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Traumatic Personal Injury: A Discussion of the 1956 Amendment to the Kentucky Workmen's Compensation Act

H. Wendell Cherry
University of Kentucky

However, compensation will be awarded under the peculiar risk theory where there is a finding that the current of the stroke is aided or assisted in some manner to seek out and land upon the injured employee. For instance, in *Bales v. Covington*,[48] an employee was struck by lightning while unharnessing his employer's horses in a barn which had a metal roof. The court held that the injury arose out of the employment on the ground that the barn aided the lightning in seeking out the employee. Larson says that there is a slow tendency to abandon the peculiar or increased risk test in the act-of-God situation in favor of the actual risk or even positional risk doctrines.[49]

The court could conclude under the actual risk test that where an employee is required to work outdoors the danger of being struck by lightning is an actual risk of the employment. Or compensation could be awarded under the positional risk doctrine on the theory that but for the fact that he was where he was required to be, he would not have been struck by lightning.[50] The choice of the test to be used is really just a matter of how liberal the court feels in carrying out the purposes of the Workmen's Compensation Statute.

RICHARD D. COOPER

TRAUMATIC PERSONAL INJURY: A DISCUSSION OF THE 1956 AMENDMENT TO THE KENTUCKY WORKMEN'S COMPENSATION ACT

Introduction

It is elementary that a claimant must show, among other things, that he has sustained a personal injury in order to obtain an award under workmen's compensation acts.[1] More specifically, a claimant in Kentucky must show that he suffered a "traumatic personal injury" under the 1956 amendment to Kentucky Revised Statutes, sec. 342.005(1).[2] The section now reads, as to the coverage of the act, that:

> It shall affect the liability of the employers subject thereto to their employes for a *traumatic* personal injury sustained by the employe by accident . . . arising out of and in the course of his employment . . . provided, however, that "*traumatic* personal injury by accident" as herein defined shall not include diseases except where the

[48] 312 Ky. 551, 228 S.W. 2d. 446 (1950).
[49] 1 Larson, op. cit. supra note 33, § 8.12.
[50] Ibid.

[1] 1 Larson, Workmen's Compensation § 42.10 (1952).
[2] Kentucky Acts 1956, ch. 77, § 1.

> disease is the natural and direct result of a traumatic injury by accident . . .[3] (Emphasis added.)

It is thus seen that prior to the amendment the act merely called for a "personal injury." This deceptively simple requirement has in many cases plagued the courts, and the problem it has presented is the subject of this note. The problem arises in determining what *kind* of injury is to be compensated, and the 1956 amendment, as will be seen, was an attempt to solve that problem.

By virtue of the amendment it now appears that a "traumatic" personal injury is required. What this means, however, must depend on the intent of the legislature in passing the amendment. Since there is no legislative history, such as committee reports and hearings related to the adoption of the amendment, it is impossible to find any objective factors which would indicate the intent of the legislature. This has turned the writer to the only other avenues open in an inquiry of this kind, that is, the existing case law on the problem at the time of the amendment and the definition of the word "traumatic." By this method some insight may be had as to whether the legislature was attempting to change existing law, or whether it was merely trying to clarify the existing language.

This note will fall into two parts: The first part will be an examination of the Kentucky cases prior to 1956 in order to determine what kind of injury was required in order that compensation be granted. This inquiry is important in that it will throw light upon the intention of the legislature in inserting the word "traumatic". The second part of the note will be devoted to a discussion of the possible impact of the amendment on cases already decided, and cases that may arise in the future.

Was Trauma Required Prior to 1956?

In early cases there was a great deal of controversy over whether the "injury" must be of a traumatic nature,[4] that is, an injury involv-

[3] The original section reads:

> It shall affect the liability of the employers subject thereto to their employees for personal injuries sustained by the employee by accident arising out of and in the course of his employment or for death resulting from such accidental injury; provided, however, that personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident. . . .

Kentucky Acts 1916, ch. 33, § 1. It is apparent from this section that trauma was required to the extend that diseases were not to be compensated unless they were the natural and direct result of a traumatic injury by accident. Subsequently an occupational disease section was passed, but there is still an area of diseases that may not fall within the definition of an occupational disease, and yet may be compensable if they are the result of a traumatic injury by accident. The occupational disease section is Ky. Rev. Stat. § 342.316 (1959).

