Volume 13
Number 3 *Spring 1979*

*pp.*535-560

Spring 1979

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INTRODUCTION

From the time Indiana enacted its first workmen's compensation statute in 1915,[1] its courts have struggled to determine which claims are compensable under the provisions of the act. This determination has proven difficult for several reasons. First, the concept of workmen's compensation is a legislative product,[2] and is not based on any type of common law remedy. Instead, courts are required to determine if any injury suffered by an employee is sufficiently related to his employment to warrant compensation. Secondly, each claimant suffers an injury that is unique in terms of both his physiological makeup[3] and the factual situation surrounding the occurrence of the injury.[4] Finally, courts must interpret the statutory language in order to define the scope of injuries covered by the Act. A workmen's compensation statute should not be so broad as to constitute an all-inclusive insurance policy for employees,[5] nor should it be so limited in scope that the humane purposes of the statute are defeated.[6]

Unfortunately, legislatures do not offer much guidance for courts in the workmen's compensation area. Indiana's statute is typical, and states that for a claimant to be awarded workmen's compensation, he must experience an "injury or death by accident

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1. B. SMALL, WORKMEN'S COMPENSATION LAW OF INDIANA § 1.2 at 6 (1950) [hereinafter cited as SMALL]. The scope of the use of workmen's compensation is broad. Its use is qualified in that the industry must have accepted the provisions of the Workmen's Compensation Act. However, every employer is presumed to have accepted the Act unless he is listed in the exceptions to the Act. *See* IND. CODE § 22-3-2-2 (1976).

2. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 1, at 1-4 (1978) [hereinafter cited as LARSON].

3. Malone, *The Limits of Coverage in Workmen's Compensation—The Dual Requirement Reappraised*, 51 N.C.L. REV. 705, 710 (1973).

4. *Id.*

5. SMALL, *supra* note 1, § 1.4 at 12.

6. Frampton v. Central Indiana Gas Co., 260 Ind. 249, 251, 297 N.E.2d 425, 427 (1973). *See* Prater v. Indiana Briquetting Corp., 253 Ind. 83, 251 N.E.2d 810 (1969); General Printing Corp. v. Umbach, 100 Ind. App. 285, 195 N.E. 281 (1935). *See also* SMALL, *supra* note 1, § 1.4 at 11 n.39, for additional cases supporting a liberal construction.

Courts are required to liberally construe the Workmen's Compensation Act in favor of the worker. A definition for "accident" should not hinder the humanitarian purpose of passing the unfortunate consequenses of an industrial accident from the injured worker to the public as a whole.

arising out of and in the course of the employment."[7] In order to interpret this standard, Indiana courts have formed definitions and interpretations for each term of the statutory phrase. "Injury" is defined as the physiological consequences or disability that results from a break or wound in some part of the body.[8] "Accident" is equated with unexpectedness.[9] The phrase "arising out of . . . the employment" is used to determine the causal connection between an injury and the work being done.[10] The final phrase, "in the course of the employment," concerns whether the accident occurred in a certain place and time and under necessary circumstances.[11] A claimant must satisfy each term of the statutory definition of a compensable claim in order to be awarded compensation under the Act.

Recently, controversy has arisen concerning the proper definition for the term "accident" as it is used in the Indiana Workmen's Compensation Act. Although there is no agreement in the Indiana court system, some courts have used "accident" to limit the scope of the workmen's compensation statute by requiring that the claimant's injury be more than unexpected.

The purpose of this note is to determine what the proper requirements for accident should be in the context of Indiana's workmen's compensation law. In making this determination, the theory and history of the term "accident" will be explored, and the changes in its meaning will be discussed and analyzed. It is the position of this note that "accident" was not meant to significantly limit

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7. IND. CODE § 22-3-2-2 (1976).

8. Indian Creek Coal and Mining Co. v. Calvert, 68 Ind. App. 474, 479, 119 N.E. 519, 525, *rehearing denied*, 187 Ind. 727, 120 N.E. 709 (1918). *See generally* SMALL, *supra* note 1, at § 5.2.

9. *See* note 12 *infra* and accompanying text.

10. *See* Tom Joyce 7 Up Co. v. Layman, 112 Ind. App. 369, 374, 44 N.E.2d 998, 1000 (1942) (*quoting* Lasaer, Inc. v. Anderson, 99 Ind. App. 428, 434, 192 N.E. 762, 765 (1934)), where the court states:

> Generally, an accident may be said to arise out of the employment, where there is a causal connection between it and the performance of some service of the employment . . . at the time of entering into it, or when the facts show an incidental connection between the conditions under which employees work and the injury.

11. *Id.* The accident occurs in the course of the employment if it "takes place within the period of the employment, at a place where the employee may reasonably be, and while he is fulfilling the duties of his employment, or is engaged in doing something incident to it." *Id.* Thus, under *Layman* there are three tests that a claimant has to pass in order to be compensated: the injury must be 1) by "an untoward event not expected or designed" 2) arising out of, and 3) in the course of the employment.

claims for compensation. Rather the term should be returned to its original meaning.

THE THEORY AND HISTORY OF THE TERM "ACCIDENT"

Indiana's courts have historically required only that the victim's injury be unexpected for it to be considered an "accident."[12] The courts noted that such a definition for accident best reflected the purposes for which workmen's compensation was intended.[13] However, this notion was later challenged and more restrictive requirements for the term were implemented by some courts.[14] Consequently the scope of work-related injuries covered under the provisions of the Workmen's Compensation Act was limited.[15] In order to determine whether this limitation is in keeping with the purpose of a workmen's compensation program, an examination of the theory and history of workmen's compensation is necessary.

Basically workmen's compensation is social legislation designed to provide benefits and medical care for victims of work-related injuries.[16] Its theoretical purpose is to shift the burden of a work-related accident from the injured employee, through the employer, and ultimately to the consumer.[17]

A recovery under the Act is not based on any type of common law remedy.[18] Workmen's compensation and common law remedies

12. Haskell and Barker Car Co. v. Brown, 67 Ind. App. 178, 187, 117 N.E. 555, 557 (1917). *Accord*, Heflin v. Red Front Cash and Carry Stores, 225 Ind. 517, 522, 75 N.E.2d 662, 664 (1947); Estey Piano Corp. v. Steffen, 164 Ind. App. 239, 328 N.E.2d 240 (1975); Chestnut v. Coca Cola Bottling Co., 145 Ind. App. 504, 251 N.E.2d 575 (1969); E. Rauh and Sons Fertilizer Co. v. Adkins, 126 Ind. App. 251, 129 N.E.2d 358 (1956); Cunningham v. Warner Gear Co., 101 Ind. App. 220, 198 N.E. 808 (1935); Townsend & Freeman Co. v. Taggart, 81 Ind. App. 610, 144 N.E. 556 (1924); Indian Creek Coal and Mining Co. v. Calvert, 68 Ind. App. 474, 119 N.E. 519 (1918).

13. *See* note 6 *supra*.

14. *See* note 46 *infra* for cases which have applied more restrictive requirements for "accident."

15. *See* Estey Piano Corp. v. Steffen, 164 Ind. App. 239, 246, 328 N.E.2d 240, 245 (1975), where Judge Buchanan, in his concurring opinion, discussed his fear of allowing every work-related injury to be compensated. *See also* SMALL, *supra* note 1, § 1 at 12.

16. SMALL, *supra* note 1, § 1.1 at 2-3.

17. *Id.* at 1. Workmen's compensation is a form of no-fault insurance. The employer must carry insurance for his employees to cover injuries arising under workmen's compensation. The cost of the insurance is passed to the consumer by an increase in the price of the manufactured product. For a thorough analysis of the concepts of workmen's compensation, *see generally* SMALL, *supra* note 1, §§ 1.1-1.4; 1 LARSON, *supra* note 2, §§ 1-3.

