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**Employee Benefits Law**—Drunk Driving Fatality Determined Not Accidental Under ERISA-Governed Insurance Plan—*Stamp v. Metropolitan Life Insurance Company*, 531 F.3d 84 (1st Cir. 2008)

Federal common law governs claims arising out of employee benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).<sup>1</sup> The Court of Appeals for the First Circuit created an approach for interpreting the ambiguous word “accident” in ERISA-governed plans in *Wickman v. Northwestern National Insurance Co.*<sup>2</sup> In *Stamp v. Metropolitan Life Insurance Co.*<sup>3</sup>, the First Circuit used the *Wickman* framework to address, for the first time, whether the administrator of an ERISA-governed plan could reasonably conclude that the death of an insured party who was killed in a single-car accident when driving drunk was not accidental for purposes of his life insurance policies.<sup>4</sup> The First Circuit reviewed the administrator’s decision under an arbitrary and capricious standard and upheld the decision as both reasonable and supported by the evidence on the record.<sup>5</sup>

In the early morning of August 3, 2002, Steven Stamp was killed in a single-car accident when his car went off the road and crashed into a tree in Johnston, Rhode Island.<sup>6</sup> Mr. Stamp’s blood alcohol content (BAC) at the time of his death was .265 percent, more than three times Rhode Island’s legal limit of .08 percent.<sup>7</sup> Stamp’s wife, Karen Stamp, submitted a claim for benefits as the

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1. See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 56 (1987) (discussing legislature’s intent for federal common law to govern ERISA claims); see also *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1084 (1st Cir. 1990) (holding benefit provisions of ERISA plans interpreted under principles of federal substantive law); Michael E. Gardner, Note, *Accidental Death Insurance Coverage of Drunk Drivers*, 69 MO. L. REV. 235, 243 (2004) (identifying federal common law as source of authority for ERISA claims); ERISA SURVEY OF FEDERAL CIRCUITS 9 (Brooks R. Magratten ed., 2005) (addressing rules of ERISA interpretation).

2. See *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990) (outlining approach for determining whether injury qualifies as accidental).

3. 531 F.3d 84 (1st Cir. 2008).

4. *Id.* at 85 (applying *Wickman* framework).

5. *Id.* at 94 (affirming decision below).

6. See *id.* at 85-86 (describing circumstances of Stamp’s accident). According to the police report, Mr. Stamp was traveling in the left lane when he lost control of his car and skidded across the middle and right lanes, eventually veering off the right side and rotating 180 degrees before crashing into the tree. Brief of Defendant-Appellee Metro. Life Insur. Co. at 8, *Stamp v. Metro. Life Ins. Co.*, 531 F.3d 84 (1st Cir. 2008) (No. 07-1061). The autopsy determined that the official cause of death was “multiple injuries due to blunt force trauma.” 531 F.3d at 86. The police also reported that there were no adverse road conditions or heavy traffic at the time of the accident. *Id.*

7. See R.I. GEN. LAWS § 31-27-2 (2002) (setting legal BAC limit for operating vehicle in Rhode Island); see also 531 F.3d. at 86 (referring to report of Stamp’s BAC). Earlier in the day, Mr. Stamp had consumed several alcoholic beverages during a boat cruise and dinner in Connecticut put on by his employer, Exxon Mobil Chemical Company, but co-workers said he did not appear impaired at that point. 531 F.3d. at 85. Mrs. Stamp reported that she talked to Mr. Stamp at approximately 5:20 p.m. and that he did not sound impaired at that point. *Id.* Mr. Stamp was planning to drive to his parents’ house near Providence, Rhode Island, where his

beneficiary of Mr. Stamp's life insurance policies to the claim fiduciary, Metropolitan Life Insurance Company (Metlife).<sup>8</sup> Metlife paid the claim for Basic Life Insurance benefits, but denied Mrs. Stamp's claims under the Basic and Voluntary Accidental Death and Dismemberment (AD & D) policies.<sup>9</sup> Mrs. Stamp submitted an appeal to Mr. Stamp's employer and administrator of the plan, Exxon Mobil Chemical Company (Mobil).<sup>10</sup> Mobil denied the appeal of the Basic and Voluntary AD & D benefits after concluding that Mr. Stamp's death was not the result of an "accident" as defined in his AD & D policies.<sup>11</sup>

