

Workmen's Compensation—Heart Cases—Compensation on Basis of Mental Disturbance and Emotional Strain.—*Klimas v. Trans-Caribbean Airways, Inc.*¹—An airlines executive, 33 years of age, with no prior cardiac history, suffered a fatal heart attack while out of state attempting to expedite the repair and return to service of a \$1,500,000 aircraft, the grounding of which five months earlier had been attributed to decedent's "sheer negligence" by the company president. His efforts were intensified just prior to his death with long hours of fruitless price negotiations attempting to reduce a \$266,000 repair bill in order to release the overdue aircraft for service. On the morning of his demise he was greatly depressed and aggravated, and, with fear, he communicated with his vice-president in a forty minute long distance telephone conversation apparently giving assurances of which he had little hope. The Appellate Division found that the record contained substantial medical testimony (including that of an impartial specialist) connecting decedent's heart attack to the emotional stress of his work, *i.e.*, the "severe and protracted state of emotional upset" which "reached a climax" during the three day period immediately preceding his death. Nevertheless, the court reversed the Workmen's Compensation Board's award of death benefits in favor of claimant, holding that, in the absence of a showing of any physical strain, an industrial accident cannot be made out. The Court of Appeals reversed and reinstated the award. HELD: Death from a heart attack occasioned solely by mental disturbances and emotional strain resulting from employment is compensable within the meaning and scope of the Workmen's Compensation Law when, as here, the accident arose out of and in the course of the employment and that the death was causally related to such accident.

In a strong dissenting opinion Chief Justice Desmond characterized the majority view as unprecedented in the absence of any physical exertion and not an industrial accident in any real objective sense.² Yet a foundation for the *Klimas* case has an established place in the law, the anatomy of which has long been permeating legal decisions. Extreme worry³ and emotional stress⁴ as supporting causative elements and emotional strain⁵ and over-exertion⁶ as primary causative elements have been the basis of

¹ 10 N.Y.2d 209, 176 N.E.2d 714 (1961).

² 176 N.E.2d at 718.

³ *Roberts v. Kennedy Valve Mfg. Co.*, 274 App. Div. 866, 82 N.Y.S.2d 195 (1948), where a fatal heart attack was compensated on a finding of confusion, nervousness, and extreme worry; see *McMurray's Case*, 331 Mass. 29, 32, 116 N.E.2d 847, 849 (1954), where the court stated "... we perceive no difference between a stress or strain brought about by physical exertion and that occasioned by distress, worry, fear or anxiety. ..."

⁴ *Brown's Case*, 334 Mass. 343, 135 N.E.2d 669 (1956) (physical and mental strain); *Schechter v. State Ins. Fund*, 6 N.Y.2d 506, 160 N.E.2d 901 (1959) (emotional and physical stress).

⁵ In *Carter v. General Motors Corp.*, 361 Mich. 577, 106 N.W.2d 105 (1960), the court held compensable an employee's collapse from emotional strain and pressure, a result of his inability to keep pace with his new job on an assembly line; and see *Church v. County of Westchester*, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938).

⁶ *Furtardo v. American Export Airlines*, 274 App. Div. 954, 83 N.Y.S.2d 745 (1948), motion for leave to appeal denied, 300 N.Y. 759, 90 N.E.2d 901 (1948), where the court held as compensable a heart attack of a 24-year-old construction supervisor

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Workmen's Compensation awards both in New York and elsewhere. In *Church v. County of Westchester*,⁷ the decedent's only physical exertion was his uncomfortable twisting on the witness stand under rigorous cross examination, and, as in the *Klimas* case, the New York court held on the basis of competent medical testimony that the mental stress was the cause of the fatal heart attack, and, therefore, compensable. Further support for the *Klimas* decision was supplied by the California court in *Fireman's Fund Indem. Co. v. I.A.C.*,⁸ which held that a stroke and paralysis caused by 65 days of tension while negotiating labor contracts was compensable.

That a problem exists in this area, however, has been evidenced by a similar line of cases where opposite results have been reached. Either the worry was not believed to be sufficient,⁹ the medical testimony was conflicting¹⁰ or the exertion considered no greater than the ordinary wear and tear of life.¹¹ The problem becomes more obvious from a reading of the Workmen's Compensation Laws. Nowhere is there a requirement of a physical exertion,¹² the basic test being an "accidental injury arising out of and in the course of employment."¹³ As a consequence, the judicial interpretations that followed the adoption of the acts gave rise to a series of subtle distinctions which have been applied as rules of law. Perhaps the most tenacious was the usual-exertion rule.¹⁴ That such a strict rule of law is untenable is best illustrated by the award of compensation to the employee who suffered a heart attack as a result of carrying fifteen pound containers of ice cream where this was considered unusual for a

which medical testimony indicated was the result of his over exertion from working long hours over an extended period of time.