18. SMALL, *supra* note 1, § 1.1 at 2.

each have distinct characteristics. For example, some injuries for which claims are now recoverable under workmen's compensation could have had a remedy in tort. If a complainant suffering such an injury were to sue in tort, his recovery would be limited only by a judge or jury. However, a tort claim is subject to the defenses of contributory negligence and assumption of risk. In a workmen's compensation claim traditional tort defenses are removed,[19] but the damages are limited by statute.[20] For the claimant to receive workmen's compensation, his injuries must merely satisfy the requirements of a compensable claim as imposed by the legislature and the courts.[21]

Although some difficulties involved with a law suit under the common law are eliminated by a workmen's compensation statute, others have developed. One problem concerns attempts to define the requirements of a compensable claim. The determination of which injuries are compensable is made difficult because the unique factual situations and circumstances surrounding each work-related injury are nearly impossible to categorize.[22] In view of the wide range of possible accidents,[23] the English Parliament in the late nineteenth century worded its workmen's compensation statute in general terms: the employer and employee must "pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment."[24] Thus, England's courts were given wide discretion to interpret the workmen's compensation statute with regard to each unique factual situation.[25] The state legislatures in the United States passed workmen's compensation statutes similar, if not identical to England's,[26] presumably with the same intent. In addition, state legislatures adopted the relevant case pro-

19. IND. CODE § 22-3-2-6 (1976).

20. *Id. See* § 22-3-3-22 (Supp. 1978), where the Act states that "[w]ith respect to any injury occurring on and after July 1, 1977, the maximum compensation exclusive of medical benefits which shall be paid for an injury under any provision of this law or any combination of provisions may not exceed sixty thousand dollars ($60,000.), in any case."

21. *See* notes 7-11 *supra* and accompanying text.

22. Malone, *supra* note 3, at 710.

23. *Id.*

24. WORKMEN'S COMPENSATION ACT, 1897 (60 & 61 Vict. c. 37); WORKMEN'S COMPENSATION ACT 1906 (6 Edw. 7, c. 58).

25. Malone, *supra* note 3, at 710.

26. Twenty-nine states have adopted the "by accident" phrase from the British Act. 1B LARSON, *supra* note 2, § 37.10 at 7-1. Forty-two states have adopted the entire British Compensation Act formula: injury "arising out of and in the course of the employment." 1 LARSON, *supra* note 2, § 6.10 at 3-1.

cedents established by English courts.[27] When Indiana adopted England's statute, Indiana courts were given the same discretion to interpret and define its terms in determining compensability in each unique factual situation.[28]

Following the English example, Indiana courts defined accident as an "unlooked for mishap or untoward event not expected or designed."[29] Basically there are two types of situations to which the courts' definition must apply: accidents as defined by an unexpected cause, and accidents as defined by an unexpected result.[30] When an accident as defined by an unexpected cause occurs, something outside the ordinary duties of the workman causes an injury. An explosion which results in injury to an employee is an example of such an accident. When an accident as defined by an unexpected result occurs, the work being done is the same type and of the same difficulty as is done by the employee every day. The only thing unexpected is the injury test. A back injury sustained by a mechanic caused by the routine exertion of tightening a nut is an example of an accident as defined by an unexpected result.[31]

There is disagreement whether a claimant should be awarded compensation when he has suffered an accident as defined by an unexpected result. In such a situation, most jurisdictions agree that an accident has occurred and award compensation.[32] This agreement

27. In Inland Steel Co. v. Lambert, 66 Ind. App. 246, 248, 118 N.E. 162, 164 (1917), the court noted that Indiana adopted the wording of its workmen's compensation statute from the British. Indiana also adopted the British precedent. *See* note 88 *infra* and accompanying text. *See also* 1B LARSON, *supra* note 2, § 38.10.

28. *See* IND. CODE § 22-3-1-1 (1976). The task of separating compensable and non-compensable claims for workmen's compensation is for the statutorily created Industrial Board. It must apply workmen's compensation law to the facts of each claim. Under IND. CODE 22-3-1-3 (1976), it may make conclusions of fact and rulings of law. However, the statutory provision notes that questions of law are to be determined by the Court of Appeals and Supreme Court of Indiana. *See generally* SMALL, *supra* note 1, § 12.1 at 366, and 1976 Supp. at 129, for a complete analysis of the functions of the Industrial board.

29. *See* note 12 *supra* and accompanying text.

30. SMALL, *supra* note 1, § 5.2 at 98-100. *See also* 1B LARSON, *supra* note 2, § 37.20 at 7-5 where "accident" is divided into four parts: 1) Unexpectedness, a) of cause, b) of result; 2) Definite time, a) of cause, b) of result. Only the section concerning unexpectedness pertains to Indiana. Indiana's courts have made no noticeable distinction with regard to the definiteness of time. *See* note 38 *infra*.

31. *See* 1B LARSON, *supra* note 2, §§ 37-38 for further analysis of the differences between "unexpected cause" and "unexpected result" accidents.

32. 1B LARSON, *supra* note 2, § 38.10 at 7-11. A large majority of jurisdictions agree that an accident has occurred if the injury results in a breakage. The majority of states agree that an accident has occurred if the injury is the result of a gradual development. For a detailed list of the situations under which certain states find "ac-

can be traced back to the English case of *Fenton v. Thornley Co.*[33] In *Fenton*, the employee's job required that he move a wheel in order to operate a press. The wheel became caught and the employee was injured.[34] The court, noting "that the injury occurred while the man was engaged in his ordinary work, and in doing or trying to do the very thing which he meant to accomplish," held that the victim had suffered an accident[35] and awarded compensation.[36] The rationale of *Fenton* was interpreted in the Indiana case of *Indian Creek Coal and Mining Co. v. Calvert*[37] as according "unexpected result" injuries the status of "accident": "Since the case of *Fenton v. Thornley*, supra, nothing more is required than that the harm that the plaintiff has sustained shall be unexpected. . . . [I]t is enough that the causes, themselves known and usual, should produce a result which on a particular occasion is neither designed nor expected."[38] Thus, it was determined that the proper requirement for an accident was that the injury be unexpected.

For many years, the courts of Indiana followed the *Fenton* rationale and allowed compensation for accidents as long as the injuries were unexpected or unintended.[39] Indiana courts emphasized that the Workmen's Compensation Act was not intended to narrow an injured workmen's common law rights, but was to be liberally construed.[40] The broad "unexpected or unintended" definition for the term "accident" was considered most closely related to the humane

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cidents," *see* 1B LARSON, *supra* note 2, at § 38.20. *See also* note 30 *supra*, and note 3 *infra*.

33. [1903] A.C. 443.

34. *Id.* at 445.

35. *Id.*

36. *Id.* at 456.

37. 68 Ind. App. 474, 492, 119 N.E. 519, 524 (1918).

38. *Id.*, *quoting* Bohlen, *A Problem in the Drafting of Workmen's Compensation Acts*, 25 HARV. L. REV. 328, 340 (1912). Although a time factor has sometimes been mentioned, Indiana does not have different rules for injury caused by "breakage" and injury caused by "generalized conditions." In Indian Creek Coal and Mining Co. v. Calvert, 68 Ind. App. 474, 495, 119 N.E. 519, 525 (1918), the court stated:

> This court seems to be committed to the doctrine that a personal injury, as that term is used in the Workmen's Compensation Act, has reference not to some break in some part of the body or some wound thereon, or the like, but rather to the consequenses or disability that results therefrom.

Accord, Heflin v. Red Front Cash and Carry Stores, Inc., 225 Ind. 517, 75 N.E.2d 662 (1947); Inland Steel Co. v. Almodovar, ____ Ind. App. ____ , 361 N.E.2d 181, *transfer denied*, ____ Ind. ____ , 366 N.E.2d 169 (1977). Note 32 *supra* reveals that most states do make a distinction between "breakage" and "generalized conditions."

39. *See* note 6 *supra*.