After Mobil denied her appeal, Mrs. Stamp filed suit in district court, and the suit was treated as an enforcement action under ERISA.<sup>12</sup> The district court granted summary judgment in favor of Metlife and Mobil after affirming the reasonableness of the determination that Mr. Stamp's death was not the result

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wife would meet him the next day to celebrate his brother's birthday. *Id.* At 9:20 p.m. that night, while on his way to his parents' house, Mr. Stamp called his friend Joe Kingsley, who said that Mr. Stamp did not sound intoxicated at this point. *Id.* Mr. Stamp's cell phone bill had roaming charges that indicated he arrived in the Providence area before 10:00 p.m., but he did not go straight to his parents' house. *Id.* When Mr. Stamp's body was found, his right hand was stamped with the word "copy," which Metlife argued is an indication that Mr. Stamp had been drinking at a bar in the Providence area where his hand was stamped at the door. *Id.* at 86.

8. *See* 531 F.3d at 86 (identifying Mrs. Stamp as beneficiary). Mr. Stamp was a participant in Exxon Mobil Chemical Company's employee welfare benefit plan. Brief of Defendant-Appellee Metro. Life Insur. Co., *supra* note 6, at 1. In addition to basic life insurance, Mr. Stamp's plan provided for various accidental death and dismemberment (AD & D) benefits. *Id.* at 3. The plan's Basic AD & D coverage provided that if an employee was physically injured as a result of an accident and died within ninety days as a result of that injury or accident, the beneficiary would receive the full amount of the AD & D benefits in addition to the basic life insurance benefits. *Id.* at 3-4. Additionally, Mr. Stamp elected to pay \$0.03 per month for each \$1,000 of Voluntary AD & D coverage, with a limit of eight times a participant's annual salary. *Id.* at 4. Like the Basic AD & D benefits, the insurance company would only pay the Voluntary AD & D benefits if the participant was injured in an accident. *Id.* Additionally, the plan provided for Occupational AD & D benefits equal to two times a participant's annual salary, with a maximum of \$250,000. *Id.* Occupational AD & D benefits would be paid if an employee died within one year as a result of an injury caused by an occupational accident while at work. *Id.* "While at work" was defined to include "traveling to or from a Mobil function . . . as a representative of management or Mobil." *Id.* at 4-5. All AD & D benefits excluded coverage for intentionally self-inflicted injuries. *Id.*

9. *See* 531 F.3d at 86 (reporting decisions of Metlife as claim fiduciary). Metlife did not make a determination at this point regarding the claim for Occupational AD & D benefits. *Id.*

10. *See id.* (addressing appeal to plan administrator). As plan administrator, Mobil had "full and exclusive authority to make final determinations as to all issues concerning plan administration," including "discretionary and final authority to determine coverage and eligibility for benefits . . . [and] to interpret and explain the terms of the Life Insurance Program." *Id.* The plan provided that all appeals of benefit denials must be submitted to Mobil. Brief of Defendant-Appellee Metro. Life Insur. Co., *supra* note 6, at 5.

11. *See* 531 F.3d at 86-87 (reporting results of Mobil's review as plan administrator). Mobil also rejected Mrs. Stamp's claim for Occupational AD & D benefits. *Id.* Mobil indicated in a denial letter that they determined Mrs. Stamp was precluded from receiving any AD & D benefits because her husband's death was caused by an intentionally self-inflicted injury. *Id.* Mobil also determined that Mr. Stamp was committing a serious crime when he crashed his car and that the crash did not occur while at work. *Id.* at 86 & n.3.

