw. Nat'l Ins. Co., 908 F.2d 1077, 1081 (1st Cir. 1990).

158. *King*, 414 F.3d at 1011 (Gruender, J., dissenting).

159. *Id.* The dissent noted that "the First Circuit's own application of the objective analysis to Mrs. Wickman's claim is devoid of any discussion about whether a reasonable person in Mr. Wickman's shoes would have viewed death as 'substantially' or 'highly' likely to occur." *Id.*

dent.[160] Instead, Hartford "relied on the analytical framework of *Wickman* to support its argument that the plan administrator's *application* of its interpretation of the term 'accidental' . . . was reasonable."[161] In fact, Hartford argued, "Mr. Schanus' expectations were manifestly unreasonable."[162] Therefore, the dissent concluded that Hartford had in fact never employed a "*Wickman*-like" definition of accident, and that it would have been proper to simply analyze whether Hartford abused its discretion in the claims denial process.[163]

The dissent disagreed with the majority's remand to the plan administrator.[164] Noting that the purpose of a deferential standard of review was to protect claimants from *post hoc* litigation rationales and to streamline the procedure for disposing of claims, the dissent concluded the majority's remand "undermine[d] these important ERISA concepts."[165] In distinguishing cases the majority relied on, the dissent stated that in cases where remand was necessary, the plan administrator had either not given reasons for denial or had not interpreted the plan.[166] Because Hartford interpreted the plan terms, its interpretation should only be overturned if it abused its discretion in doing so.[167]

The dissent explained how it would have resolved the issue. First, the dissent would have applied the multi-factor test set forth in *Finley v. Special Agents Mutual Benefit Ass'n, Inc.*,[168] under which the dissent concluded Hartford did not abuse its discretion.[169] Second, the dissent would have determined whether the plan administrator reasonably applied its interpretation to the facts of Amber's claim by asking whether the decision was "adequately supported by the evidence on record."[170]

In applying all of the *Finley* factors, the dissent noted that Hartford's two interpretations of "accident" in its denial letters were not as inconsistent as the majority claimed.[171] Citing the *Merriam-Webster's Collegiate Dictionary* definition of "'unexpected' as 'not expected: UNFORSEEN,'" the dissent maintained that Hartford's denial letters were internally consistent, as well as

160. *Id.* at 1011-12.
161. *Id.*
162. *Id.* at 1012 (citation omitted) (quotation marks omitted).
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.* at 1014.
167. *See id.*
168. 957 F.2d 617, 621 (8th Cir. 1992).
169. *King*, 414 F.3d at 1015 (Gruender, J., dissenting).
170. *Id.* at 1014-15 (quoting Donaho v. FMC Corp., 74 F.3d 894, 900 (8th Cir. 1996)) (quotation marks omitted). The dissent paraphrased the test as whether the plan administrator "offer[ed] a reasoned explanation, based on the evidence, for a particular outcome." *Id.* (quoting *Donaho*, 74 F.3d at 899) (quotation marks omitted).
171. *Id.* at 1015.

"consistent with the goals of the Hartford accidental-death policy."[172] The dissent also thought that this interpretation did not "render any language in the policy meaningless or internally inconsistent."[173]

Finally, the dissent addressed the contention that "Schanus's 'expectation of reaching home . . . was not patently unreasonable.'"[174] This contention was made in light of the new statistical evidence presented at trial showing "the number of people who died as a result of drunk driving is less than 1% of all individuals who are *arrested* for driving under the influence of alcohol."[175] The dissent reasoned that since this evidence was not presented to Hartford during the claims denial process, Hartford did not abuse its discretion.[176]

In conclusion, the dissent surmised that since Hartford "reasonably interpreted [the plan] and applied the terms," it did not abuse its discretion, and therefore, the district court's judgment should have been affirmed.[177]

V. COMMENT

The *King* decision leaves the law of accidental death benefits uncertain. While the court seemed more sympathetic to Amber's claim than past decisions denying accidental death benefits, it stopped short of determining conclusively whether Mr. Schanus's death was an accident.[178] Although unstated in the court's opinion, the implication is that applying *Wickman* to alcohol-related car wrecks no longer forecloses the possibility of finding that injuries were "accidents." Consequently, *King* represents a step toward policy change in the Eighth Circuit that has important practical consequences for insurance companies with accidental death and dismemberment policies.

A. Inching toward Policy Change

Several factors indicate the Eighth Circuit's slightly changing stance on alcohol-related car accidents, including its departure from previous decisions' reasoning, the concurring opinion's discussion, and the inconsistency of its underlying rationale.