40. *Id.*

purposes for which the act was drafted by the legislature.[41] Hence, no distinction was made between accident as defined by an unexpected result and accident as defined by an unexpected cause with regard to compensability. This judicial construction of "accident" continued until 1958, when the Supreme Court of Indiana, in *United States Steel Co. v. Dykes*,[42] questioned the compensability of an accident as defined by an unexpected result.

CHANGES AND CONFUSION BROUGHT ABOUT BY THE *DYKES* DECISION

Ever since *Dykes*,[43] Indiana's appellate courts have been confused over what constitutes an accident in the context of the Workmen's Compensation Act. The case involved a worker who died as a result of a coronary occlusion while in the course of his normal, everyday employment activities.[44] The Supreme Court of Indiana refused compensation, noting that a closer causal connection between a heart attack and the victim's work was necessary.[45] However, instead of changing the definition of the statutory phrase concerning causal connection between work and injury, or dealing specifically with heart attacks, the *Dykes* court held that there had been no "accident." Unfortunately the court did not specify the degree of change in workmen's compensation law it intended to bring about, and the lower courts have subsequently interpreted "accident" in a confusing and inconsistent manner.

Though not easily categorized, three basic interpretations of "accident" have been attributed to the *Dykes* decision by the lower courts: A) *Dykes* covers all factual situations, and requires an event or happening beyond the normal scope of employment in order to constitute an accident; B) *Dykes* is applicable only to injuries arising from certain factual situations; C) *Dykes* requires some type of unusual event, or some degree of unusual exertion, not necessarily beyond the normal scope of employment. In order to demonstrate the confusion brought about by *Dykes*, the varying applications of the decision by the courts of Indiana will be further examined.

Dykes Covers All Factual Situations, and Requires an Event or Happening Beyond the Normal Scope of Employment

Some courts interpret *Dykes* as establishing a completely new standard for what types of injuries should be considered "accidents"

41. *Id.*
42. 238 Ind. 559, 154 N.E.2d 111 (1958).
43. *Id.*
44. *Id.* at 602, 154 N.E.2d at 113.
45. *Id.* at 613, 154 N.E.2d at 118.

in the context of workmen's compensation.[46] These courts allude to the last paragraph of the *Dykes* case as the basis for its holding. The last paragraph states: "The mere showing that he was performing his usual routine, everyday task when he suffered a heart attack, does not establish a right to workmen's compensation, because there was no event or happening beyond the mere employment itself."[47] Consequently, in addition to requiring that the injury be unexpected, these courts also insist that the injury must have been caused by some occurrence beyond the normal employment. Examples of an event or happening beyond the normal employment itself often occur in the form of an unusual or extreme exertion, or an unusual event, and courts usually refer to the last paragraph of *Dykes* in terms of requiring an "unusual exertion."[48]

An interpretation of accident based on the last paragraph of *Dykes*, and thus requiring some type of unusual exertion or event, would preclude an unexpected result injury from being an "accident."[49] For an unexpected result injury to occur, the victim must be engaged in his routine duties. An exertion in the course of one's routine duties can not be "ususual" or "extreme" with regard to those duties. Hence, such an exertion would not be considered beyond the normal employment. In courts which follow a "last paragraph" interpretation of *Dykes*, an accident as defined by an unexpected result can never occur for lack of an unusual exertion or event.

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46. *See* Rivera v. Simmons Co., 164 Ind. App. 381, 329 N.E.2d 39 (1975), *transfer denied*, 264 Ind. 401, 345 N.E.2d 227 (1976); Dooley v. Richard's Standard Serv., 145 Ind. App. 470, 251 N.E.2d 449 (1969); City of Anderson v. Borton, 132 Ind. App. 684, 178 N.E.2d 904 (1962); Bundy v. Concrete Ready-Mix Co., 130 Ind. App. 542, 167 N.E.2d 477 (1960); B. G. Hoadley Quarries, Inc. v. Eads, 129 Ind. App. 670, 160 N.E.2d 202 (1959).

47. United States Steel Co. v. Dykes, 238 Ind. 599, 613, 154 N.E.2d 111, 119 (1958).

48. *Id.* at 604, 154 N.E.2d at 117, where the court mentions the terms "unusual exertion" and "extreme exertion." Other Indiana courts that also mention an "unusual exertion" in regard to the requirements for "accident" established by *Dykes* include: Inland Steel Co. v. Almodovar, ___ Ind. App. ___ , 361 N.E.2d 181, *transfer denied*, ___ Ind. ___ , 366 N.E.2d 169 (1977); Rivera v. Simmons Co., 164 Ind. App. 381, 329 N.E.2d 39 (1975), *transfer denied*, 264 Ind. 401, 345 N.E.2d 227 (1976); Estey Piano Corp. v. Steffen, 164 Ind. App. 329, 328 N.E.2d 240 (1975); Chestnut v. Coca Cola Bottling Co., 145 Ind. App. 504, 251 N.E.2d 575 (1969); City of Anderson v. Borton, 132 Ind. App. 684, 178 N.E.2d 904 (1962); B. G. Hoadley Quarries, Inc. v. Eads, 129 Ind. App. 670, 160 N.E.2d 202 (1959).

49. *See* notes 30-32 *supra* and accompanying text for a definition of "unexpected result" injuries, and accidents as defined by unexpected results.

An example of an "unexpected result" injury for which the claimant was denied compensation for lack of an accident is illustrated by *Rivera v. Simmons Co.*[50] That case involved a tool and die worker who suffered a back injury while placing a ninety pound die on a rack.[51] This work constituted part of the injured worker's regular and normal duties.[52] The Court of Appeals for the Second District approved the Industrial Board's negative award, holding that there was no "unlooked for mishap, untoward or unexpected event,"[53] and thus no accident within the meaning of the Workmen's Compensation Act.[54]

Cases holding similar to *Rivera* indicate that some courts believe that the last paragraph of *Dykes* was the essence of the decision. These cases have interpreted *Dykes* as a limitation on the coverage of the Indiana Workmen's Compensation Act so that no claimant is compensated for work-related injuries unless there is a strong showing of a causal connection between work and injury.[55] However, others note that such a restrictive interpretation eliminates many legitimate claims and qualify the *Dykes* decision in various ways.

Dykes is Applicable Only to Injuries Resulting From Certain Factual Situations

A second category of Indiana decisions has interpreted the last paragraph of *Dykes* to be merely one basis for the holding of that case. In doing so, the decisions have confined the influence of *Dykes* to particular factual situations. The cases awarding compensation are not actually contrary to a "last paragraph" interpretation of *Dykes*, but the results are different from those which would have been reached had a "last paragraph" interpretation been applied to the facts.[56] Under the cases in this category, no unusual exertion on

50. 164 Ind. App. 381, 329 N.E.2d 39 (1975), *transfer denied*, 264 Ind. 401, 345 N.E.2d 227 (1976) (Hunter, J., dissenting). In his dissent, Judge Hunter noted that the court of appeals "severely limited the scope of compensable injuries under the act." *Id.* at 402, 345 N.E.2d at 228. The transfer was denied because the issue was settled out of court.

51. 164 Ind. App. 381, 383, 329 N.E.2d 39, 40 (1975).

52. *Id.* at 384, 329 N.E.2d at 41.

53. *Id.* at 386, 329 N.E.2d at 43.

54. *Id.*

55. This strong showing is determined on the basis of an unusual exertion requirement for "accident." *See* Estey Piano Corp. v. Steffen, 164 Ind. App. 329, 246, 328 N.E.2d 240, 245 (1975), where Judge Buchanan discussed his fears in regard to allowing every work-related injury to be compensated.

56. An examination of the dissenting and concurring opinions in Ellis v. Hubbel Metals, Inc., ___ Ind. App. ___ , 366 N.E.2d 207 (1977); Inland Steel Co. v.

the part of the employee is required in certain situations. Hence, some accidents as defined by unexpected result may be compensated.