⁷ Supra note 5.

⁸ 241 P.2d 299 (Cal. Dist. Ct. App. 1952), aff'd, 39 Cal.2d 831, 250 P.2d 148 (1952).

⁹ See, e.g., *Toth v. Standard Oil Co.*, 110 Ohio 1, 113 N.E.2d 81 (1953).

¹⁰ *Stang v. J. Pechman & Co.*, 7 App. Div.2d 245, 181 N.Y.S.2d 955 (1959); *Wade v. Woodside Farms, Inc.*, 2 App. Div.2d 625, 151 N.Y.S.2d 761 (1956).

¹¹ In *Stang v. J. Pechman & Co.*, supra note 10, the court denied compensation to an employee who suffered emotional strain, a heart attack and death as a result of having to change a number of invoices, holding his activity involved no more than the ordinary wear and tear of life. Accord, *Burris v. Lewis*, 2 N.Y.2d 323, 160 N.Y.S.2d 853 (1957).

¹² See *Charon's Case*, 321 Mass. 694, 75 N.E.2d 511 (1947), for a discussion of the Massachusetts statute which awards compensation for personal injury arising out of and in the course of employment.

¹³ N.Y. Workmen's Compensation Law § 2(7).

¹⁴ 1 Larson, *Workmen's Compensation Law* § 37.30 at 513 (1952) [hereinafter cited as 1 Larson]: "... once you read accidental as meaning 'by an accident' it is natural to begin to look for some single incident or event and this is precisely what many courts have done ... the greatest source of controversy, however, lies in the accidental—cause versus accidental—result problem. Its most familiar manifestation is the usual—exertion case." The rule was established in New York in *Lerner v. Rump Bros.*, 241 N.Y. 153, 149 N.E. 334 (1925), requiring an accident be assignable to both a single act identified in space or time and a catastrophic or extraordinary event. It should be noted that Massachusetts has not been faced with this problem merely by reason of the fact that the Massachusetts statute calls for a "personal" injury and not an "accidental" injury.

sales representative of the company,¹⁵ and the denial of compensation to the mailman who suffered a like attack in lifting two hundred pounds of mail.¹⁶ In spite of the shortcomings of such a rule, twenty-five years were to elapse before Chief Justice Loughran's famous statement in *Masse v. James H. Robinson*,¹⁷ "whether a particular event was an industrial accident is to be determined not by any legal definition, but by the common sense viewpoint of the average man,"¹⁸ reduced the rule to its proper perspective, that of a question of fact.¹⁹ It should be noted that this judicial evolution was unnecessary, for well before any American state copied the injury by accident terminology of the British Act,²⁰ it was settled beyond question in England that such a claim was compensable on the theory that, although the cause was routine and not accidental, the effect on the employee was accidental in that it was unexpected and catastrophic.²¹ But, notwithstanding the settled doctrine that, in adopting a statute, the adoption extends to any authoritative judicial construction,²² the American courts have forced a running battle with this very issue which is still being fought.²³

It appears antithetical that Chief Justice Desmond should concede the progress made in the *Masse* case and yet still require an "industrial accident in some real objective sense."²⁴ Apparently he is still clinging to the judicial subtleties resorted to in heart cases because of their generalized nature which, it has been said, makes it difficult factually to attribute the

¹⁵ Philadelphia Dairy Products Co. v. Farran, 44 Del. (5 Terry) 380, 57 A.2d 88 (1948), aff'd, 44 Del. (5 Terry) 437, 61 A.2d 400 (1948).

¹⁶ Marlow v. Huron Mountain Club, 271 Mich. 107, 250 N.W. 130 (1935).

¹⁷ 301 N.Y. 34, 92 N.E.2d 56 (1950).

¹⁸ Id. at 37, 92 N.E.2d at 57.

¹⁹ See, e.g., McMurray's Case, supra note 3, where the court stated that whether the employee's death was caused by a gradual degeneration of his cardiac organs or was accelerated by a strain attributable to his work on that particular day is a question of fact for the board to decide.

²⁰ Workmen's Compensation Act of 1897, 60 & 61 Vict., c. 37, § 1(1) (repealed). Workmen's Compensation Act of 1906, 6 Edw. 7, c. 58, § 1(1) (repealed).

