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Comment

THE VALIDITY OF TIME LIMITATIONS IN ACCIDENTAL MULTIPLE INDEMNITY DEATH PROVISIONS OF LIFE INSURANCE POLICIES

I. INTRODUCTION

Many accident and life insurance policies provide for the payment of multiple benefits, often double the face amount of the policy, if the insured dies as the result of an accident. These multiple benefit provisions are not intended to provide the insured's beneficiary with a windfall, but rather are meant to compensate for the in-

1. Breenan & Delgado, Death, Multiple Definitions or a Single Standard?, 54 S. CAL. L. REV. 1323 (1981); 1 C. J. APPLEMAN, INSURANCE LAW AND PRACTICE ¶ 612, at 128 (1981). "A provision in a life insurance policy, whereby the company agrees to pay twice the face of the contract in case of accidental death" is referred to as a double indemnity provision. WEBSTER'S NEW INTERNATIONAL DICTIONARY 678 (3d ed. 1976). "However, these benefits have been variously designated as "double indemnity," "additional indemnity," and "accidental death benefits . . . ." Strictly speaking, the term "double indemnity" is no longer applicable now that companies . . . are willing to issue amounts of accidental death benefits which may be a multiple of the policy's face . . . ." Note, Death Be Not Proud—The Demise of Double Indemnity Time Limitations, 23 DE PAUL L. REV. 854 n.1 (1974) (quoting D. GREGG, LIFE AND HEALTH INSURANCE HANDBOOK 269 (2d ed. 1964)).

2. 1 C. J. APPLEMAN, supra note 1. See also Breenan & Delgado, supra note 1, at 1330-31. Typically the policy language provides that the insurer will pay the insured's beneficiary an "accidental death benefit" equal to a multiple of the face amount of the policy providing that death results from an accidental bodily injury during a period in which the policy was in force. See, e.g., Kirk v. Financial Sec. Life Ins. Co., 54 Ill. App. 3d 192, 193, 369 N.E.2d 340, 341 (1977), rev'd, 75 Ill. 2d 367, 389 N.E.2d 144 (1978). In Kirk, the policy in question contained a multiple benefit indemnity provision which provided in pertinent part: "ACCIDENTAL DEATH BENEFIT. The company . . . will pay an Accidental Death Benefit . . . upon receipt . . . of due proof . . . which directly shows the accidental death occurred; (1) death resulted directly and solely from an accidental bodily injury, and (2) death occurred within ninety (90) days after the bodily injury . . . ." Id. at 193, 269 N.E.2d at 341. For a discussion of the court's decision in Kirk, see notes 148-70 and accompanying text infra.

3. Breenan & Delgado, supra note 1, at 1330 (citing R. KEETON, BASIC TEXT ON INSURANCE LAW ¶ 3.1(a), at 88 (1971)). Professor Keeton points out that insurance is an arrangement to provide for the wide disbursement of accidental losses. One aspect of this arrangement involves "the transfer of loss from an insured to an insurer by means of an obligation upon the insurer to confer an offsetting benefit." R. KEETON, supra, ¶ 3.1(a), at 88. The notion that insurance involves a "transfer of loss" or the receipt of an "offsetting benefit" implies that the benefit conferred should not be greater than the loss suffered. See id. This principle, known as the principle of indemnity, serves as the basis for all insurance contracts and helps to protect against the loss of the insured's property or life. Id. ¶ 3.1(b), at 88-90.

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creased psychological trauma which generally accompanies accidental death. Although the insurer is obligated to pay a multiple of the policy’s face amount in the event of accidental death, the insurer generally attempts to limit this potential for increased liability by including within the policy a time limitation clause, which provides that multiple benefits are payable only if the insured’s death occurs within a specified period following the accident.

Traditionally, these time limitation provisions have been upheld as valid and enforceable limitations on coverage. They have withstood challenges characterizing them as ambiguous, unreasonable, unfair to the insured, contrary to main provisions of the policy, and invalid as against public policy. In recent years, however, three jurisdictions have used various theories to refuse enforcement of these limitation provisions.