An example of an "unexpected result" injury determined to be an accident within the meaning of the Indiana Workmen's Compensation Act is found in *Inland Steel Co. v. Almodovar*.[57] In *Almodovar*, the claimant's job required him to tighten bands on steel rolls by using a compressed air hand tool.[58] The claimant's normal duties included pulling a seventy-five foot air hose free from a conveyor system seven to eight times per day.[59] The claimant suffered a back injury while pulling the entangled hose free of the conveyor.[60] The *Almodovar* court determined that the claimant had a pre-existing back condition,[61] and in granting compensation, held that the *Dykes* rationale, which requires an unusual exertion, did not apply to cases where a pre-existing condition was present.[62] Thus, the holding of *Almodovar* suggests that claims for "unexpected result" injuries are compensable if there is evidence of the aggravation of a pre-existing condition in the area of the injury. Moreover, *Almodovar* states that the requirement of "some type of untoward or unexpected incident" in order for a claim to be compensable applies only when there is no evidence of aggravation of a pre-existing injury.[63]

Almodovar, ___ Ind.App. ___ , 361 N.E.2d 181, *transfer denied*, ___ Ind. ___ , 366 N.E.2d 169 (1977); Estey Piano Corp. v. Steffen, 164 Ind. App. 329, 328 N.E.2d 240 (1975), leads one to such a conclusion. The judges often point out that the factual situations do not fit the requirements set out by the last paragraph of United States Steel Co. v. Dykes, 238 Ind. 599, 154 N.E.2d 111 (1958), which calls for an "unusual exertion."

57. ___ Ind. App. ___ , 361 N.E.2d 181 (Buchanan, J., dissenting on the grounds that no "accident" had occurred), *transfer denied*, ___ Ind. ___ , 366 N.E.2d 169 (1977) (Privarnik, J., dissenting on the grounds that the decision was contrary to *Dykes*).

58. *Id.* at ___ , 361 N.E.2d at 189.

59. *Id.*

60. *Id.* at ___ , 361 N.E.2d at 183.

61. *Id.* at ___ , 361 N.E.2d at 185.

62. *Id.* at ___ , 361 N.E.2d at 184.

63. *Id.* A test similar to that used by the court in Inland Steel Co. v. Almodovar, ___ Ind. App. ___ , 361 N.E.2d 181 *transfer denied*, ___ Ind. ___ , 366 N.E.2d 169 (1977), to determine accident was used in Callahan v. Lovelace Truck Serv., 149 Ind. App. 314, 271 N.E.2d 734 (1971), where the court found that *Dykes* applies only to cases where there is no evidence of aggravation of a pre-existing injury.

The *Almodovar* court arrived at its decision through what might be considered faulty reasoning. It noted that the "unusual exertion" requirement of *Dykes* does not apply to accidents which are aggravations of pre-existing conditions. However, in order for an injury which is an aggravation of a pre-existing condition to be compensable, it must occur in "such circumstances that he [the injured worker] might have obtained

Like *Almodovar, Chestnut v. Coca Cola Bottling Co.*[64] distinguished the factual situation of *Dykes*. However, contrary to *Almodovar, Chestnut* limits the *Dykes* rationale to injuries which involve pre-existing conditions in the area of the injury. The claimant in *Chestnut* was not awarded compensation because there was sufficient evidence to sustain the full Industrial Board's decision that no award should be made.[65] Nevertheless, the *Chestnut* court took upon itself the task of defining what types of injuries *Dykes* covered for the future benefit of the Industrial Board.[66] The *Chestnut* court held that the *Dykes* doctrine merely supplemented the original definition of "accidents."[67] The court further found that the *Dykes* doctrine applied only to cases in which the victim had a pre-existing condition in the area of the injury.[68] Thus, any injury which was not an aggravation of a pre-existing condition was not to be covered by the *Dykes* rationale.

Contrary interpretations of *Dykes* by such cases as *Chestnut* and *Almodovar* reflect confusion as to what situations *Dykes* should cover.[69] However, underlying this confusion is a general dislike for

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compensation under a Workmen's Compensation Act on account of the injury had there been no disease involved." Inland Steel Co. v. Almodovar, ____ Ind. App. ____, ____, 361 N.E.2d 181, 184 (1977), *quoting* Heflin v. Red Front Cash and Carry Stores, Inc., 225 Ind. 517, 520 75 N.E.2d 662, 664 (1947). Under the reasoning of *Heflin*, it would seem that an injury which is an aggravation of a pre-existing condition must satisfy the requirements of compensability that all injuries must satisfy. Instead of being more easily compensable, aggravation type injuries not only must satisfy the unusual exertion requirements of *Dykes*, but also must occur under circumstances which indicate that the disease is materially aggravated.

64. 145 Ind. App. 504, 251 N.E.2d 575 (1969).

65. *Id.* at 510, 251 N.E.2d at 577. Judge White dissented on this point noting that an accident had occurred. *Id.* at 512, 251 N.E.2d at 578.

66. *Id.* at 510, 251 N.E.2d at 577.

67. *Id.* at 511, 251 N.E.2d at 578. The original definition of "accident" was cited in Haskell and Barker Car Co. v. Brown, 67 Ind. App. 178, 117 N.E. 555, 557 (1917), where the court defined the term to be a "mishap or untoward event not expected or designed."

68. 145 Ind. App. at 507, 251 N.E.2d at 579.

69. Confusion as to precisely what *Dykes* means is evidenced by the following decisions made by the Court of Appeals for the Second District: Inland Steel Co. v. Almodovar, ____ Ind. App. ____, 361 N.E.2d 181, *transfer denied*, ____ Ind. ____, 366 N.E.2d 169 (1977); Rivera v. Simmons Co., 164 Ind. App. 381, 329 N.E.2d 39 (1975), *transfer denied*, 264 Ind. 401, 345 N.E.2d 227 (1976); Estey Piano Corp. v. Steffen, 164 Ind. App. 329, 328 N.E.2d 240 (1975). Although in *Estey Piano*, the court determined that the victim had suffered from an "unusual exertion," one may infer from the opinion that an unusual exertion is not necessary for an injury to be an accident. The decisions lead one to believe that the three judges of the Court of Appeals for the Second District each have a somewhat different opinion of how *Dykes* changed the concept of accident.

Judge Buchanan (author of *Rivera*) believes that an unusual exertion or some

the necessity of finding that the claimant's injury was the result of an unusual exertion or event before an accident can occur. The unusual exertion requirement precludes many claims from being compensated for lack of an accident. Hence, many courts distinguish their factual situations from *Dykes* so that an unusual-exertion test for accident is unnecessary. In this manner courts reach what they may consider to be a more just result in view of the fact situations.[70]

Dykes Requires Some Type of Unusual Event, or Some Degree of Unusual Exertion Not Necessarily Beyond the Normal Scope of Employment

The third category of cases, like the first two, acknowledges the unusual-exertion test for accident established in *Dykes*. However, the cases in the third group confine the application of *Dykes* to situations in which the injured employee was not performing any duties or tasks concerning his work. For *Dykes* to apply the injury must be incurred without *any* exertion. In these cases emphasis is not on the existence or non-existence of a condition prior to the injury. Instead, if the injured employee was engaged in his usual work

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other type of event or happening beyond the victim's normal employment is necessary before an injury may be considered an accident. Such an opinion is in accordance with the last paragraph of *Dykes*. Rivera v. Simmons Co., 164 Ind. App. 381, 329 N.E.2d 39, 41 (1975). Unexpected result injuries would not be considered "accidents."

Judge Sullivan (author of *Estey Piano*) noted that experiencing a sharp pain while lifting a piano key bed which results in an injury would constitute an accident. Estey Piano Corp. v. Steffen, 164 Ind. App. 239, 245, 328 N.E.2d 240, 243 (1975). Hence, Judge Sullivan would designate accidents as defined by unexpected result as "accidents" in the context of workmen's compensation.