²¹ Fenton v. Thorley, [1903] A.C. 443; and see Clover, Clayton & Co. v. Hughes, [1910] A.C. 242, where a routine exertion of tightening a nut causing an aneurism to break was held to be an injury by accident and compensable.

²² Fuller—Toponee Truck Co. v. Public Service Commission, 99 Utah 28, 96 P.2d 722 (1939).

²³ New Jersey has been going through a judicial evolution similar to that of New York. See the discussion of Ciuba v. Irvington Varnish Co., 27 N.J. 127, 141 A.2d 761 (1958), in 13 Rutgers L. Rev. 390, 391 (1958), wherein the writer concluded that "the unusual strain doctrine has been laid in a shallow grave from which its ghost may be expected to emerge at any time." For a treatment of this evolutionary process in reverse, see the fairly recent Washington developments; Washington, like Massachusetts, had no accident requirement in their compensation act, and thus the court had defined injury in McCormick Lumber Co. v. Department of Labor & Industries, 7 Wash. 2d 40, 108 P.2d 807 (1941), as an accident which arises out of employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of the workman's health. This is also the state of the law in Georgia as defined in Williams v. Maryland Cas. Co., 67 Ga. App. 649, 21 S.E.2d 478 (1942). However, the Washington rule was abrogated in Windhurst v. Department of Labor & Industries, 52 Wash.2d 33, 323 P.2d 241 (1958), requiring now an "unusual strain."

²⁴ Supra note 1, 176 N.E.2d at 718.

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attack to the work,²⁵ or because of the judicially declared presumption that death from heart disease is ordinarily the result of natural physiological causes rather than trauma or particular effort.²⁶ Perhaps it is because of the often repeated assertion that to compensate such cases would be to make compensation law the equivalent of life and health insurance.²⁷ Whatever the reason, the *Klimas* decision clearly brought reason to bear on the basic issue. The focal point for judicial review is not the accidental character of the mishap, but rather the medico-legal question of causation.²⁸ This was recognized in the *Church* case where compensation was awarded on the basis of competent medical testimony that the death was a natural and unavoidable result. Similar testimony was given in the *Klimas* case and was not disputed.²⁹ As succinctly stated by Professor Larson:

These decisions do not stand for the proposition that every heart failure becomes an accident just because it happens. There must still be an unexpected result and there must be an exertion—some exertion—capable medically of causing the collapse. . . . The natural progress of the disease may bring it to its fatal climax during working hours but if the employee's activity at that time involves no effort, or effort which can support medically a causal connection, it can rightly be said that the outcome was neither accidental nor causally related to employment.³⁰

The rationality and propriety of this medico-legal causation theory is further supported by the social philosophy of compensation law itself. The basic test of liability is whether there was a work connected injury, *i.e.*, arising out of and in the course of employment, with no reference to the personal conduct or merits of the parties. Thus, the test is not a matter of assessing blame but of marking out boundaries. Negligence and, for the most part, fault are not in issue and cannot affect the result.³¹

²⁵ *Kayser v. Erie County Highway Department*, 276 App. Div. 789, 92 N.Y.S.2d 612 (1949).

²⁶ *Neylon v. Ford Motor Co.*, 13 N.J. Super. 56, 80 A.2d 235 (1951).

²⁷ *Supra* note 1, 176 N.E.2d at 718; 1 *Larson* § 1.20; accord, *McLaughlin*, *Compensability of Heart Injuries Under the Pennsylvania Workmen's Compensation Act*, 21 U. Pitt. L. Rev. 445, 448 (1960) [hereinafter cited as *McLaughlin*].

²⁸ 1 *Larson* § 38.83; *Schechter v. State Insurance Fund*, *supra* note 4, where the court stated that the stress of the unusual exertion must be causally related to the infarction and that this is a problem of medical causality. Accord, *LeBlanc's Case*, 334 Mass. 265, 134 N.E.2d 900 (1956), holding whether death was due to heart disease in its usual course or whether death came sooner than it otherwise would have because of employment was a matter for experts in medical science and that in light of such evidence the claimant must prove causation by a fair preponderance of the evidence.

²⁹ *Supra* note 1, 176 N.E.2d at 715.