---

172. *Id.* at 1015-16 (citing MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1286 (10th ed. 2002)).

173. *Id.* at 1016. Amber argued that this interpretation rendered the intentionally self-inflicted injury exclusion meaningless, because it would exclude all foreseeable risks of injury or death that were the consequence of an intentional act. *Id.* at 1016-17.

174. *Id.* at 1018 (alteration in original) (citation omitted).

175. *Id.* (citation omitted) (quotation marks omitted).

176. *Id.*

177. *Id.*

178. *See id.* at 1002-03 (majority opinion) (stating that it was "unnecessary and inappropriate" to determine whether Hartford's definition of accident was reasonable).

As previously discussed, courts have traditionally been unsympathetic to claimants' arguments for treating alcohol-related car wrecks as accidents.[179] These courts have largely based their decisions on social intolerance for drunk driving by reasoning that "the hazards of drinking and driving are widely known and widely publicized,"[180] and therefore the insureds "knew, or should have known, that [they were] risking [their lives] in [ ]real and measurable way[s]."[181] This trend was questioned in *Cozzie*,[182] a Seventh Circuit case, and *West*,[183] a district court decision from Iowa.

The Eighth Circuit's absence of discussion on this point is significant, because before *Cozzie* and *West*, the emphasis on the social stigma was nearly universal.[184] *King*, however, did not address this social stigma in its discussion of the pertinent issues.[185] In fact, the court noted that remanding the case "permit[ted] the administrator to consider in the first instance evidence received by the district court."[186] Since this evidence was a statistical analysis of the frequency of drunk-driving deaths,[187] it appears that the court is hoping Hartford will follow *Cozzie* and *West* on remand and rule that Schanus's death was an accident. This would allow the court to refrain from making an official application of *Wickman* to a drunk-driving accident.

The concurrence, however, was more willing to discuss the consequences of applying the underlying definition of accident.[188] Judge Bright - who also joined in the majority opinion - wrote the concurring opinion, in

---

179. *See supra* notes 84, 89, 94, 97, 101 and accompanying text.

180. Fowler v. Metro. Life Ins. Co., 938 F. Supp 476, 480 (W.D. Tenn. 1996).

181. Schultz v. Metro. Life Ins. Co., 944 F. Supp 1419, 1422 (M.D. Fla. 1997); *see also* Buhite & Marrero-Ladik, *supra* note 46, at 985-86 (stating that "where the apparent cause of death was the result of ingestion of alcohol . . . the determination as to whether a particular death was accidental . . . is often impacted by societal biases, assumptions, and beliefs").

182. Cozzie v. Metro. Life Ins. Co., 140 F.3d 1104, 1110 (7th Cir. 1998).

183. West v. Aetna Life Ins. Co., 171 F. Supp. 2d 856, 901-02 (N.D. Iowa 2001).

184. Courts have typically upheld accidental death benefit denials in these cases by determining that the injuries or deaths were not accidents or that they were self-inflicted injuries. *See supra* Part III.B.

185. More directly, the *Kind* court rejected prior courts' determinations that alcohol-related injuries were "intentionally self-inflicted." King v. Hartford Life & Accident Ins. Co., 414 F.3d 994, 1004-05 (8th Cir. 2005). At least two courts have advanced the line of reasoning the *King* court rejected. *See* Mullaney v. Aetna U.S. Healthcare, 103 F. Supp. 2d 486, 495 (D.R.I. 2000) (citing with approval *Nelson*'s determination that applying a self-inflicted injury exclusion to an alcohol-related car wreck was "eminently reasonable" (quoting Nelson v. Sun Life Assurance Co. of Canada, 962 F. Supp. 1010, 1013 (W.D. Mich. 1997))). The Eighth Circuit flatly rejected this argument because it was a *post hoc* rationale and because it was "based on an unreasonable interpretation of the plan." *King*, 414 F.3d at 1004.

186. *King*, 414 F.3d at 1006.

187. *Id.* at 997 n.1.

188. *See id.* at 1006-08 (Bright, J., concurring).

which he discussed the "startling implications" of Hartford's definition of accident.[189] In stressing that the definition of accident should be applied to all cases, the concurrence bolstered the majority's unstated message that drunk-driving deaths are not likely reasonably foreseeable in light of statistical evidence presented at trial. This is especially clear in the concurrence's statements that Hartford's denial "would seem to make nonsense of the concept of an 'accident.'"[190] The concurrence expressed the concerns suppressed by the majority in dealing with the case on a procedural level. This is more evident in light of the dissent's criticism of the majority's rationale.