Judge White (author of *Almodovar*) has noted that the accident requirement should be satisfied by "the sudden onset of severe pain." Thus, Judge White would determine unexpected result injuries to be "accidents." Rivera v. Simmons Co., 164 Ind. App. 381, 388, 329 N.E.2d 39, 44 (1975) (White, J., concurring).

Judge White's position seems to be near that of Judge Sullivan's. However, the *Almodovar* decision notes that the *Dykes* doctrine is inapplicable to aggravation-type injuries. Implicit in the decision is that Judge White believes an unusual exertion may be necessary for "accident" in some situations. One may at least infer that Judge White might apply the *Dykes* rationale to some type of factual situation. *See Survey of Recent Developments in Indiana Law—Workmen's Compensation*, 9 IND. L. REV. 389 (1975), for a discussion of *Estey Piano* and *Rivera*.

70. Other cases that have restricted *Dykes* to certain factual situations in a manner consistent with either *Almodovar* or *Chestnut* include Callahan v. Lovelace Truck Serv., 149 Ind. App. 314, 271 N.E.2d 734 (1971), and Anaconda Aluminum Co. v. Aue, 136 Ind. App. 463, 202 N.E.2d 403 (1964). *Cf.* Estey Piano Corp. v. Steffen, 164 Ind. App. 329, 328 N.E.2d 240 (1975). The court noted that there had been sufficient unusual exertion to constitute an accident. *Id.* at 246, 328 N.E.2d at 244. However, implicit in the opinion is the idea that the sudden onset of pain itself is an accident.

when he was injured, he would suffer an "accident." In such cases, almost all "unexpected result" injuries could be defined as accidents.

The case of *Lock-Joint Tube Co. v. Brown*[71] presents an example of this limited application of *Dykes*. In *Lock-Joint* the claimant aggravated a pre-existing back condition while lifting a steel panel weighing seventy pounds.[72] Lifting the panels constituted part of the claimant's normal duties.[73] The court found an accident had occurred[74] and granted compensation.[75] It noted that the employee in *Dykes* was not performing any work or duty when he suffered a heart attack.[76] Because the heart attack was suffered *"without any exertion,"* the *Lock-Joint* court felt that the *Dykes* rationale should be confined to such cases.[77]

Cases such as *Lock-Joint*, which interpret the *Dykes* decision as covering injuries that occur without any exertion, severely limit the application of the *Dykes* doctrine. It is doubtful that the Supreme Court of Indiana, in establishing a standard for "accident" in workmen's compensation cases,[78] would limit the application of such a standard to cases where the employee suffered an injury without any exertion. In addition, *Dykes* specifically noted that the employee was engaged in his regular work when he suffered a heart attack.[79] This fact seemingly precludes the *Lock-Joint* court's conclusion that he was not performing his usual work duties. While it may be argued that the victim in *Dykes* was not performing his regular duties, the Supreme Court of Indiana based its decision on the assumption that he was.[80] A limitation of *Dykes* to cases where the employee was not performing any work duty is another means of eliminating the necessity for an unusual exertion in order to find an "accident."[81] Such a limitation is indicative of a general dislike for an unusual-exertion test.

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71. 135 Ind. App. 386, 191 N.E.2d 110 (1963).
72. *Id.* at 387, 191 N.E.2d at 111.
73. *Id.*
74. *Id.* at 390, 191 N.E.2d at 114.
75. *Id.* at 390, 191 N.E.2d at 114.
76. *Id.* at 389, 191 N.E.2d at 113.
77. Id. at 390, 191 N.E.2d at 114 (emphasis original).
78. *See* note 95 *infra* and accompanying text.
79. United States Steel Co. v. Dykes, 238 Ind. 599, 600, 154 N.E.2d 111, 118 (1958).
80. *Id.*
81. Another decision that has restricted *Dykes* in a manner similar to that of Lock-Joint Tube Co. v. Brown, 135 Ind. App. 386, 191 N.E.2d 110 (1963), is Ellis v. Hubbell Metals, Inc., ___ Ind. App. ___ , 366 N.E.2d 207 (1977). Judge Hoffman dissented on the grounds that the decision was contrary to that of *Dykes* in that no "accident" occurred. *Id.* at 215.

All Indiana courts have determined that an unusual exertion is necessary for some type of injury to be considered an accident, although numerous decisions have limited the application of the *Dykes* doctrine to specific factual situations. By so limiting the application of the unusual-exertion test, courts have been able in some instances to award compensation for accidents as defined by "unexpected result." However, a claimant who has suffered an unexpected result injury has no guarantee that his injury will be considered an accident in the context of the Workmen's Compensation Act. As has been demonstrated, the status of the term "accident" in Indiana workmen's compensation law is not clear. A claimant's recovery is thus dependent upon a court's interpretation given to the *Dykes* case.

Much of the confusion over the correct interpretation of *Dykes* is a result of judicial attempts to circumvent the unusual-exertion test in order to reach a just result. Further examination of the unusual-exertion test and its application reveals why circumvention is often necessary and justified.

CRITICISM OF THE *DYKES* DECISION

As was evidenced by the preceding section, there is confusion among the Indiana courts regarding the meaning of the *Dykes* decision. That *Dykes* created confusion is the first aspect of the case which must be criticized.[82] Because courts interpret *Dykes* in at least three distinct manners, further criticism of the application of *Dykes* must be qualified to the respective interpretation given it by each group of courts. If one assumes that *Dykes* covers all cases involving accidents and requires an event or happening beyond the normal employment itself in order to consitute an "accident,"[83] problems concerning legislative intent and judicial precedent arise. In addition, the unusual-exertion test which most courts have attributed to *Dykes* does not effectively determine which injuries should be considered accidents so as to facilitate compensation. Furthermore one may assume that *Dykes* was attempting to deal with the unique problems of causal connection between work and injury posed by heart attack claims. The solution was in the form of an unusual-exertion test for the term "accident." While this solution may eliminate certain heart attack claims, it also leads to additional problems in the workmen's compensation field.

82. *See* pages 541-548 of text, *supra*, for examples of the confusion created by the *Dykes* decision. For a specific example, *see* note 69 *supra*.

83. *See* notes 42-55 *supra* and accompanying text.

Precedent and Legislative Intent

Courts that hold the *Dykes* rationale applicable to all claims for compensation under Indiana's Workmen's Compensation Act may do so in contradiction to the intent of the legislature. Under this application of *Dykes*, an unusual exertion or event is required before *any* accident can occur. Such an interpretation of accident excludes unexpected result injuries[84] from being considered accidents,[85] and the scope of compensability under the provisions of workmen's compensation is severely limited. This limitation is inconsistent with legislative intent.[86]

The wording of the Indiana Workmen's Compensation Act was taken from the English Workmen's Compensation Act of 1897.[87] When an act is adopted by another legislature, the construction given the terms of the original act is also adopted.[88] Therefore, the construction given the term "accident" as it is used in workmen's compensation should arguably be the same in Indiana as in England. English cases, most notably *Fenton v. Thornley Co.*, determined that a claimant who suffered an accident as defined by an unexpected result should be compensated.[89] A construction which would prevent an accident as defined by an unexpected result from being considered an accident in the context of workmen's compensation is in direct conflict with the construction afforded the term "accident" by the English. Hence, it is also in conflict with the construction for "accident" adopted by the Indiana Legislature. For if the Indiana Legislature had intended that a claim based on an unexpected result

84. *See* notes 30-32 *supra* and accompanying text for a definition of unexpected result injuries.

85. *See* notes 49-50 *supra* and accompanying text.

86. In addition, the definition of a compensable claim should be liberally construed so as not to defeat the humane purposes of the act. *See* note 6 *supra.*

87. Inland Steel Co. v. Lambert, 66 Ind. App. 246, 253, 118 N.E. 162, 164 (1917). Although the ENGLISH WORKMEN'S COMPENSATION ACT OF 1897, L.R. Stat. 60-61, Vict. p. 53, was replaced by the ENGLISH WORKMEN'S COMPENSATION ACT OF 1906, 6 Edw. VII, ch. 58, the wording of the definition of a compensable claim remained the same.