³⁰ 1 *Larson* § 38.83 at 565; and see *Madden's Case*, 222 Mass. 487, 495, 111 N.E.2d 379, 382 (1916):

Not every diseased person suffering a misfortune at work is entitled to compensation. The relief is so new that the tendency may be to inquire only as to the employment and to assume that these two facts constitute ground for compensation. But the essential connecting link of direct causal connection . . . must be established before the Act becomes operative. . . .

³¹ 1 *Larson* § 2; and see *Madden's Case*, *supra* note 30, at 494, 111 N.E.2d at 382: It is the injury arising out of the employment and not out of the disease of the

Some writers refer to compensation law as a form of strict liability,³² but this cannot be equated to strict tort liability. Proof of this is the retention of the defenses of act of God, act of third parties, and some forms of contributory negligence in strict tort liability and their unavailability in compensation law, indicating that the former is ultimately based on fault while the latter is not. Further, Workmen's Compensation injuries include only those which produce disability and thereby personally affect earning power. The claimant is not reimbursed for his loss, as in tort law, but is merely given a sum which when added to his remaining earning ability, if any, will enable him to exist without becoming a burden to others.³³ It is not a substitute for disability or old age pensions nor can it be strained to include such coverage.³⁴ Thus, it can be seen that any application of strict legal rules will only tend to frustrate the basic tenets of this system of social protection.³⁵ As a "system" and not as an adversary contest, its ultimate purpose is to treat the personal injuries incident to employment as a part of the cost of doing business.³⁶ To recite the old campaign slogan: "The cost of the product should bear the blood of the workmen."³⁷ Moreover, this philosophy is not purely academic, constituting as it did, one of the major determinants in *Carter v. General Motors Corp.*³⁸

In view of the above, it would appear that it is not the decision in the *Klimas* case that is unprecedented but merely the fact situation. The result reached by the court is not an extension of compensation coverage as concluded by the dissent, but rather is the ultimate extension of a factual problem dealing with heart cases in which physical exertion is not in issue. The decision, suited as it is to the needs of the day, is a much needed, modern reaffirmation of the *Masse* case. It not only sustains the adequacy of the judicial process in deciding cases involving this basic problem of causality, but it synthesizes the aforementioned anatomical complex of law existing in this area. This is significant because the coverage of heart cases is purely the result of judicial interpretation and because the problem is more often than not ultimately analyzed as a function for the legislature.³⁹

employee for which compensation is to be made. Yet it is the hazard of the employment acting upon the particular employee in his condition of health and not what the hazard would be if acting upon a healthy employee or upon the average employee. The Act makes no distinction between wise or foolish, skilled or experienced, healthy or diseased employees. All who are describable as employees come within the Act.

³² Prosser, Torts 383 (2d ed. 1955).

³³ 1 Larson § 2.

³⁴ Madden's Case, *supra* note 30.

³⁵ See the discussion of the *Carter* case, *supra* note 5, as noted in 6 Vill. L. Rev. 434 (1961), which sustains the view that "compensation laws were passed for the beneficent purpose of attaining a humanitarian end which had hitherto been frustrated by the inexorable rules of the common law," citing *A. Wilson & Co. v. Matthews*, 170 Va. 164, 165, 195 S.E. 490, 491 (1938), and generally, 1 Schneider, Workmen's Compensation Law, 1-10 (2d ed. 1932).

³⁶ *Supra* note 34.

³⁷ *Supra* note 32.

³⁸ *Supra* note 5.

³⁹ McLaughlin at 489-92.

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Such was Chief Justice Desmond's conclusion.⁴⁰ Whether further judicial interpretation of additional legislation will resolve the problem is a question that need not be answered. As long as the problem is a medico-legal question of causality between employment and injury it will, of necessity, involve Judge Loughran's "question of fact" to be answered in the light of existing conditions, medical knowledge, and social responsibility. The *Klimas* decision was, therefore, a proper application of a judicial trend within this framework. It is a trend which requires flexible court room guide lines and not confining labels of law. The causation theory is not problem-free,⁴¹ but in an increasingly complex and dynamic society it possesses a very practical attribute of workability.

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⁴⁰ Supra note 1, at 719.

⁴¹ It is convenient to assume that since an attack followed exertion the exertion must have caused the attack. Unfortunately the matter is not so simple for the heart specialist. It is known that many attacks of coronary thrombosis occur when the patient is at complete rest, the reason being the tendency of blood to clot at low flow rate at the site of the damage to the artery lining. Even if exertion is a factor, how much is required is another problem. In other words, the more the expert witness may know of the heart and its disease, the more difficult it may become for him in individual cases to find causality in exertion. McLaughlin at 452.