[4] 1 Larson, Workmen's Compensation § 42.11 (1952).

ing physical contact that leads to a harmful change in the body. A majority of statutes use the term "personal injury" or "injury" in the coverage clause,[5] while some of the acts require that the injury result through violence to the physical structure of the body, or trauma.[6] Since the majority place emphasis on the word "injury" alone, it is generally held that no physical trauma is required, but that sunstroke, disease, and nervous collapse are injuries within the acts.[7]

Prior to the 1956 Amendment, the Kentucky Act merely called for a "personal injury" and it would thus seem that less stress would be placed on the question of whether trauma was involved, and more placed upon whether an "injury" had been sustained. However, the cases that were decided prior to 1956 led to some confusion as to whether *"trauma"* was required.

In *Straight Creek Fuel Co. v. Hunt,*[8] the deceased was struck in the ribs and abdomen when he fell across a steel rail and died twelve days later from paralysis of the bowels. The Board found that the injury caused the death and granted compensation. The defendant appealed on the ground that there was no evidence that the worker died from a traumatic injury. The court concluded, after a discussion of the definition of the word "traumatic," that an internal injury resulting from an external force is a traumatic injury, and that if such an internal injury results in death compensation should be granted. The court apparently assumed that a traumatic injury was required. It is true that in its discussion of the word "traumatic" the court quoted from a "disease" case,[9] but this does not seem to counter the fact that the present case did not involve a disease, but rather an ordinary injury. The attorneys for the defendant expressly argued that there was no trauma which resulted in death, and therefore the claimant's application for compensation should be dismissed. The court rested its decision of the case on a determination that there was a *traumatic injury which caused death.* Therefore, this case is a strong precedent for the proposition that an injury must be traumatic in order that compensation be granted, though a stronger case would be presented if compensation were denied because the injury was not traumatic.

There is another area of the law where the court seems to intimate collaterally that a traumatic injury is required by the statute. This is the area of the so-called "apportionment" cases. No compen-

[5] Id § 42.10.
[6] 4 Schneider, Workmen's Compensation-Text § 1240(e) (1945).
[7] 1 Larson, Workmen's Compensation § 42.00 (1952).
[8] 221 Ky. 265, 298 S.W. 686 (1927).
[9] Jellico Coal Co. v. Adkins, 197 Ky. 684, 247 S.W. 972 (1923).

sation may be awarded for the results of a pre-existing disease,[10] and where disability is traceable partly to pre-existing disease and partly to an accidental injury arising out of and in the course of the employment, the court has held that it is the duty of the Board to ascertain the facts and to apportion the award accordingly.[11] This simply means that the Board must determine the proportion of the disability attributable to each of the two causes and then award compensation for the portion attributable to the *injury.* This doctrine was urged upon the court in *Wallins Creek Collieries Co. v. Williams,* but was rejected as inapplicable. In that case an employee who had angina pectoris became ill and died after some strenuous exertion. The court found that the death was caused solely by the pre-existing disease and that no award should be made. The court also rejected the doctrine of the cases wherein apportionment has been allowed saying:

> Neither do the facts of this case bring it within the [apportionment] doctrine . . . (cases cited) wherein the results of the injuries were apportioned between that which was produced by the prior disease and that which was produced by the accident, and compensation allowed for the latter only, since in each of those cases the alleged accident was not only an admitted and indisputable one, but it was a *traumatic injury,* which was found to cooperate with the prior existing disease to bring about the final result.
>
> It is exceedingly doubtful if what happened to the employee, Williams, in this case could be classified as an accident, it being our opinion that it could not, but, without determining that question (it not being necessary), it was certainly not a *traumatic accident* so as to permit the apportioning of the compensation and allowing an award for whatever was produced by it. (Emphasis added.)[12]

The cases distinguished,[13] where apportionment was allowed, were all, save one,[14] cases of genuine trauma wherein the traumatic personal injury combined or concurred with the pre-existing disease to

[10] Ky. Rev. Stat. § 342.005(1) (1959).