88. 66 Ind. App. at 253, 118 N.E. at 164, *quoting* Jarvis v. Hitch, 161 Ind. 217, 221, 67 N.E. 1057, 1059 (1903):

> [I]t is common learning that the adjusted construction of the terms of the statute is enacted as well as the terms themselves, when an act which has been passed by the Legislature of one state or country is afterwards passed by the Legislature of another; . . . for if it were intended to exclude any known construction of the previous statute, the legal presumption is that its terms would be so changed as to effect that intention.

89. Fenton v. Thornley Co., [1903] A.C. 443. *Accord,* Clover, Clayton and Co. v. Hughes, [1910] A.C. 242, 3 B.W.C.C. 775.

injury be denied compensation, it would have noted a change in the construction of "accident" when it adopted England's workmen's compensation statute.[90]

This is not to say that an original construction of "accident" may never be changed. However, sound policy arguments are necessary before a court should overturn a definition that has legislative approval. Such arguments are not found in *Dykes*. *Dykes* establishes in the last paragraph of the opinion what some courts believe to be an entirely new construction for "accident."[91] Surely more than one small paragraph is necessary to introduce and justify the sweeping changes that *Dykes* supposedly brought about.[92] Therefore, decisions that require an "unlooked for mishap or untoward event beyond the mere employment itself"[93] in order for an accident to occur should be considered contrary to legislative intent.

Criticism of Unusual Exertion

All Indiana courts do not always require an event beyond the normal employment in every case before an "accident" can occur.[94] Consequently they all are not subject to the criticism concerning a "last paragraph" interpretation of *Dykes*. However, to varying extents, all courts have acknowledged the *Dykes* rationale,[95] which is objective in nature,[96] and requires an "unlooked for mishap or untoward event beyond the mere employment itself"[97] in order for an

90. *See* note 88 *supra*.

91. United States Steel Co. v. Dykes, 238 Ind. 599, 613, 154 N.E.2d 111, 119 (1958).

92. Perhaps the reason that the *Dykes* decision has lasted so long is that some courts have not interpreted it to require an unusual exertion or have distinguished its factual situation. *See* notes 56-83 *supra* and accompanying text.

93. United States Steel Co. v. Dykes, 238 Ind. 599, 613, 154 N.E.2d 111, 119 (1958).

94. As was indicated in the previous section entitled "Changes and Confusion Brought About by the Dykes Decision," at p. 541, only the cases in the first subsection require an event beyond the normal employment in every case before an "accident" can occur. The cases in the two other subsections do not make this requirement in every situation.

95. The distinctions in the section concerning the changes brought about by *Dykes* are based on the degree of acceptance that the courts have given to the *Dykes* decision. While cases in the third subsection nearly construe the unusual exertion requirement out of existence, they do indicate that an unusual exertion is needed before an accident can be found in some situations.

96. Objective as opposed to subjective in terms of the type of analysis used. *See* p. 558 for a discussion of the differences between objective and subjective analysis in the context of workmen's compensation claims.

97. United States Steel v. Dykes, 238 Ind. 599, 606, 154 N.E.2d 111, 119 (1958).

accident to occur. Courts often speak of *Dykes* as requiring an unusual exertion by the victim in his work before his claim may be compensated.[98] In addition to the criticism concerning the elimination of accidents as defined by unexpected results,[99] an unusual-exertion test is inadequate for the purpose of separating claims *worthy* of compensation from claims *unworthy* of compensation. This is true for the following reasons: 1) the unusualness of the exertion is measured only in terms of the job; 2) it is difficult to determine the requirements of an unusual exertion.

1. Measuring Standards

Courts consider "unusual exertion" in terms of "an event or happening beyond the mere *employment* itself."[100] As a result the unusualness of the exertion is measured only with regard to the requirements of the job. Neither the physical makeup and strength of the employee nor the amount of exertion are considered in the determination of whether an "accident" has occurred. Such incomplete analysis, which disregards factors that should bear on whether an injury is worthy of compensation, can result in inconsistent and unfair results.

The inadequate scope of the unusual-exertion test, which measures exertion only in terms of the job, is illustrated by the following example: The routine duties of worker A require him to lift items weighing 100 pounds. Worker B routinely lifts 20 pound items on his job. If A strains his back while lifting a 100 pound item, he will be denied compensation. Whereas if B lifts the same 100 pound item and is injured, he will be compensated. This result is based on the fact that A, in lifting the 100 pound item, had not exerted himself unusually because he lifted 100 pound items as part of his normal duties. Worker B only lifted 20 pound items; an exertion required to lift a 100 pound item would be unusual as compared with B's normal duties.[101] Surely a test that measures only one of many

98. *See* note 48 *supra* and accompanying text. The unusual exertion requirement is only one type of "unlooked for or untoward event" beyond the normal employment. However it is a very popular form, and acknowledged as a test to determine if the injury is beyond the normal employment.

99. *See* notes 49-50 *supra* and accompanying text.

100. United States Steel Co. v. Dykes, 238 Ind. 599, 606, 154 N.E.2d 111, 119 (1958).

101. *See* 1B LARSON, *supra* note 2, §§ 38.60-.64, for discussion of problems concerning an unusual exertion test. In an earlier edition, Dean Larson illustrated the inequities of the measuring standard by comparing the factual situations of the following two decisions. In Marlowe v. Huron Mountain Club, 271 Mich. 107, 260 N.W. 130 (1935), the claimant, a longshoreman, whose routine duties included lifting 200 pound

relevant factors is inadequate for the purposes of fairly determining whether an accident has occurred.

Moreover, the routineness of the work performed by the individual worker is not considered in the application of the unusual-exertion test. What may be an unusual exertion for one worker may not be for another, depending on the physical makeup of the individual. Suppose that in the previous example, worker A was 55 years old, sickly, and weighed 135 pounds. Further suppose that worker B was in prime physical condition, being 30 years old, six feet two inches tall and weighing 195 pounds. In an application of the unusual-exertion test, where the unusualness of the exertion is measured with regard to the normal requirements of the job, such statistics, although clearly relevant, would not be considered.[102]

2. Qualifications for an Unusual Exertion

In addition to the inequities that result from an incomplete analysis of all the relevant factors involved in an injury, the unusual-exertion test is not easily applied. It is difficult to determine what qualifies as an "unusual exertion." Because each injury is unique, courts often lack sufficient guidelines to aid in the determination of whether an exertion is unusual as compared with the normal duties of the work.

If a workman's duties include lifting 200 pound boxes, would an injury incurred by the workman when he lifted a box that weighed 201 pounds be the result of an unusual exertion? What if the box weighed 210 pounds or 250 pounds? There is some point in time when the exertion will become unusual. However, there is no efficient method available to discover the precise moment when that point in time is reached.

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sacks, was denied compensation when he was injured in lifting one of the sacks even though the strain medically contributed to his injury. Compensation was granted in Philadelphia Dairy Products Co. v. Farran, 44 Del. 380, 57 A.2d 88 (1948), where a salesman was injured while engaged in the "unusual" activity of lifting a fifteen pound parcel. *Marlowe* has been overruled by Sheppard v. Michigan National Bank, 348 Mich. 577, 83 N.W.2d 614 (1957). *See* 1A A. LARSON, THE LAW OF WORKMEN'S COMPENSATION, § 622.17 (1967). However, the comparison still serves to illustrate the inadequacies of the unusual-exertion test. In jurisdictions that still apply an unusual-exertion test, such inconsistent and unfair results could still occur. *See* 1B LARSON, *supra* note 2, § 38.83 at 7-173.