Courts generally allow insurers to impose limitations upon their liability so long as the limitations are not violative of statutory regulations or public policy. See 7 J. Appleman, Insurance Law and Practice § 4255, at 17 (1942).


12. See National Life & Accident Ins. Co. v. Edwards, 119 Cal. App. 326, 174 Cal. Rptr. 31 (1981) (time limitation not invalid as a matter of public policy, but trial court required to admit evidence on causation under the “process of nature” rule rather than rely on arbitrary time limitation); Karl v. New York Life Ins. Co., 139 N.J. Super. 318, 353 A.2d 564 (Law Div. 1976), aff’d, 154 N.J. Super. 182, 381 A.2d 62 (App. Div. 1977) (time limitation read as requiring only that there be “clear and convincing evidence” that the accident was the cause of death whenever the time...
It is the purpose of this comment to provide the reader with an understanding of the various interpretations given time limitation clauses in accidental, multiple indemnity death provisions as presented in cases in which death has occurred outside the time period specified by the limitation. This comment will first examine the view, currently supported by an overwhelming majority of jurisdictions, upholding such time limitations as valid and enforceable, thereby precluding multiple indemnity. Next, this comment will analyze the view espoused in \textit{Burne v. Franklin Life Insurance Co.}, in which the Pennsylvania Supreme Court held such limitations to be unenforceable as violative of public policy. Although no reported decision has totally adopted the \textit{Burne} rationale, one jurisdiction has adopted a limited interpretation of \textit{Burne}. Another jurisdiction, while refusing to adopt the public policy rationale of \textit{Burne}, has used another theory to defeat time limitation clauses. Finally, this comment will compare these various views and suggest a direction for future decisions.

\section{The Majority View: A Valid and Enforceable Limitation on Coverage}

Until the past decade, time limitations in accidental death insurance provisions were strictly construed in accordance with principles of general contract law so as to give full effect to the manifest intentions of the parties. This "strict construction" view was first articulated in \textit{Randall v. State Mutual Ins. Co.}, 112 Ga. App. 268, 145 S.E.2d 41 (1965) (strict application of general contract principles to deny recovery under an accident insurance provision even though insured's death

\begin{thebibliography}{19}
\bibitem{13} See notes 19-77 and accompanying text \textit{infra}.
\bibitem{14} 451 Pa. 218, 301 A.2d 799 (1973).
\bibitem{15} See notes 78-115 and accompanying text \textit{infra}.
\bibitem{18} For a discussion of the various views and a suggested direction for future decisions, see notes 225-51 and accompanying text \textit{infra}.
\bibitem{19} For a discussion of cases applying strict principles of contract law, see notes 20-77 and accompanying text \textit{infra}. See, e.g., \textit{Randall v. State Mutual Ins. Co.}, 112 Ga. App. 268, 145 S.E.2d 41 (1965) (strict application of general contract principles to deny recovery under an accident insurance provision even though insured's death

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lated in *Perry v. Provident Life Insurance & Investment Co.*20 *Perry* involved a claim by a beneficiary for additional death benefits under a policy with a ninety-day limitation period.21 When the insurer refused to pay the accidental death indemnity because death occurred outside the ninety-day period, the insured's beneficiary brought a breach of contract action alleging that the time limitation was "inconsistent with the general object and tenor of the policy and . . . [therefore] void."22 The Massachusetts Supreme Court held that no such inconsistency was apparent in the policy, which clearly limited the insurer's liability to cases within the time limitation.23 The court noted that its decision was merely the result of the parties' contract terms, which simply provided for coverage against certain accidents resulting in the insured's death within the specified time period.24 "The court pointed out that, despite the fact that the instant case came very near to being within the terms of the policy (one day), it was "not quite" within the terms of the policy and, therefore, coverage had to be denied."25 This strict application of general contract law in interpreting time limita-