The dissent pointed out that Hartford's first denial letter's reference to the expectedness of injury might not be so different from its second denial letter's reference to the foreseeability of injury.[191] This suggestion is not without precedent. Citing *Cozzie*, the court in *West* explained, "there is nothing more than a semantic difference between" the concepts of "expectation" and "foreseeability."[192] "Both concepts plainly involve the degree to which the insured did or reasonably should have 'foreseen' or 'expected' the injury he or she sustained."[193] Therefore, it seems that the difference in language is not as egregious as the majority perceived.

While ERISA requires the "specific reasons for . . . denial [to be] written in a manner calculated to be understood by the participant,"[194] the Eighth Circuit seems to be requiring these reasons to be written in a more particularized manner accepting nothing less than quoting prior cases. While this distinction may have significance in some contexts, the difference in discussing whether an event is expected or whether it is foreseen has little significance outside a courtroom. A claimant receiving a denial letter will not likely appreciate the significance of such a fine distinction. The court's decision implies that insurance companies should write denial letters in technical legal terminology, which may be completely different from a letter "written . . . to be understood by the participant."[195] Whatever the reason, however, the Eighth Circuit is becoming increasingly skeptical of insurance companies who deny accidental death benefits to those injured in drunk-driving wrecks.

B. Practical Consequences

This step toward a change in policy has two important practical consequences for accidental death benefit plans governed by ERISA. First, the

189. *Id.*
190. *Id.* at 1008.
191. *Id.* at 1015 (Gruender, J., dissenting).
192. West v. Aetna Life Ins. Co., 171 F. Supp. 2d 856, 886 (N.D. Iowa 2001) (citing Cozzie v. Metro. Life Ins. Co., 140 F.3d 1104, 1110 (7th Cir. 1998)).
193. *Id.*
194. 29 U.S.C. § 1133(1) (2000).
195. *Id.*

importance of an initial claims denial cannot be understated. Ultimately, the different language in Hartford's denial letters precluded a favorable judgment from the Eighth Circuit. To avoid a technical mishap, insurance companies must take extra precaution in writing denial letters. Second, plan administrators can no longer rely solely on the *Wickman* definition of accident when denying accidental death benefits. To eliminate any uncertainty, plan administrators should include an alcohol-related exclusion in all accidental death insurance plans.

The Eighth Circuit's decision places an added importance on the initial claims denial letter. To eliminate any inconsistent language in the claims review process, insurance companies may employ a form letter.[196] These letters, however, should not be written too broadly because the Eighth Circuit has previously held such denials must state "specific reasons for the decision" as opposed to "[b]ald-faced conclusions."[197] The best course to avoid inconsistency appears to entail having several form letters to set forth the plan's interpretation of certain plan terms, such as accident. In this case, if Hartford sincerely intended to apply *Wickman*, a form letter should set forth the test as an interpretation of the limited definition of "accident" given in the plan. Although plan administrators would still have to apply the interpretation to each case, the language so critical to the *King* court would already be spelled out so that inadvertent mistakes could be avoided.

Thus, plan administrators would employ a format similar to one traditionally suggested for writing law school exam answers. "IRAC" is an acronym that symbolizes the order in which to write a model law school essay exam: issue, rule, application, conclusion. By setting forth the issue and rule as part of the form letter, the insurance agent can then simply apply the rule for each individual claim and state a conclusion. The benefit of having the term defined and rule stated in a form letter is allowing the pertinent language structure the subsequent analysis. These form letters cannot replace specific case-by-case analysis,[198] but they can eliminate any inadvertently inconsistent language that may result in a court overturning the denial.

Insurance companies may no longer safely stretch the general definition of accident or apply a self-inflicted injury exclusion to avoid paying accidental death benefits in drunk-driving cases. To achieve the same result, benefit plans should contain a specific exclusion for alcohol-related accidents. Critics have previously argued for the need and applicability of specific exclusions for injuries incurred while intoxicated or while committing crimes.[199] This would have the salutary effect of providing explicit notice to insured employees and stream-

196. 27 FED. PROC., L. ED. § 61:49 (2005).