[11] Broughton's Adm'r v. Congleton Lumber Co., 235 Ky. 534, 31 S.W. 2d 903 (1930).

[12] 211 Ky. 200, 203, 277 S.W. 234, 235 (1925).

[13] These were the apportionment cases that were distinguished: B. F. Avery & Sons v. Carter, 205 Ky. 548, 266 S.W. 50 (1924) (death caused by injury from contact with molten metal combined with pre-existing diabetes). Employers' Liab. Assur. Corp. v. Gardner, 204 Ky. 216, 263 S.W. 743 (1924) (disability caused by an injury due to a strain combined with pre-existing syphilis); Robinson-Pettet Co. v. Workmen's Compensation Bd., 201 Ky. 719, 258 S.W. 318 (1924) (disability caused by an injury due to a fall combined with pre-existing tuberculosis of the spine).

[14] The facts in Employers' Liability Assur. Corp. v. Gardner, 204 Ky. 216, 263 S.W. 743 (1924), may give rise to doubt as to whether what happened to the claimant could be classified as a traumatic personal injury under any tenable definition of "traumatic." Exertion causing a strain is a close case depending on how broad the definition of "traumatic" is in the particular jurisdiction. This problem will be taken up later in this note.

cause the disability or death. Thus, the court seems to indicate that there must be a trauma for a personal injury to be compensable and thus qualify under the doctrine of apportionment. Since the court did not find such an injury in the present case, the doctrine was not applied.

Harlan Collieries Co. v. Johnson[15] is another recent case where it might seem that the court thought in terms of a traumatic injury. In this case, the deceased, by mistake, drank a a strong acid solution which resulted in serious burns to the mouth, throat, and stomach, and some of the acid may have gotten into his lungs. The defendants argued that the deceased had not suffered a traumatic injury *within the meaning of the act,* but the court found no merit in the argument. Finding expressly that trauma was present, the court pointed out that there was no physical force or bodily blow, but that under modern decisions the tendency was toward a more liberal construction of the word "traumatic." In the present case, there was direct physical injury resulting from the accident of drinking the acid and this was trauma in the mind of the court.

Here again, however, there may be shadows of doubt in regard to whether the court considered this an "injury" or a "disease" case. The language in the opinion indicates that the court thought they were dealing with an "injury," but because of certain aspects of the opinion it could be considered a "disease" case. If it were the latter, then an inquiry as to whether there was a traumatic injury would be relevant since a disease (other than an occupational disease) to be compensable must be the result of a traumatic injury by accident.[16] In discussing the meaning of the word "traumatic," the court referred to a "disease" case[17] which might lead one to believe that the court considered the present case as one involving a disease. The death certificate listed the cause of death as "lung infection brought about as accidental result of drinking strong alkali by mistake," and the defendant contended that there was enough evidence of pre-existing tuberculosis to warrant apportionment of the award between the injury and the pre-existing disease. However, the court held that there was substantial evidence to warrant the Board's denial of apportionment on the grounds that it was not shown that the tuberculosis was in fact pre-existing. The court's conclusion was that:

[15] 308 Ky. 89, 212 S.W. 2d 540 (1948).
[16] Ky. Rev. Stat. § 342.005 (1956).
[17] Great Atl. & Pac. Tea Co. v. Sexton, 242 Ky. 266, 46 S.W. 2d 87 (1932). Claimant contracted tularaemia (rabbit fever) through a pre-existing abrasion on his finger while cleaning rabbits for his employer. The court found that claimant had contracted a disease via a traumatic injury. The merits of this case will be discussed later in this note.

> Deceased suffered a painful and serious *injury* from the sudden accident of drinking the acid and we hold that it was of *traumatic* origin within the meaning of the statute. (Emphasis added.)[18]

It should be noted that no mention was made of the injury causing a disease that led to death, but merely, that an *injury* of a traumatic nature was inflicted. No mention is made of the disease sections of the statute. It would, therefore, appear that the court again has written "traumatic" into the statute, though his case is by no means conclusive on that point.