occurred approximately 11 hours after the expiration of time limitation); Mullins v. National Casualty Co., 273 Ky. 686, 117 S.W.2d 928 (1938) (strict application of general contract principles to deny recovery under accident insurance provision even though insured's death occurred about five hours after expiration of 30-day time limitation period); Perry v. Provident Life Ins. & Inv. Co., 99 Mass. 162 (1868) (strict application of contract principles to deny recovery under accident insurance provision even though death occurred one day after expiration of a 90-day time limitation period). Generally, insurance policy terms are construed to give full effect to the intention of parties as set forth in the policy provided that intention is not contrary to public policy. See 13 J. Appleman, Insurance Law and Practice § 7381, at 1 (1943); W. Vance, supra note 5, § 136, at 808. Likewise, courts generally allow insurers to impose limitations upon their liability provided the limitations are not violative of statutory regulations or public policy. 7 J. Appleman, supra note 5, § 4255, at 17-18. However, it has often been stated that a "contract of insurance is to be read, in the event of any ambiguity in its language, in a light most strongly supporting the insured." Weissman v. Prashker, 405 Pa. 226, 233, 175 A.2d 63, 67 (1961). See also R. Keeton, supra note 3, § 6.3a, at 351.


21. Id. at 162-63. The policy in *Perry* provided for the payment if the insured "sustained personal injury caused by any accident within the meaning of this policy and such injuries shall occasion death within ninety days from the happening thereof . . . ." Id. at 163.

22. Id. It was stipulated that the insured had been injured at 9:00 a.m. on December 11, 1866 and that he died as a result of the accident at 9:00 a.m. on March 12, 1867. The insurer contended, and the court later determined, that the insured's death occurred 91 days after the date of the accident under a rule of computation which included the day of the accident. Id.

23. Id. In reference to the inconsistency alleged by the plaintiff, the court stated that "[n]o such inconsistency is apparent to the court. On the contrary, the policy clearly describes the cases in which the loss of life shall make the company responsible, and limits the liability to such cases." Id.

24. Id. at 164.

25. Id.
tions is indicative of the general approach which would be followed by the courts for many years.\footnote{26} Despite the short shrift given by the \textit{Perry} court to the beneficiary’s “tenor of the policy” argument,\footnote{27} this argument was the forerunner of the public policy arguments that would eventually be raised in many courts and be adopted by at least two.\footnote{28} Thus, the seed for future judicial recognition of a public policy argument had been planted as early as 1868.\footnote{29}

The strict construction approach articulated by the \textit{Perry} court was subsequently applied uniformly by the courts throughout the next century, routinely defeating claims made under accidental death provisions where the death of the insured occurred after the expiration of the policy’s time limitation provision.\footnote{30} These decisions gave only summary treatment to the various arguments articulated by the claimants for the nonenforcement of the time limitation provision.\footnote{31}

26. See generally Annot., 39 A.L.R. 3d 1311 (1971). This annotation collects cases that have involved questions of the validity or construction of time limitation provisions in accident insurance provisions. \textit{Id.} at 1312.

For a contrast to the strict construction approach of construing time limitations in accident insurance provisions, see \textit{Perry} v. Provident Life Ins. & Inv. Co., 103 Mass. 242, 243 (1869) (policy provision providing for weekly disability payments for non-fatal accidental injuries given broad construction so as to provide coverage where the insured died as a result of accidental injuries after the expiration of a 90-day time limitation). For a discussion of the first \textit{Perry} opinion, see notes 20-25 and accompanying text \textit{supra}. For a discussion of instances in which the courts have declined to strictly apply general contract principles in interpreting insurance policies, see \\textit{Hud-}

27. See 99 Mass. at 163. In rejecting the beneficiary’s argument, the court failed to explain why the limitation was not inconsistent with the tenor of the policy. Instead, the court merely stated that there was “[n]o such inconsistency apparent to the court.” \textit{Id.}


29. See, e.g., \textit{Karl} v. New York Life Ins. Co., 139 N.J. Super. 318, 353 A.2d 564 (Law Div. 1976), \textit{aff'd}, 154 N.J. Super. 182, 381 A.2d 62 (App. Div. 1977) (time limitation in accidental death benefit provision of life insurance policy should not be read literally to preclude recovery where death does not occur within specified time following the accident, but rather be read as requiring that there be “clear and convincing evidence” that the accident was the cause of death whenever time limitation is exceeded); \textit{Burne} v. Franklin Life Ins. Co., 451 Pa. 218, 301 A.2d 799 (1973) (policy provision that accidental death benefits would be payable only if death occurred within 90 days from the date of accident was contrary to public policy and unenforceable).