102. The statistics may be relevant if the issue of aggravation of a pre-existing condition is present. The relevancy would be limited to the condition of the injured worker with regard to the area of aggravation.

The problem becomes more complex if a workman lifts boxes of different weights, some of which weigh 200 pounds, but with an average weight of 100 pounds. Should the workman be compensated if he is injured while lifting a 200 pound box? The exertion required to lift the 200 pound box is unusual as compared with the average exertion, but it is not greater than the maximum exertion required. In this situation a determination must be made as to how many times per day or per week a 200 pound box must be lifted so that such an exercise can be considered a usual requirement of the job.

In sum an unusual-exertion test for "accident" arbitrarily separates injuries to the categories of compensable and non-compensable. Unfortunately, due to its objective nature and the incomplete analysis of the test, there is no correlation between the results of the unusual-exertion test for "accident" and the purpose for which it was established—to help distinguish those claims *worthy* of compensation from those claims *unworthy* of compensation.[103]

The effect of the unusual-exertion test has been to limit the number of claims compensable under the act. This has been accomplished through the application of the unusual exertion requirement for "accident." To satisfy the "accident" requirement for compensation, one must not only suffer an accident, but the accident must be of a certain variety.[104] The Indiana Supreme Court may have desired this result in view of the characteristics of heart disease.

Heart Attacks

The *Dykes* court dealt with the special problem posed by heart attacks on the job.[105] Due to the nature of heart disease, it is often difficult to determine if a causal relationship between the injury and the work is sufficiently established to warrant recovery in heart attack cases. It is suggested that the *Dykes* court introduced a more restrictive test for "accident" to help determine compensability because it found that the causal relationship between work and heart attack was often indeterminable. The court required that for

103. *See* notes 100-102 *supra* and accompanying text. *See also* 1B LARSON, *supra* note 2, §§ 38.60-.64; Comment, *Problems of Proving Causation in Cardiac Cases Arising Under the Ohio Workmen's Compensation Act*, 1969 U. TOL. L. REV. 165, 181.

104. The accident must have been caused by an unusual exertion. *See* note 48 *supra*.

105. United States Steel Co. v. Dykes, 238 Ind. 599, 154 N.E.2d 111 (1958). *See* note 106 *infra* and accompanying text.

an injury to be considered an accident, it had to be the result of "an event or happening beyond the mere employment itself."[106] However, it will be demonstrated that a more restrictive definition of "accident" that would be applicable to *all* claims should not be substituted to determine compensability when a causal connection between work and heart attack is indeterminable.

Because of the nature of heart disease, heart attack claims present a unique definitional problem with regard to their compensability under the Workmen's Compensation Act. It is widely agreed medically that no single event can cause a heart attack if the heart is healthy, regardless of the degree of exertion imposed.[107] Thus heart attacks usually result from the cumulative effects of some type of heart disease.[108] Because of this it is difficult to determine the role, if any, of the victim's work in a heart attack.

The difficulty in determining the causal connection between work and heart attack is intensified by the differences in medical and legal causation. To prove a causal connection between heart attack and work, the testimony of medical experts is necessary. Unfor-

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106. *Id.* at 606, 154 N.E.2d at 119. That the *Dykes* court was concerned with the problem of establishing a causal connection between heart attacks and work for the purposes of determining compensability is indicated by note 3 of the decision which states:

> The medical theory of a situation such as that presented by the record here is ably stated by Dr. Alan R. Moritz in an article "Coronary Thrombosis," J.A.M.A. Vol. 156, No. 14, pages 1306-1309, reprinted in the 1955 Medical Trial Technique Quarterly, pages 67 to 77, at page 74, as follows:
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> "Frequently it is difficult or impossible to evaluate the significance of the particular episode of stress or injury that the disabled person stipulates (claims) as the precipitating cause of his disability. If the event stipulated is clearly unusual and if it was followed immediately by heart (cardiac) failure, the relationship may be reasonably clear. Often the event stipulated is not sufficiently unusual to distinguish it from other nonoccupational stresses that may have occurred about the same time. Thus, it may be alleged that coronary insufficiency or heart failure was precipitated by lifting a 40 lb. box from an overhead shelf. Such an exertion may have been no greater than that of sneezing or straining at stool, either or both events may have had the same relationship to the onset of heart (cardiac) disability as did the stress of lifting the box. In circumstances of this type no one can assert with propriety that any one of these episodes of stress was more likely than any other to have provided the excess work load that caused the diseased heart to fail."

Id. at 612, 154 N.E.2d at 118.

107. Hellmuth & Hellmuth, *Heart Attack and Workmen's Compensation: Model Rules of Practice*, 4 FORUM 113 (1969). *See also* J. SAGALL & C. REED, THE HEART AND THE LAW (1968).

108. *Id.*

tunately there is a language barrier between doctors and lawyers concerning causation in that each group places emphasis on two different aspects of the term.[109] Generally a doctor is concerned with cause as it relates to the physiological facts associated with a bodily malfunction. To a lawyer, cause has to do with the outside events which lead to and are responsible for a bodily malfunction. The difference in emphasis between a doctor and a lawyer regarding cause is illustrated by the following example: If a man is shot to death, a doctor would be inclined to say that the victim's death was caused by a loss of blood. In the same situation, a lawyer would say that the victim's death was the culmination of an argument between the victim and his assailant. The lawyer would look to the reasons for the shooting in terms of a relationship between acts and results. The doctor would look to the physiological reasons for the death.[110]

In order to compensate a heart attack claim, the physiological cause of injury must also be the legal cause.[111] While all doctors can testify as expert witnesses to the general physiological symptoms and conditions involved in heart attacks, only a few medical experts are actually qualified to determine the legal cause of a heart attack.[112] Moreover the determination of the specific legal cause of heart attacks, even by experts, is beyond the limits of medical science.[113] Apparently most doctors are unaware of the significant differences between legal and medical causation. In many heart attack cases there is "expert" testimony stating that the work was the legal cause of the heart attack and "expert" testimony stating that it was not.[114] Such a situation is favorable to the employee. Because a causal connection between heart attacks and work is often indeterminable, and because one may obtain "expert" opinion stating that the heart attack could have been caused by the work, claims for compensation could be granted for victims of heart attacks even though no causal connection between work and the heart attack existed.

Since the causal relationship between heart attacks and work is often indeterminable due to the nature of heart attacks and the

109. Comment, *supra* note 103, at 181. *See also* SMALL, *supra* note 1, § 6.3 at 117.

110. Comment, *supra* note 103, at 181.

111. In order for the heart attack to be compensable, it must have occurred "by accident arising out of and in the course of the employment." IND. CODE § 22-3-2-2 (1976).

112. Hellmuth & Hellmuth, *supra* note 107, at 115.

113. Goshkin, *Legislative Action, the Only Reasonable Solution to the Problems of Workmen's Compensation Heart Cases*, 5 FORUM 329, 334-35 (1970).

114. Hellmuth & Hellmuth, *supra* note 107, at 115.

language barrier between doctors and lawyers, some courts have added restrictions to "accident" in an attempt to separate worthy heart attack claims from unworthy ones. The *Dykes* court, in an effort to obtain what it considered to be a closer causal connection between the heart attack and the work, or at least to restrict the number of compensable claims for heart attack victims, established a definition for accident which required an event or happening beyond the normal duties of the employment.[115] However a more restrictive requirement for accident should not be substituted for a failure to ascertain the existence of a causal connection. Problems concerning the causal connection between work and injury should be remedied by changes in the requirements of the term "arising out of."[116] The requirements of this term are subjective in nature and therefore appropriate for deciding if a causal connection exists.[117]

When the problem posed by heart attacks is identified as the reason for the implementation of the "unusual-exertion or event" test, it becomes clear that the *Dykes* court failed miserably in its attempted remedy. As a whole Indiana workmen's compensation law has been hindered as a result of *Dykes*. This is evinced by the following factors. First, the courts are terribly confused regarding what a claimant must experience in order to have been involved in an "accident."[118] Thus it is possible for two claimants to suffer identical injuries in identical factual situations for which one will be compensated and the other will be denied compensation—depending upon the way *Dykes* is interpreted by the courts.[119]

Secondly, the unusual-exertion test attributed to the *Dykes* court is not effective or appropriate for determining compensability. The unusual-exertion test eliminates all claims for compensation for

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115. *See* note 106 *supra* and accompanying text.