Then came the case of *Adams v. Bryant*[19] which clearly constituted a holding by the court that the statute merely called for a "personal injury" and that no trauma was required where no disease was present. In this case, the deceased died of overexertion, exposure and nervous shock occasioned by his efforts in a mine-rescue operation. The Board was of the opinion that the death was not the result of a "personal injury sustained by the employee by accident" since there was no trauma connected with the injury. The court reversed on the ground that the cases relied upon by the Board for the requirement of a traumatic injury were all cases where a "disease" was involved,[20] and were, therefore, no authority for the requirement of a traumatic injury where no disease was involved. The court stated that where the word "injury" is used without any qualifying words, such as "traumatic," it should be given its broadest possible scope.[21] The court then concluded:

> [W]e are persuaded that the Legislature did not intend to limit injuries in the absence of a disease to only those injuries of a traumatic nature. Furthermore . . . we conclude that shock, overexertion and exposure are personal injuries within the meaning of KRS 342.005(1).[22]

Thus the case seems to end any doubt as to the court's position in regard to the construction of "personal injury" in the coverage clause, though from the cases prior to this time there is reason to doubt the conclusion of the court that the injury does not have to be traumatic. This doubt is found in Judge Sims' dissenting opinion

[18] 308 Ky. 89, 94, 212 S.W. 2d 540, 544 (1948).

[19] 274 S.W. 2d 791 (Ky. 1955). Opinion redelivered as of January 28, 1955.

[20] Rue v. Kentucky Stone Co., 313 Ky. 568, 232 S.W. 2d 843 (1950); Coleman Mining Co. v. Wicks, 213 Ky. 134, 280 S.W. 936 (1926); Wallins Creek Collieries Co. v. Williams, 211 Ky. 200, 277 S.W. 234 (1925).

No mention was made in the Adams case of Harlan Collieries Co. v. Johnson, 308 Ky. 89, 212 S.W. 2d 540 (1948), or Straight Creek Fuel Co. v. Hunt, 221 Ky. 265, 298 S.W. 686 (1927), where in it seemed that the court was of the opinion that the injury was required to be traumatic.

[21] This seems to be the majority rule as to construction in those states where the term "injury" or "personal injury" appears in the coverage clause. 1 Larson, Workmen's Compensation § 42.00 (1952).

[22] 274 S.W. 2d 791, 793 (Ky. 1955).

wherein he stated that he could find no trauma in the facts, evidently meaning that in his mind the injury must be of a traumatic nature to be compensable.

Impact of the Amendment

What change, if any, will be made upon existing case law due to the insertion of the word "traumatic" into the coverage clause of the statute? This question can only be answered by obtaining an answer to another question, that is: What was the intent of the legislature in passing the amendment? Since there are no committee reports to guide one, some speculation will have to be engaged in. The *Adams* case, which was decided in 1955, held that an injury was not required to be traumatic in the absence of a disease, and the amendment inserting the word "traumatic" into the statute occurred in the very next session of the General Assembly in 1956. Also, that part of the statute involved here had read "personal injury," without the qualifying word "traumatic," from the original Act of 1916 until the 1956 amendment.[23] The only reasonable conclusion or inference that can be drawn from these facts is that the amendment of 1956 was designed to repeal the rule of *Adams v. Bryant* and to require that an injury be traumatic in order for compensation to be granted.[24]

If the above conclusion be valid, what will be the impact of the amendment, not only on cases with facts like those in the *Adams* case, but also on cases that may arise in the future? The answer to this question will depend upon what construction is given to the word "traumatic." The Kentucky Court has had occasion to define and apply this word in those cases where a disease was involved and, by the express words of the statute, it was incumbent upon the claimant to prove that his disease was the result of a traumatic injury by accident.[25] A perusal of these cases should be helpful in determining what construction and effect will be accorded the word in future cases where an *injury* is involved.

Kentucky Cases on Trauma

The first case involving an interpretation of the word "traumatic" was *Jellico Coal Co. v. Adkins*,[26] wherein the claimant contracted heart disease due to breathing "bad air" in a mine. In finding that

[23] Kentucky Acts 1916, ch. 33, sec. 1. See n. 3 supra.

[24] T. M. Crutcher Dental Depot v. Miller, 251 Ky. 201, 206, 207, 64 S.W. 2d 466, 468 (1933).