In time, however, the courts supplemented their decisions with discussions of the voluntary nature of the contract and the purposes behind the inclusion and enforcement of time limitations in accidental death provisions. In the much cited decision of Brown v. United States Casualty Co., although the insurer admitted that the accident was the sole cause of death, the insurer denied any liability under the policy because the insured's death occurred beyond the ninety-day period specified in the policy. In reaching its decision that the time limitation constituted a valid bar to recovery, the court advanced two theories that have been relied upon heavily by courts in succeeding cases. First, the court, citing Perry, advanced the rationale that the time limitation, as a provision in a contract, should be strictly interpreted in accordance with principles of contract law. The court opined that the terms of the policy were "reasonable, clear and unambiguous," and that the insurance policy was a "voluntary contract." The court determined that, because there was no question as to the terms of the provision and no evidence that it was a contract


33. 95 F. 935 (C.C.N.D. Cal. 1899). In Brown, the insured had sustained serious injuries when thrown from a dog cart and died after the expiration of the 90-day time limitation contained in his policy. As an immediate result of the accident the insured was wholly disabled and remained in that condition until his death, 106 days after the accident. Id.

34. Id. at 936. The policy provided in pertinent part that "if death shall result from such injuries alone, and within ninety days of the event causing said injuries, the company will pay $5,000 to Lucy P. Brown (his wife) . . . ." Id. (quoting policy language).

35. Id. at 936-37. For a discussion of the first of these theories, see notes 36-40 and accompanying text infra. For a discussion of the second of these theories, see notes 41-44 and accompanying text infra.

36. Id. at 936-37. For a discussion of the Perry court's articulation of this rationale, see notes 20-29 and accompanying text supra. See also 95 F. at 937 (citing Perry v. Provident Life Ins. & Inv. Co., 99 Mass. 162 (1868)).

37. 95 F. at 936-38. When a contract appears to be clear and unambiguous on its face, its meaning must be ascertained solely from the language used in the contract without resort to extrinsic evidence. See J. Calamari & J. Perillo, The Law of Contracts § 3-9, at 117 (2d ed. 1977).

38. Id. at 936-37. In stating that the insurance policy was a "voluntary contract," permitting the insurer to impose conditions on coverage, the court assumed that the insured was aware of the 90-day time limitation on coverage. Id. at 937. The court stated that "[t]he assured knew the character and extent of the obligations of the Company when he accepted the policy." Id. Accord Mullins v. National Casualty Co., 273 Ky. 686, 688, 117 S.W. 2d 928, 930 (1938); Hargrove v. Fidelity Mutual Life Ins. Co., 196 Pa. Super. 627, 630, 175 A.2d 912, 913 (1961); Douglas v. Southwestern Life Ins. Co., 374 S.W.2d 788, 793-94 (Tex. Civ. App. 1964).
of adhesion,\textsuperscript{39} the terms were to be "taken in their plain, ordinary and popular sense," which, therefore, resulted in a denial of recovery when death occurred outside the specified time period.\textsuperscript{40} The second theory articulated by the court in support of its conclusion that the time limitation was a valid limitation on recovery was based on the supposed purpose of the limitation.\textsuperscript{41} The court reasoned that time limitations were required in accidental death provisions because of the insurer's need to limit liability to a specified period in the calculation of premiums.\textsuperscript{42} The court also stated that "[ninety] days has been decided to be a fair length of time for the final result of an acci-

\textsuperscript{39} 95 F. at 936-37. The term "contract of adhesion" appears to have first been used in reference to insurance contracts. See Note, supra note 11, at 150 n.22 (citing Patterson, \textit{The Delivery of a Life-Insurance Policy}, 33 \textit{Harv. L. Rev.} 198 (1919)). Patterson stated that, "[F]reedom of contract rarely exists . . . . Life insurance contracts are contracts of 'adhesion.' The contract is drawn up by the insurer and the insured, who merely adheres to it, has little choice as to its terms." Patterson, supra, at 222.