197. Richardson v. Cent. States, Se. & Sw. Areas Pension Fund, 645 F.2d 660, 665 (8th Cir. 1981).

198. 27 FED. PROC., L. ED. § 61:49 (recommending that form letters "should contain several alternatives that can be checked in regard to each of the notice requirements and space for specifying any matters peculiar to an individual case").

199. *See* Gardner, *supra* note 9, at 251-52.

lining the ERISA claims process by reducing subsequent litigation, thereby addressing two concerns expressed by the concurrence and dissent in *King*.[200]

There are three different ways to write an alcohol exclusion: using general terms, using state law to define intoxication, and using a specific blood alcohol percent. A generally phrased alcohol exclusion will prevent accidental death benefits in cases where death results, in any way, from alcohol or intoxication.[201] Causation is an important issue in the phrasing of nearly all alcohol exclusions.[202] It is also the main issue when applying a generally phrased exclusion because it covers such a broad range of scenarios.[203] "Most courts," however, "find that such an exclusion prevents coverage when the carrier meets [the] burden of showing that the death was caused directly or indirectly by the insured's intoxication."[204] Therefore, "[m]ost policies . . . incorporate some causation element."[205] This causation provision may be defined very broadly, to include "any loss . . . caused directly, indirectly, wholly or partly by . . . being intoxicated."[206] The upside for those insured under plans with this type of language is that it affords slightly more notice of when the plan will provide coverage and when it will not. On the other hand, insurance

200. The concurrence noted that allowing insurance companies to exclude accident coverage for foreseeable injuries "would deceive employees – attracting them to a job with the promise of benefits that turn out, when they are claimed, to be illusory." King v. Hartford Life & Accident Ins. Co., 414 F.3d 994, 1008 (8th Cir. 2005) (Bright, J., concurring). The dissent also criticized the majority's decision to remand the case to the plan administrator because it was inconsistent with "'ERISA's purpose of streamlining and shortening the timeframe for disposing of claims.'" *Id.* at 1012 (Gruender, J., dissenting) (quoting Schadler v. Anthem Life Ins. Co., 147 F.3d 388, 396 (5th Cir. 1998)).

201. *See* Sylvester v. Liberty Life Ins. Co., 42 P.3d 38, 40 (Colo. Ct. App. 2001) (holding that insurer did not have to prove alcohol was the predominant cause of death where policy stated "This Certificate does not cover death which results directly or indirectly, in whole or in part, from . . . (e) injury occurring while under the influence of alcohol." (alteration in original)).

202. *See, e.g.*, Burgess v. JC Penney Life Ins. Co., 167 F.3d 1137, 1140 (7th Cir. 1999). Although the policy at issue contained a specific blood alcohol percent exclusion, the court used an interesting hypothetical to illustrate its point: "If a man who was covered by this exact policy was sitting on his porch after having a few beers (rendering his BAC greater than 0.10%) were to be struck by a meteor, would his beneficiaries be able to collect? From the language of the policy, the answer is clearly no." *Id.*

203. *See* Buhite & Marrero-Ladik, *supra* note 46, at 991.

204. *Id.*

205. *Id.* at 992.

206. Giangreco v. U.S. Life Ins. Co., 168 F. Supp. 2d 417, 420 (E.D. Pa. 2001) (holding that the quoted definition was enforceable). Using "intoxicated" as the standard allows state law to define intoxication, and prevents any dispute about whether setting a specific blood alcohol content usurps the state law definition. *See* Buhite & Marrero-Ladik, *supra* note 46, at 991-92 (citing *Holloway*, 190 F.3d 966 (holding that the alcohol level conflicted with Illinois law)).

companies retain a significant amount of flexibility to apply the clause to a wide variety of cases – including those that may actually be accidents.[207]

Some plan exclusions deny coverage where the insured is injured while "legally intoxicated," although this approach has pros and cons as well. Using state statutes to define intoxication allows for plan flexibility across several states and provides those insured with fair notice of the level of intoxication at which coverage is denied. But using state statutes also presents unique problems. First and foremost, many state laws criminalize driving while intoxicated, as opposed to criminalizing public drunkenness.[208] Thus, a death that does not occur as a result of drunk driving would not be excluded.[209] To apply the state standard of legally intoxicated outside the drunk driving context, insurance companies must specify which activities it will cover.[210] This specification can be cumbersome for insurance companies, but the insured would be better informed.