[25] Ky. Rev. Stat. § 342.316 (1959) now provides for compensation for occupational diseases. There still remains the problem of a wide variety of diseases which are not occupational within the meaning of the statute. Death or disability from such diseases, now as before the 1956 amendment, is compensated under Ky. Rev. Stat. § 342.005.

[26] 197 Ky. 684, 247 S.W. 972 (1923).

the disease was not the result of a traumatic injury, the court reviewed several dictionary definitions of the word "traumatic" and concluded:

> It will be observed that all of these definitions of "trauma" and "traumatic" imply the presence of *physical force,* and this is the generally accepted meaning of the word. Evidently the act implies that some *external physical force* actually directed against the body must occur in order to constitute traumatic injury by accident. . . . (Emphasis added.)[27]

Obviously, this is a very narrow concept of trauma but it was broad enough to cover the injury involved in *Straight Creek Fuel Co. v. Hunt,*[28] and the court in this later case seemed to adopt the previous construction of the word in the *Adkins* case. Then, in *Great Atlantic & Pacific Tea Co. v. Sexton,*[29] the concept was clearly broadened. In this case the claimant was dressing rabbits infected with tularemia germs and they entered his system through a preexisting cut on his finger resulting in the claimant contracting "rabbit fever." The court was faced with the question whether or not the disease was the result of a traumatic injury by accident, which it answered in the affirmative. In discussing the meaning of the word "traumatic" the court referred to its decisions in the *Adkins* and *Hunt* cases, *supra.* It noted that in those cases reference had been made to Webster's definition of "trauma" as "a wound or injury directly produced by causes external to the body." Commenting upon this definition, the court stated:

> It will be noted that this does not include within its scope and meaning only *physical force* in the sense of a blow, a current of electricity, or like terms implying power, vigor, violence, or energy in the commonly accepted meaning of those terms, but may be as consistently construed to include *any independent influence or causes external* to the body coming into direct contact with, and causing injury to, the physical structures thereof. (Emphasis added.)[30]

It is evident that this definition greatly broadens the concept of trauma by making the word synonymous with any independent *influence* or *cause.* External physical force is not required in order that trauma be present according to this definition. The *Adkins* and *Hunt* cases required that for an injury to be traumatic there must be an external physical force. The *Sexton* case extended this to *any* external force or influence, physical or not.[31]

Coming back to the specific application of the word "traumatic"

[27] *Id.* at 688, 247 S.W. at 794.

[28] 221 Ky. 265, 298 S.W. 686 (1927). Here the injury was definitely of a traumatic nature. Claimant fell across a steel rail, so that the narrow construction of the word in the Adkins case did not have to be extended.

[29] 242 Ky. 266, 46 S.W. 2d 87 (1932).

[30] *Id.* at 271, 46 S.W. 2d at 89.

[31] See People v. Burns, 88 Cal. App. 2d 867, 200 P. 2d 134 (1948).

in the *Sexton* case, there seems to be some confusion as to what constituted the trauma. It is possible that the germs coming into contact with the membranes of the body through the pre-existing abrasion could satisfy the trauma requirement, though at least one court has distinguished between medical and legal trauma, holding that medical trauma produced by a microbe or a microscopic foreign substance coming in contact with an uninjured mucous membrane is not such trauma as is contemplated by workmen's compensation law.[32] But in a later case[33], in which the claimant had contracted typhoid fever from drinking contaminated water, the Kentucky Court distinguished the *Sexton* case. They noted that in *Sexton* the germs entered through an abrasion, but in the case before them the germs entered through a normal channel of entry and were absorbed into the system. The court held that in the latter situation there was no trauma but said that in *Sexton* there had been. This seems to rule out the possibility that the requirement of trauma is satisfied by germs coming into contact with healthy tissue of the body. Where then was the trauma in *Sexton*? The court evidently considered that the abrasion constituted the trauma, but this seems indefensible since by the court's own admission the abrasion did not arise out of and in the course of claimant's employment, but was inflicted at his home while cutting kindling. Had claimant broken the skin by a blow while at his employment, and germs entered by that route, it could be said that a traumatic injury by accident had occurred, which resulted in a disease. However, the holding of the court that trauma was present on the facts in *Sexton* appears questionable. Even if the germs coming in contact with healthy tissue could constitute trauma, where was the *injury* which led to a disease? This is what the words of the act seem to require. Here a distinction should be drawn between *injury* and *disease*, but the court treats them as one and the same.[34] The germs caused a disease and the act did not then treat injury and disease as the same, since it required that the disease be the result of a *traumatic injury* by accident. This confusion led the court to misapply the *Sexton* case in a later case[35] wherein the deceased died from pneumonia and gangrene occasioned by breathing sawdust into his lungs. The court found that *Sexton* was squarely in point and controlling. But the distinction is fairly obvious, for in the one case *germs* came into contact with healthy tissue and caused a dis-