\textsuperscript{40} 95 F. at 936-38. In reaching this determination, the court noted that nothing in the principles of common law or in the policy of statutory law called for the application of a different rule of interpretation. \textit{Id.} at 938. The court found its support for this determination in part in Article 1176 of the Code Napoleon which provided, "When an obligation has been contracted on condition that an event shall happen within a limited time, the condition is considered as broken when the time expired without the event having taken place." \textit{Id.} (quoting Code Napoleon art. 1176).

\textsuperscript{41} \textit{Id.} at 937-38.

\textsuperscript{42} \textit{Id.} at 937. The court made two key presumptions. The court stated, "It is to be presumed that insurance companies, in formulating policies, adopt the terms best suited to the purposes of all parties; [and] that in fixing the premium charged it is necessary to limit the liability to a stated period . . . ." \textit{Id.}
dent . . . [and would] protect the interests of both the insurer and insured."43 In addition, the court noted that, although the time limitation provision "may work injury in individual cases, it must be regarded in the same manner as the fundamental principles of government, seeking the greatest good to the greatest number."44 Thus, the Brown court, in upholding the time limitation as a valid and enforceable limitation on coverage, expanded the Perry rationale by supplementing the strict construction approach with considerations of the alleged purpose underlying the time limitation45 and the notion that the insurance policy constituted a "voluntary contract."46

In the years following Brown, other courts expanded its two pronged rationale, while continuing to enforce time limitations in accidental death provisions as valid limitations on coverage.47 In Mullins v. National Casualty Co.48 a strict construction of the insurance contract, together with a recognition of the needs of the insurance industry, prevented equitable considerations, overwhelmingly favorable to the insured, from defeating the time limitation. Although the insured in Mullins was struck by a street car, suffered severe skull fractures, developed traumatic pneumonia, was continually unconscious, and required "herculean" medical efforts to be kept alive, the insurer denied any liability under the policy because the insured died five hours after the expiration of the thirty-day time limitation period provided by the policy.49 In rejecting the beneficiary's contention that the provision was unconscionable and unreasonable,50 the court reasoned that the insurer's need to guard against re-

44. 95 F. at 937-38.
45. Id. For a discussion of these purposes as viewed by the Brown court, see notes 41-44 and accompanying text supra.
46. 95 F. at 937. For a discussion of a view concerning the "voluntary" nature of an insurance contract which is contra to that of the Brown court, see note 39 supra.
47. For cases which have expanded upon the two-pronged rationale of Brown see cases cited in notes 48, 54, 64 & 78 infra.
48. 273 Ky. 686, 117 S.W.2d 928 (1938).
49. Id. at 687-88, 117 S.W.2d at 929-30. The court pointed out that the insured's doctor testified that the insured never had a chance to recover and that the medical efforts merely prolonged his life. Further, it was noted that the insured was "practically pulseless" for the 24 hours preceding his death. Id. at 687, 117 S.W.2d at 929.
50. Id. at 687-88, 117 S.W.2d at 929-30. Cf. Crowe v. North Am. Accident Ins. Co., 96 S.W.2d 670, 671 (Tex. Civ. App. 1936) (30-day limitation held to be an un-
covery where there was a question of causation constituted a sound reason for limiting recovery to deaths occurring within a stipulated period. The court characterized the policy as a "voluntary contract" and concluded that the clear and unambiguous language imposed no liability on the insurer when death occurred after the time limitation had expired. The alleged necessity of including time limitations in accidental death provisions as a means of protecting insurers from dubious claims was also advanced by the Eighth Circuit in McKinney v. General Accident Fire & Life Assurance Co. Although, in the final analysis, the McKinney decision turned on the "voluntary contract—strict construction" rationale, the court indicated that a reasonable time for the occurrence of final result of an accident, but provision enforced because of the explicit nature of the policy's terms). In addition, the beneficiary contended that the policy insured against the "injury causing death," that the time of death was not the essence of the policy, and that the insured would have died but for the extraordinary medical efforts expended on his behalf from which the insurer should not profit. 686 Ky. at 687-88, 117 S.W.2d at 929-30.