12. *See id.* at 87 (summarizing district court claim). Mrs. Stamp initially asserted claims for breach of contract and breach of fiduciary duty, but the district court held that ERISA preempted these claims. *See id.* at 87 (addressing ERISA's preemption of common-law claims); *see also* 29 U.S.C. § 1132(a)(1)(B) (2000) (allowing beneficiary to bring civil action to recover benefits due to participant); *infra* note 18 and accompanying text (discussing ERISA preemption provisions).

of an accident.<sup>13</sup> Mrs. Stamp then appealed to the Court of Appeals for the First Circuit, asserting that Mobil unreasonably determined that her husband's death was not accidental.<sup>14</sup> Upon reviewing the federal common law pertaining to ERISA, the First Circuit affirmed the district court's decision and upheld Mobil's determination that Mr. Stamp's death was not an accident.<sup>15</sup>

Congress enacted ERISA in 1974 to protect the rights of employees and their beneficiaries and to provide access to federal courts when these rights are violated.<sup>16</sup> A participant or beneficiary of a plan covered by ERISA may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."<sup>17</sup> ERISA claims are federal questions and preempt any state-law claims relating to employee benefit plans.<sup>18</sup> Accordingly, federal common law controls claims regarding ERISA-governed plans.<sup>19</sup>

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13. See 531 F.3d at 87 (setting forth findings of district court). The district court used an "arbitrary and capricious" standard to review Mobil's denial of benefits. *Id.* (announcing standard of review). Under this standard, the court will uphold the decision of an administrator as long as it was "reasoned and supported by substantial evidence." *Id.*

14. See *id.* at 87 (discussing Mrs. Stamp's appeal). In her appeal to the First Circuit, Mrs. Stamp presented four arguments, each of which the court rejected. *Id.* at 92-94. First, she argued that the reports of Mr. Stamp's phone calls from the night of the accident show that he was not suicidal and had no "subjective expectation" of death. *Id.* at 92. Second, she presented statistical evidence that death is not a "highly likely" outcome of driving while intoxicated. *Id.* Third, she argued that it had not been proven that Mr. Stamp's intoxication caused his death. *Id.* at 93. Fourth, she attempted to invoke the doctrine of *contra proferentem*, arguing that the policy terms should be construed strictly against the insurer and in favor of the insured. *Id.* In the district court, Mrs. Stamp also argued there was a conflict of interest that would necessitate a different standard of review. *Id.* at 88. In her brief at the appellate level, she asserted the same proposition, but did not claim that such a conflict existed in this case. *Id.* at 88. As a result, this issue was waived on appeal. See *id.* (detailing Mrs. Stamp's conflict of interest argument); see also *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (holding issues mentioned on appeal with no developed argumentation are waived).

15. See 531 F.3d at 85 (holding plan administrator may reasonably conclude death not accidental).

16. See 29 U.S.C. § 1001(b) (2000) (announcing ERISA policies); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44 (1987) (summarizing Congressional goals in enacting ERISA); 1 AMERICAN BAR ASSOCIATION JOINT COMMITTEE ON EMPLOYEE BENEFITS, THE 22ND ANNUAL NATIONAL INSTITUTE ON ERISA BASICS A-12 (2008) (providing overview of Title I of ERISA). Other purposes of ERISA included establishing "equitable standards of plan administration," mandating "minimum standards of plan design with respect to the vesting of plan benefits," and requiring "minimum standards of fiscal responsibility." See Pamela D. Purdue, *Overview of ERISA's Legislative and Regulatory Scheme*, A.L.I.-A.B.A., FUNDAMENTALS OF EMPLOYEE BENEFITS LAW 2 (2006) (listing purposes of ERISA enactment).

17. 29 U.S.C. § 1132(a) (2000); see *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987) (reviewing civil enforcement provisions of ERISA).

18. 29 U.S.C. § 1144 (2000) (stating rule of federal preemption); see, e.g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987) (classifying ERISA claims as federal questions); *Metro. Life Ins. Co. v. Mass.*, 471 U.S. 724, 732 (1985); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983) (emphasizing breadth of ERISA's express preemption clause). The Supreme Court has broadly interpreted the phrase "relate to" in ERISA's preemption clause to mean having a connection with or reference to an employee benefit plan. See *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983) (interpreting "relate to" in accordance with normal sense of phrase); see also 29 U.S.C. § 1002(2)(A) (2000).