116. The term of the definition of a compensable claim that should determine a causal connection between work and injury is "arising out of." *See* note 10 *supra*. A solution to the problem of determining the existence of a causal connection between work and injury is beyond the scope of this note in that the term "accident" is improper for the function. Articles that deal with this problem include: Hellmuth & Hellmuth, *supra* note 107; Comment, *supra* note 103; Note, *A Reappraisal of the "Unusual Exertion" Doctrine in the "Heart Cases" under Pennsylvania Workmen's Compensation Law*, 46 TEMP. L.Q. 126 (1972).

117. The determination of the existence of a causal connection must involve subjective analysis in that there are no characteristics of a causal connection. Either there is one or there is not. Therefore, each case must be judged on its own facts and circumstances in order to tell if there is a causal connection between work and injury.

118. *See* the section of this note entitled "Changes and Confusion Brought About by the Dykes Decision," pp. 541-548 *supra*.

119. *Id. See also* notes 94-104 *supra* and accompanying text.

unexpected result injuries, consequently it severely limits the scope of compensability under the Indiana Workmen's Compensation Act. Such a limitation is in conflict with the scope of the act as it was adopted from English law,[120] and totally unnecessary when applied to non-heart attack claims. Additionally the unusual exertion requirement for "accident" is a poor standard whose application often results in unfair determinations. This is due primarily to the incomplete analysis which results from its application.[121] Only the requirements of the job are analyzed when the unusual-exertion test is applied.[122] The end result of this limited analysis is that no correlation exists between the test and the purpose of determining claims worthy of compensation. The claimant must not only suffer an accident, but the accident must be caused by an unusual exertion or event.[123] Furthermore, the determination of what constitutes an unusual exertion is difficult due to the unique factual situations of the injuries for which workmen's compensation is claimed.[124] In view of these problems the requirements for "accident" should be reviewed.

THE PROPER DEFINITION FOR "ACCIDENT"

After a consideration of the problems concerning "accident" with regard to workmen's compensation, it is evident that a proper and uniform definition for "accident" is necessary. In determining this definition, one must consider how the term is being used now, what is wrong with the way it is being used, and what the proper definition should reflect.

As was previously mentioned, the determination of a causal connection between work and heart attack is difficult.[125] The *Dykes* court, probably with this fact in mind,[126] added the "unusual exertion or event" requirement to "accident."[127] After *Dykes*, in order for a claimant to suffer an "accident," his injuries not only had to be unexpected but also the result of an unusual exertion or event.[128]

120. *See* notes 82-93 *surpa* and accompanying text.

121. *See* notes 94-104 *supra* and accompanying text.

122. *Id.*

123. *United States Steel Co. v. Dykes*, 238 Ind. 599, 613, 154 N.E.2d 111, 119 (1958). Under this case, four steps are necessary for a claim to be compensable. The injury must be 1) by an untoward event not expected or designed 2) caused by an unusual exertion or event 3) arising out of 4) and in the course of the employment.

124. *See* note 4 *supra* and accompanying text.

125. *See* note 106 *supra* and accompanying text.

126. *Id.*

127. United States Steel Co. v. Dykes, 238 Ind. 599, 601, 154 N.E.2d 111, 114 (1958).

128. *Id. See* note 123 *supra* for the effect of the decision on the requirement for accident.

Through the addition of this requirement, the number of compensable claims for heart attack victims was limited. However, the unusual exertion requirement has resulted in inequities and confusion that far outweigh the benefits of excluding certain types of heart attack claims.[129]

The problem posed by heart attacks is one of causation. In order to determine whether the claimant's injury was *caused* by the work, subjective analysis is best. Only by examining the facts and circumstances of each case can a court determine whether the injury was caused by the work. That is, there is no way to objectively determine the characteristics of a causal connection—either there is one or there is not. The *Dykes* court made the mistake of establishing an objective standard in the form of the unusual exertion or event test for "accident" as a substitute for the determination of a causal connection between heart attack and work. Consequently, under Indiana's unusual exertion or event requirement for "accident," it is possible for a claimant who suffers an injury caused by his work to be denied compensation.[130] This result stems from the fact that some courts require the claimant to either be injured as a result of an unusual exertion or event or be denied compensation. As has been demonstrated, the use of an objective test designed to supplant the function of other requirements often leads to inequitable results.[131]

It is evident that the solution to a problem concerning the inability to be certain of a causal connection between work and heart attacks is not to add burdensome objective requirements to "accident." Problems concerning a causal connection between work and injury would best be solved by examining the requirements and procedures that deal with causal connection.[132] The requirements of "accident" were not changed because they were inadequate for their function.[133] Therefore, the original requirements of "accident" should be reinstated and they should require only that an injury be unex-

129. *See* the section of this note entitled "Changes and Confusion Brought About by the Dykes Decision," pp. 541-548 *supra*.

130. Since the claim must satisfy four tests when an unusual exertion requirement is utilized, *see* note 123 *supra*, a claimant may be denied compensation even though the causal connection between injury and work is clear, and all other requirements are satisfied.

131. See examples of this at notes 94-104 *supra* and accompanying text.

132. *See* note 116 *supra* and accompanying text.

133. They were changed in order for courts to eliminate heart attacks claims in which the causal connection between work and injury was indeterminable. *See* note 106 *supra*.

pected.[134] Alternatively, the accident requirement should be abandoned by the legislature. This action was recommended by the National Commission on State Workmen's Compensation Laws:

> The traditional test for determining whether an injury or disease is compensable, is that the cause must be an "accident"—sudden, unexpected, and determinate as to time and place. This interpretation has served to bar compensation for most diseases and injuries which were considered routine and usual in the place of employment.
>
> *We recommend that the "accident" requirement be dropped as a test for compensability.*[135]

It is clear from the findings presented in this note that the accident requirement was meant to serve a limited purpose in the determination of a compensable claim. Further it should never be used as it is by some Indiana courts—to deny compensation to an otherwise legitimate claim for lack of an unusual exertion or event.

CONCLUSION

It has been demonstrated that the *Dykes* court's solution to the causation problem posed by heart attacks in workmen's compensation cases has created additional problems in Indiana law. The court mistakenly added objective terms to the accident requirement of the statute instead of examining the causal connection between the claimant's work and his injury. Clearly a causation issue must involve subjective analysis in the form of a case by case determination of whether the injury was indeed caused by the work. Objective requirements serve no legitimate purpose in determining a causal connection and are not appropriate substitutes for determining compensability when the presence of a causal connection is questionable.

Indiana workmen's compensation law is still plagued by the causation problems of heart attack claims. It is true that now only those claimants suffering heart attacks caused by an "unusual exertion or event" are assured of compensation. However, there is still no correlation between those claimants suffering injuries *worthy* of compensation and those being compensated. "Accident" is useful

134. 1B LARSON, *supra* note 2, § 37.20 at 7-3. *See also* note 135 *infra* and accompanying text.

135. THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS (*Major Conclusions and Recommendations*) *quoted in* 4 LARSON, *supra* note 2, *supra* note 2, app. G at 614-15. (emphasis original).

only in determining "genuine unexpectedness."[136] If the term was returned to its original meaning, or eliminated altogether, the problems created by the "unusual exertion or event" test would be removed, and the Indiana courts could properly turn their attention to the issues of causation that should have been addressed by the *Dykes* court.

F. Joseph Jaskowiak

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136. *See* 1 B. LARSON, *supra* note 2, § 37.20 at 7-3.