[32] Industrial Comm'n. v. Armacost, 129 Ohio St. 176, 194 N.E. 23 (1935).
[33] Mills v. Columbia Gas Const. Co., 246 Ky. 464, 55 S.W. 2d 394 (1932).
[34] Industrial Comm'n v. Cross, 104 Ohio St. 561, 136 N.E. 283 (1922). This case points up the distinction between disease and injury.
[35] Schabel v. Riddell-Robincan Mfg. Co., 245 Ky. 409, 53 S.W. 2d 750 (1932).

ease, while in the other case, sawdust, with its irritating qualities, came in contact with healthy tissue and caused an *injury,* which led to infection and pneumonia causing death. The cases, once this distinction is observed, should be less conflicting and more in accord with the provisions of the act.

It can be concluded at this point that the definition of "traumatic" by the Kentucky Court is very broad as the *Sexton* case illustrates.[36] This breadth of meaning will be helpful in future cases when it may be urged that the insertion of the word into the coverage clause has a restrictive effect on the scope of coverage in certain types of injuries.

Overexertion, Exposure and Shock

This was the type of injury involved in *Adams* v. *Bryant* and, as previously concluded, the amendment to Kentucky Revised Statute, sec. 342.005(1) was intended to reverse the holding in *Adams* by requiring that an injury to be compensable must be traumatic.

At the outset, before discussing whether the type of injury involved in *Adams* is traumatic, the phrase "overexertion, exposure and shock" should be examined. The court calls these things *injuries,* but upon closer examination this appears to be a misnomer in some respects. Exertion is defined by Webster to be an "active exercise of any power or faculty,"[37] thus overexertion would be an overactive exercise of any power or faculty. Is this an injury? It does not seem possible that it could be, but the *effects* of overexertion could be, for example, a general break down of the vital bodily processes as the *result* of overexertion. Thus, overexertion may be the *cause* of an injury, but it cannot be of itself an injury. This same reasoning seems to apply to exposure. One may die from the *effects* of exposure, but exposure is a *cause* of an injury, not the injury itself. For example, if one is exposed to sub-freezing temperatures in improper clothing for an appreciable period of time, a definite body reaction occurs, that is, the blood pressure is lowered and a general deterioration of bodily processes takes place. But it should be noted that the *result* of the exposure is the injury and not the exposure itself. Lastly, the word "shock" can apply to both *cause* and *effect.* Webster defines shock as an "impact, collision or . . . sudden

[36] For jurisdictions that attribute a narrower meaning to the word "traumatic" see, People v. Burns, 88 Cal. App. 2d 867, 200 P. 2d 134 (1948); Higgins v. Department of Labor & Indus., 27 Wash. 2d 816, 180 P. 2d 559 (1947).

[37] Webster, New International Dictionary (2d ed. 1944). See also, 8 Murray, A New English Dictionary (1897) "the action or habit of exerting or putting into active operation (an organ, the faculties, or habit of the body of mind)"; American College Dictionary (1955) "exercise, as of power or faculties"; Webster, New Collegiate Dictionary (1953) "Act of exerting; exercise of any power or faculty. . . ."

and violent agitation of the mental or emotional sensibilities,"[38] and these can clearly constitute the *causes* of injuries to the bodily structure. Yet, shock in the medical sense can also be the *injury* since it is a "state of profound depression of the vital processes of the body characterized by . . . rapid but weak pulse . . . shallow respiration"[39] and a general deterioration of the bodily processes which can and does in many cases lead to death. Shock may be the *result* of a wound or crushing injury and is therefore a type of *injury* in itself.