19. See *supra* note 1 and accompanying text (discussing development of federal common law for ERISA claims).

In the landmark case of *Wickman v. Northwestern National Insurance Company*, the Court of Appeals for the First Circuit established a procedure for interpreting the ambiguous word “accident” in ERISA-regulated plans.<sup>20</sup> The *Wickman* test uses the expectations of the insured at the time the policy was purchased as a starting point for determining whether an injury was accidental.<sup>21</sup> If the fact-finder determines that the insured party did not have a subjective expectation of sustaining a similar injury, the fact-finder must then determine whether it was reasonable for the insured party to not have this expectation.<sup>22</sup> If the fact-finder determines that the insured party was unreasonable in not expecting such an injury, the court will not deem the injuries accidental.<sup>23</sup> However, if the fact-finder decides that there is insufficient evidence to determine the subjective expectations of the insured, he or she must analyze whether a reasonable person with the background and characteristics of the insured would have viewed the injury as “highly likely to occur” as a result of his intentional conduct.<sup>24</sup>

If a plan administrator possesses discretionary authority to determine eligibility under an ERISA plan, courts will review the administrator’s decision under an arbitrary and capricious standard.<sup>25</sup> Under this standard of review, the

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20. *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1084-88 (1st Cir. 1990). In *Wickman*, the First Circuit rejected an approach to defining accidents in ERISA claims that distinguished between accidental means and accidental results. *Id.* at 1085-86. Under this type of approach, an injury would not be considered an accident if the act proximately leading to the injury was intentional, regardless of any subjective or objective expectation of injury. See *Landress v. Phoenix Mut. Life Ins. Co.*, 291 U.S. 491, 497 (1934) (applying distinction to determine sunstroke death from intentional sun exposure not accidental). Justice Cardozo famously dissented in *Landress*, arguing for a definition more consistent with its every day meaning. *Id.* at 498 (Cardozo, J., dissenting). Cardozo argued that court should be guided by the view of the average man, stating that “[w]hen a man has died in such a way that his death is spoken of as an accident, he has died because of an accident.” *Id.*

21. *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990). The viewpoint of the insured is the traditional perspective from which the term “accident” is defined. See 46 C.J.S. *Insurance* § 1241 (2008) (discussing definition of accident for purposes of accidental death insurance). The *Wickman* court, however, recognized two primary problems with relying solely on the subjective expectations of the insured. See *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1087 (1st Cir. 1990). First, an insured’s subjective expectations can be entirely unreasonable. *Id.* Second, it is often impossible to determine the actual subjective expectations of the insured. *Id.*

22. *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990). The *Wickman* court emphasized the need to consider the insured’s personal characteristics before determining if their subjective expectations were reasonable. *Id.*

23. *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990) (outlining second prong).

24. *Wickman v. Nw. Nat’l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990). The *Wickman* court emphasized the importance of considering the insured’s background and characteristics because the objective analysis is intended to serve as a proxy for the subjective expectations of the insured party and considering these factors allows the court to come the closest to the actual expectations of the insured. *Id.*

25. See, e.g., *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Wright v. R.R. Donnelly & Sons Co.*, 402 F.3d 67, 74 (1st Cir. 2005); *Gannon v. Metro. Life Ins. Co.*, 360 F.3d 211, 212-13 (1st Cir. 2004) (applying deferential standard of review where plan grants discretion to administrator); see also ERISA SURVEY OF FEDERAL CIRCUITS 10 (Brooks R. Magratten ed., 2005) (emphasizing deferential nature of review of administrators’ interpretation of plans). In *Firestone*, the Supreme Court of the United States distinguished ERISA claims under 29 U.S.C. § 1132(a)(1)(B) that granted discretion to plan administrators from those that

relevant inquiry is “whether the aggregate evidence, viewed in the light most favorable to the non moving party, could support a rational determination that the plan administrator acted arbitrarily in denying the claim for benefits.”<sup>26</sup> Several federal circuit courts of appeals have applied a form of the *Wickman* framework along with the arbitrary and capricious standard of review to uphold plan administrators’ determinations that deaths resulting from drunk driving incidents were not accidental.<sup>27</sup> Meanwhile, other circuits have used the *Wickman* framework with a strict interpretation of the objective prong to determine that certain unintentional deaths were, in fact, accidental for the purposes of ERISA claims.<sup>28</sup>