Perhaps the clearest approach is to simply define a blood alcohol content at which injuries and deaths are no longer deemed accidental. Policies following this approach will state that they deny benefits for death that "occurs while the Covered Person's blood-alcohol level is .10 percent . . . or higher."[211] However, the causation issue would likely require adding some language such as indicating that injury and death must be a result of this heightened blood-

---

207. *See, e.g.*, Sylvester v. Liberty Life Ins. Co., 42 P.3d 38, 39 (Colo. Ct. App. 2001) (upholding denial of accidental death benefits where insured consumed alcohol with her regularly taken prescription medication despite a warning on the prescription not to do so).

208. *See* Marjorie A. Shields, Annotation, *Clause in Life, Accident, or Health Policy Excluding or Limiting Liability in Case of Insured's Use of Intoxicants or Narcotics*, 100 A.L.R. 5th 617, § 4 (2002) (stating that provisions using state law will only apply where the policy limits the statute to certain situations, or where "the injury or death occurs under circumstances for which the applicable state law provides a specific blood alcohol content for intoxication"). Missouri statutes pose this problem, in that Missouri defines its legal intoxication limit at "eight-hundredths of one percent" for the crime of "[d]riving with excessive blood alcohol content." MO. REV. STAT. § 577.012 (2000).

209. *See, e.g.*, Mahoney v. Union Pac. R.R. Employees' Hosp. Ass'n, 471 N.W.2d 438, 441 (Neb. 1991). Although Mahoney's situation was somewhat different, the same principles apply. Mahoney injured herself after falling down stairs while intoxicated and was seeking reimbursement of medical expenses under a medical insurance plan that contained an alcohol exclusion defined by state law. *Id.* at 439-40. The court affirmed a judgment in her favor and agreed that "there is no legal limit for nondriving intoxication in Nebraska, and therefore the policy exclusion is inapplicable." *Id.* at 441.

210. *See id.* at 441 (stating that "[i]f the Association wanted the intoxication limits as prescribed in [the drunk driving statute] to apply to injuries sustained while dancing, walking, riding a bicycle, or any other activity, it should have specified these activities in the policy.").

211. Chmiel v. JC Penney Life Ins. Co., 158 F.3d 966, 967 (7th Cir. 1998) (holding the quoted language to be unambiguous and enforceable).

alcohol level.[212] Such policies have been upheld even though consumption of alcohol is in itself a legal activity.[213] This approach adds the benefit of clear notice to the insured of the limits of their coverage, which may eliminate litigated disputes about the meaning or interpretation of policy terms.[214]

While these provisions may not abrogate accidental death benefits in all circumstances,[215] they almost certainly would have precluded accidental death benefits in *King*.[216] Either way, however, the exclusion moves the focus in litigation of these cases away from the stigma of drunk driving and provides insured employees fair notice of what conduct will be excluded under their benefit plan.

VI. CONCLUSION

While not a watershed decision, *King* represents a growing uneasiness among courts in declaring that drunk-driving deaths are not accidents. Although a ruling on the merits would have added certainty to an uncertain area of law, the Eighth Circuit delayed that ruling for another case. That does not mean, however, that the *King* decision is altogether meaningless. Viewing this decision as a step toward policy change notifies insurance companies and employers of the need to revise the terms of employee accidental death plans and corresponding claims processes. These practical measures essentially preempt any future Eighth Circuit decision holding that a drunk-driving death is an accident.

MARCUS WILBERS

212. *But see Chmiel*, 158 F.3d at 969 (stating "[u]nder the terms of this exclusion, no connection between the blood-alcohol level and the death need necessarily be shown by the insurer."). It is important to note, however, that the plaintiff "made no attempt to" show that the insured's death was not caused by alcohol. *Id.*

213. *Id.*

214. *See, e.g.*, Burgess v. JC Penney Life Ins. Co., 167 F.3d 1137, 1139 (7th Cir. 1999) (stating "both parties agree[] that the insurance policy is unambiguous").

215. This is particularly true when the intoxicated insured dies in a multi-car wreck and there are issues of fact as to which motorist was at fault. *See* Giangreco v. U.S. Life Ins. Co., 168 F. Supp. 2d 417, 422-23 (E.D. Pa. 2001); *see also* Buhite & Marrero-Ladik, *supra* note 46, at 992-93.

216. Causation would not have been an issue in Schanus's death, because he died in a single-vehicle accident and his blood-alcohol content was 0.19%, significantly higher than the legal limit in Minnesota. *See* King v. Hartford Life & Accident Ins. Co., 414 F.3d 994, 996-97 (8th Cir. 2005); *see also* MINN. STAT. § 169A.20, Subd. 1(5) (2001).