Can such *causes* of injuries as overexertion, exposure and shock (used in the sense of cause) be classified as traumatic in nature? This is the question that will have to be answered when facts similar to those in *Adams v. Bryant* are presented again. According to the last authoritative definition by the court in the *Sexton* case, trauma is "any independent influence or cause external to the body coming into direct contact with, and causing injury to, the physical structure." The breadth of this definition could easily make the *causes* of injury in *Adams* classifiable as traumatic. Obviously exposure may satisfy even a narrow interpretation of trauma, since something of a physical nature comes into contact with the body, i.e., cold or heat coming into contact with the body and resulting in injury to the physical structure. Examples of such injuries would be frostbite, burns, heat which leads to exhaustion, and even shock (used in the result sense). The causes of these types of injuries could be classified as thermal trauma.[40]

Exertion which results in something breaking, herniating, or

[38] Webster, New International Dictionary (2d ed. 1944). See also, 8 Murray, A New English Dictionary, pt. 2 (1897) "a sudden and violent blow, impact, or collision, tending to overthrow or to produce internal oscillation in a body subjected to it"; Webster, New Collegiate Dictionary (1953) "a blow, impact; collision or violent shake. . . ."

[39] Webster, New International Dictionary (2d ed. 1944); 8 Murray, A New English Dictionary, pt. 2 (1914). "A sudden and disturbing impression on the mind or feelings; usually, one produced by some unwelcome occurrence or perception, by pain, grief, or violent emotion . . . and tending to occasion lasting depression or loss of composure. . . ."; See also, Dorland, Illustrated Medical Dictionary (23d ed. 1957) "A condition of acute peripheral circulatory failure due to derangement of circulatory control or loss of circulating fluid and brought about by injury. It is marked by pallor and clamminess of the skin, decreased blood pressure, feeble rapid pulse, decreased respiration, restlessness, anxiety and sometimes unconsciousness"; Blawiston, New Gould Medical Dictionary (2d ed. 1956) "The clinical manifestations of an inadequate volume of circulating blood. . . . Signs include marked decrease in blood pressure, weak thready pulse, pale cold skin. . . ." See also, Cox, Shock Takes Varied Forms, Doctors Warn, Louisville Courier-Journal, Apr. 5, 1959, § 4, p. 5, col. 5.

[40] "Trauma can be defined as injury to the body inflicted by some form of outside force. It is divided into four categories: 1. Physical trauma, caused by physical violence; 2. Thermal trauma, caused by heat or cold; 3. Electrical trauma, caused by electrical energy; 4. Chemical trauma, caused by poisons." Henry v. A. C. Lawrence Leather Co., 234, N.C. 126, 66 S.E. 2d 693, 696 (1951).

letting go has been held compensable in a majority of jurisdictions.[41] Yet, is the exertion which causes the breakage a trauma? Under the definition of "traumatic" in the *Sexton* case there must be an independent cause or influence coming into direct contact with the body. As broad as this definition is, there may be difficulty in finding that exertion can be trauma within the act, unless one considers the *object* of the exertion the independent influence or cause. In the *Adams* case, the deceased worked feverishly to remove his friends from a mine cave-in and undoubtedly used his hands to remove debris. Since the exertion was directed towards something external to the body, can this satisfy the "independent influence or cause" requirement? Such a rationalization appears to be rather weak and leaves much to be desired in the way of a realistic theory to decide the cases on. However, one court has met this problem head-on and has adopted a more realistic theory in deciding cases involving strain, exertion and similar causes of injury.[42] In that case the claimant was suffering from tenosynovitis or inflammation of a synovial membrane which is a protective sheath that encloses the tendons in one's arm. The inflammation arose from the nature of claimant's work which required the constant lifting of weight with the result that the tendons and tendon sheaths were stretched by repeated overflexion or overextension. In this particular jurisdiction tenosynovitis was an occupational disease, if caused by trauma. Thus, the issue was squarely presented whether this constant strain and exertion which led to inflammation could be classified as traumatic. In answering this proposition in the affirmative the court turned to authoritative definitions of medical trauma and quoted from the expert testimony:

> "Wound or injury is trauma, but not all trauma comes under that classification. Wound or injury as the meaning of the word trauma in the medical sense is not all-inclusive. . . . Repeatedly putting the elbow through motions, to call that trauma would not be a misuse of the word medically. . . ." And Dr. Lancaster testified: "I would say that tenosynovitis could not result from repeated external trauma. . . . I don't think this condition could result without the intervention of some unusual strain or use of that particular tendon. . . . The trauma would be the continuous stretching and pulling of that particular ligament in his occupation."[43]

The analogy to the exertion cases is obvious and it seems that such a rationale could be helpful in construing the word "traumatic" to include exertion in those cases where the exertion can be shown

[41] 1 Larson, Workmen's Compensation § 38.20 (1952). For Kentucky cases see, McKnelly v. Gaddis, 309 Ky. 698, 218 S.W. 2d 1 (1949); Kroger Grocery & Baking Co. v. Bartle, 250 Ky. 658, 63 S.W. 2d 807 (1933).

[42] Henry v. A. C. Lawrence Leather Co., 234 N.C. 126, 66 S.E. 2d 693 (1951).

[43] *Id.*, 66 S.E. 2d at 695, 696.

to have caused breakage or a general detrimental effct on the physical structure of the body.

As previously concluded, shock in the medical sense is an injury, yet, it can also be a cause of injury. This raises the problem of whether shock, used in the sense of cause, can be classified as traumatic in nature. Obviously shock frequently involves no physical contact with the body although there is no question but that a definite ascertainable reaction develops from severe nervous shock which could constitute an injury, such as a neurosis or shock (used in the result sense).[44] The broad definition of "traumatic" in the *Sexton* case would justify construing trauma to include shock since an independent influence or cause results in injury, but here again a troublesome problem arises because under the rule in *Sexton* the independent influence or cause must come into direct contact with the body. In the case of nervous shock there has been direct contact of light waves or sound waves with the body to the extent that a person sees or hears facts which have an injurious physical effect. But is this enough? In *Bailey v. American General Insurance Co.*,[45] where shock of a visual nature resulted in a neurosis, the medical expert talked in terms of "psychic trauma" and "traumatic experience." Admittedly a rationale based on "psychic trauma" is some distance apart from the old-fashioned notion of trauma being physical contact, but it illustrates current thinking on this concept and can be useful in carrying out the intent and spirit of the Workmen's Compensation Act.[46] In cases of shock there is a definite *impact* on the nervous system created by what may be called a "traumatic experience." This impact leads to obvious physical harm and injury just as physical impact does and the spirit of the act seems to demand that both be compensated. In such cases such terminology as "psychic trauma" and "traumatic experience" can be very helpful in this area of the law.

Conclusion

These are just a few of the problems that may arise when the court comes to apply the amendment. It is apparent that it is difficult to find trauma in cases of overexertion, exposure and shock, but as the previous discussion indicates trauma may be so construed as

[44] Bailey v. American Gen. Ins. Co., 279 S.W. 2d 315 (Tex. Sup. 1955). For comments on this case, see 34 Tex. L. Rev. 496 (1956), and 53 Mich. L. Rev. 898 (1955), which commented on the lower court opinion which was eventually reversed.

[45] Supra note 44.

[46] Dorland, Illustrated Medical Dictionary (23 ed. 1957) (psychic shock in the sense of result) "a shock like condition produced by strong emotion."; Blakiston, New Gould Medical Dictionary (2d ed. 1956) (psychic shock in the sense of cause) "a physical or emotional trauma."

to include these *causes* of injury, without stretching the word completely out of shape. The broad definition of "traumatic" expounded in the *Sexton* case is fortunate since it will give the court a flexible definition to work with when it is confronted with the new trauma requirement in cases that will arise in the future. It is important that these first cases be carefully rationalized in respect to the trauma requirement for, if too narrow a definition is used, the court may find itself handcuffed by its own language in later cases when a more flexible meaning of traumatic is needed to carry out the spirit of the act. Modern medical terminology is solidly behind a broad meaning of "traumatic" and courts which appreciate this will have little difficulty in construing the word so that the spirit and purpose of the Workmen's Compensation Act can be implemented.

H. Wendell Cherry