In *Stamp v. Metropolitan Life Insurance Co.*, the First Circuit reviewed Mobil’s denial of benefits under an arbitrary and capricious standard and, after determining that the denial was reasoned and supported by substantial evidence, upheld the district court’s judgment.<sup>29</sup> The First Circuit applied the

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did not. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Ordinarily, ERISA claims brought under this civil enforcement section are reviewed under a de novo standard, but the court held that the arbitrary and capricious standard would apply to claims where discretion was given to plan administrators. *Id.* Insurance companies can eliminate the need for discretion by explicitly providing a specific exclusion for alcohol-related accidents in the benefit plan. See Marcus Wilbers, Note, *Alcohol-Related Car “Accidents”?* *The Eighth Circuit Moves Toward Policy Change in ERISA Litigation*, 71 MO. L. REV. 471, 491 (2006) (arguing for inclusion of alcohol exclusion clauses).

26. *Leahy v. Raytheon Co.*, 315 F.3d 11, 18 (1st Cir. 2002) (describing nature of the inquiry).

27. See, e.g., *Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 625-26 (6th Cir. 2007); *Eckelberry v. Reliastar Life Ins. Co.*, 469 F.3d 340, 346 (4th Cir. 2006); *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104, 1111 (7th Cir. 1998) (holding administrators not arbitrary and capricious in determining death from drunk driving not accidental). But see *West v. Aetna Life Ins. Co.*, 171 F. Supp. 2d 856, 905 (N.D. Iowa 2001) (finding Aetna’s determination of non-accident in drunk driving case arbitrary and capricious); *Metro. Life Ins. Co. v. Potter*, 992 F. Supp. 717, 730 (D.N.J. 1998) (holding death not “highly likely” to result from drunk driving). A strong dissent in *Lennon* urged that these holdings were a departure from the standard set forth in *Wickman*. See *Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 628-29 (6th Cir. 2007) (Clay, J., dissenting) (promoting stricter application of *Wickman* standard). The dissent emphasized the language used in *Wickman* of “highly likely to occur” and “probable consequence[s] substantially likely to occur,” arguing that this standard requires a higher level of certainty than these decisions have afforded it. *Id.* The dissent goes on to argue that under the objective prong of *Wickman*, a reasonable person would know of the potential consequences of driving while intoxicated, but this is not equivalent to knowledge of probable injury. *Id.* at 629. Additionally, it is possible that even if one knows of potential injury, the idea of highly likely or probable injury is an “imperfect, subjective assessment.” See 10 Lee R. Russ & Thomas F. Segalia, COUCH ON INSURANCE 3D 139:11 (2005) (discussing distinction between foreseeability and probability). From a statistical standpoint, over 1.46 million drivers were arrested in 2005 for driving under the influence of alcohol or narcotics, but only 13,491 people died in alcohol-related motor vehicle crashes in that same time period. See Mothers Against Drunk Driving, *A 2008 Q3 Summary of Statistics*, available at <http://www.madd.org/getfile/87c27a21-7866-47d6-8ad3-5025867b0c07/2008-Q3-Summary-of-Statistics.aspx> (providing statistical analysis of drunk driving incidents). Even these statistics potentially overstate the likelihood of death resulting from driving while intoxicated because not every drunk driver is arrested. See Gardner, *supra* note 1, at 249 (analyzing drunk driving statistics).

28. See *Santaella v. Metro. Life Ins. Co.*, 123 F.3d 456, 462-63 (7th Cir. 1997) (holding death not substantially certain to result from ingestion of high dosage of painkiller); see also *Todd v. AIG Life Ins. Co.*, 47 F.3d 1448, 1456 (5th Cir. 1995) (holding death not substantially certain to result from autoerotic asphyxiation).

29. See 531 F.3d at 94 (summarizing reasons for affirmation of district court judgment); see also *supra* notes 25-26 and accompanying text (detailing arbitrary and capricious standard of review).

*Wickman* framework in order to determine whether Mobil's decision to deny AD & D benefits was arbitrary and capricious.<sup>30</sup> The *Stamp* court began their analysis by examining Stamp's expectations at the time of his death because it concluded that, under the *Wickman* analysis, there was no "necessary inconsistency" between his state of mind when he purchased the policy and at the time of his death.<sup>31</sup> The court concluded that Mr. Stamp's plan to meet his family the next day along with the reports of his phone calls that night did not sufficiently establish his subjective state of mind at the time of his death because many hours had elapsed after the phone calls were made and Mr. Stamp had continued drinking.<sup>32</sup>

The court applied the objective prong of *Wickman* after deciding that Mr. Stamp's subjective expectation could not be determined and held that Mobil's denial of benefits was appropriate because Mr. Stamp "reasonably should have expected death or serious injury when he drove with a BAC of more than three times the legal limit."<sup>33</sup> The court rejected the notion that the objective prong of *Wickman* required statistical probability that death would result from the insured's actions.<sup>34</sup> Instead, the court held that the objective component of the *Wickman* analysis looked to what a reasonable person would expect to be the outcome of the intentional conduct in question.<sup>35</sup> The court declined to declare all alcohol-related deaths per se non-accidental, and instead held that the circumstances of each case would have to be examined.<sup>36</sup> In this case, Mr. Stamp's BAC was over three times the legal limit and there was no evidence of adverse driving conditions or mechanical failure; thus, the court held that it was not arbitrary and capricious for Mobil to determine that his death was not the result of an accident.<sup>37</sup>

The First Circuit correctly held that it could not determine Mr. Stamp's

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30. See 531 F.3d at 88 (applying federal common law of ERISA); see also *supra* notes 20-24 and accompanying text (outlining *Wickman* framework).

31. See 531 F.3d at 88 (discussing equivalency of expectations at times of purchase and death).

32. *Id.* at 92 (declining to establish victim's subjective state of mind at time of death); see also *supra* note 7 (listing contacts with Mr. Stamp on night prior to his death).

33. See 531 F.3d at 94 (applying objective standard of *Wickman*); see also *supra* note 24 and accompanying text (setting forth objective prong of *Wickman*).

34. See 531 F.3d at 92 (rejecting appellant's statistic-based argument of objective analysis). The court supported its rejection of a requirement for statistical probability by drawing a comparison to Russian roulette. *Id.* at 92-93. The court reasoned that, statistically speaking, the likelihood of dying in a round of Russian roulette is only 16 percent. *Id.* at 92. Therefore, if statistical probability were a requirement, death could not be considered a highly likely consequence of an activity as dangerous as Russian roulette. *Id.* at 93. The court also warned of the misleading nature of statistics that suggest there is a low probability of a fatal accident when driving while intoxicated. *Id.* at 92. Specifically, the court noted that the statistics Mrs. Stamp presented did not take into account the degree of intoxication in other instances of drunk driving. *Id.*

35. See *id.* at 92 (establishing reasonable person as basis for objective prong).

36. See *id.* at 91 (rejecting "categorical determination" of alcohol-related deaths as non-accidental).

37. See *id.* (setting forth analysis of circumstances of Mr. Stamp's death); see also *supra* notes 5-7 and accompanying text (providing greater detail regarding circumstances of Mr. Stamp's death).

subjective state of mind at the time of his death.<sup>38</sup> The first prong of the *Wickman* framework required the court to inquire into whether Mr. Stamp had a subjective expectation that his conduct would result in death.<sup>39</sup> Although Mr. Stamp's numerous contacts with family and friends during the night prior to the accident did not suggest an expectation of death, there was evidence that Mr. Stamp had been drinking heavily between the final contact and the accident.<sup>40</sup> It was virtually impossible for the court to determine what, if any, influence the alcohol consumption had on Mr. Stamp's subjective mind state, and the court thus declined to do so.<sup>41</sup> From there, the court then correctly sidestepped the second *Wickman* prong because of the inability to determine Mr. Stamp's subjective expectations at the time of the accident.<sup>42</sup>

The First Circuit, however, strayed from its own precedent by not applying the objective prong of *Wickman* as it was articulated in that case.<sup>43</sup> In *Wickman*, the First Circuit framed the objective analysis to ask "whether a reasonable person, with background and characteristics similar to the insured, would have viewed the injury as *highly likely* to occur as a result of the insured's intentional conduct."<sup>44</sup> In *Stamp*, on the other hand, the court based its decision on a determination that Mr. Stamp "*reasonably should have expected* death or serious injury" at the time of the accident.<sup>45</sup> The First Circuit noted that other circuits, when upholding plan administrators' determinations that deaths resulting from drunk driving were not accidental, have explicitly eliminated the need for the injury to be highly likely in their applications of *Wickman*.<sup>46</sup>

This departure from *Wickman* renders the First Circuit's holding in *Stamp* practically meaningless.<sup>47</sup> If courts are only asked whether death was a

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38. See 531 F.3d at 92 (summarizing and rejecting appellant's argument regarding subjective state of mind).

39. See *supra* notes 21-23 (describing subjective component of *Wickman* analysis).

40. See *supra* note 7 and accompanying text (setting forth known details of Mr. Stamp's night prior to accident).

41. See *supra* note 32 (addressing court's refusal to establish victim's subjective state of mind at time of death).

42. See *supra* notes 22-23 and accompanying text (describing requirement of analyzing reasonability of subjective expectations of insured).

43. See 531 F.3d at 95 (Torruella, J., dissenting) (arguing majority misapplied third prong); see also *Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 628-29 (6th Cir. 2007) (Clay, J., dissenting) (advocating stricter reading of *Wickman*).

44. See *Wickman v. Nw. Nat'l Ins. Co.*, 908 F.2d 1077, 1088 (1st Cir. 1990) (emphasis added) (articulating test for objective prong).

45. See 531 F.3d at 94 (emphasis added) (summarizing holdings of case); see also *id.* at 95 (Torruella, J., dissenting) (suggesting majority relied on reasonable foreseeability analysis).

46. See *Eckelberry v. Reliastar Life Ins. Co.*, 469 F.3d 340, 344 (4th Cir. 2006) (dismissing distinction between high likelihood and reasonable foreseeability); *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104, 1110 (7th Cir. 1998) (inquiring whether injury is reasonably foreseeable); see also *Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 624-25 (6th Cir. 2007) (Boggs, J., concurring) (warning of misapplication of *Wickman* precedent).

47. See 531 F.3d at 95 (Torruella, J., dissenting) (arguing majority's holding creates exclusion where

*reasonably foreseeable* consequence of driving with a BAC over the legal limit, determinations of plan administrators will likely not be overturned under an arbitrary and capricious standard of review.<sup>48</sup> If insurance companies believe drunk drivers should be precluded from receiving benefits reserved for victims of accidents, then a better alternative would have been to create an explicit categorical exclusion for such behavior in their policies.<sup>49</sup> Proceeding in this manner would have allowed insurance companies to meet their objectives while simultaneously not precluding victims in different factual scenarios from receiving benefits.<sup>50</sup>

In *Wickman*, the First Circuit set forth a requirement that, where an objective analysis of the insured's expectations is used to determine whether an injury was accidental under an ERISA-governed plan, the expectation of incurring an injury similar to that which was actually incurred must be highly likely. The court strayed from this precedent in *Stamp v. Metropolitan Life Insurance Co.* by relying on a lesser standard of foreseeability and allowed plan administrators to make drunk driving accidents almost categorically non-accidental. *Wickman* set a high bar for precluding coverage, but did not prevent policy drafters from clarifying any ambiguity by including a specific drunk driving exclusion in their policies. After *Stamp*, however, such an exclusion may not even be necessary.

*Jeffrey E. Dolan*

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decendent's BAC is above legal limit); *see also supra* note 36 and accompanying text (addressing rejection of categorical approach to drunk driving incidents).

48. *See supra* notes 25-26 and accompanying text (addressing impact of deferential standard of review).

49. *See Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 630 (Clay, J., dissenting) (suggesting specific drunk driving exception in plans); *see also Wilbers, supra* note 25, at 491 (promoting inclusion of alcohol exclusion clause).

50. *See Lennon v. Metro. Life Ins. Co.*, 504 F.3d 617, 630 (Clay, J., dissenting) (warning of danger of eviscerating coverage where insured would expect to be covered); *see also Wilbers, supra* note 25, at 491 (discussing impact of inclusion of alcohol exclusion clause).