51. 686 Ky. at 688, 117 S.W.2d at 930 (citing McKinney v. General Accident Fire & Life Assurance Co., 211 F. 951 (8th Cir. 1914)). The court also noted that it made no difference in the instant case that the time limitation was only 30 days in duration rather than 90 days as is usually prescribed. Id. at 688, 117 S.W.2d at 930. In further support of its determination that the time limitation provision was not "unconscionable or unreasonable" the court cited Clark v. Federal Life Ins. Co. for the proposition that the small premium received by the insurer for the policy justified the limited protection received by the insured. 273 Ky. at 689, 117 S.W.2d at 930 (citing Clark v. Federal Life Ins. Co., 193 N.C. 166, 136 S.E. 291, 293 (1927). Accord Bennett v. Life & Casualty Ins. Co., 60 Ga. App. 228, 3 S.E.2d 794 (1939); Hudson v. Mutual Ben. Health & Accident Ass'n, 184 S.W.2d 188, 189 (Mo. Ct. App. 1944).

52. 273 Ky. at 638, 117 S.W.2d at 930. In echoing the traditionally accepted "voluntary contract—strict construction" view, the court "presumed" that the insured "knew" the extent of coverage. Id. Similarly, commentators have pointed out that the clear language of a policy is not to be ignored even though its application in a given instance may prove to be harsh or not in accord with the purpose of the insured in obtaining the insurance. Moreover, such language must be followed, in the absence of fraud, regardless of whether the insured has read and understood the language. See 1 G. COUCH, CYCLOPEDIA OF INSURANCE LAW § 15:25, at 688 (2d ed. 1959). Further support for the court's presumption is found in the words of Justice Holmes in Lumber Underwriters v. Rife, where he stated that "[n]o rational theory of contract can be made that does not hold the assured to know the contents of the instrument to which he seeks to hold the other party." 237 U.S. 605, 609 (1915). For a discussion of the view that insurance policies are not voluntary contracts, but rather contracts of adhesion, see note 39 supra.

53. 273 Ky. at 688, 117 S.W.2d at 930.

54. 211 F. 951, 952-53 (8th Cir. 1914). In McKinney, the policy provided that the insurer's liability under the policy would be limited to accidental death occurring within 90 days from the date of the accident unless the accident was followed by "immediate, complete and continuous disability." Id. at 951-52. The plaintiff had admitted in her complaint that the death did not occur within 90 days of the accident and that the accident did not cause immediate, complete, and continuous disability. Id. at 953.

55. Id. at 964 (citing Imperial Fire Ins. Co. v. Coos County, 151 U.S. 452 (1894); Delaware Ins. Co. v. Greer, 120 F. 916 (8th Cir. 1903); Liverpool & London & Globe
stipulated period during which death must occur following an accidental injury was necessary in order to guard the insurer from being forced to pay claims where death was not the result of the accidental injury. The McKinney decision typifies the decisions of the early twentieth century in that it articulates policy justifications for the enforcement of these time limitations but ultimately supports its decision by reliance on a "voluntary contract—strict construction" approach.

Although the cases which followed the Brown, Mullins, and McKinney decisions resulted in very little modifications in the outcome of the decisions, with an increasing regularity the courts began at least to address the public policy arguments raised by the beneficiaries. In these decisions, the beneficiaries generally attempted to

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56. 211 F. at 952. In reaching its determination that the time limitation was a necessary restriction on coverage the court stated, "It is not difficult to prove by the mistaken opinions of witnesses that a death which occurs more than 90 days after an accident . . . was caused by that accident independently of all other causes, even when the truth is that it was caused by disease alone . . . ." Id. The court noted that the insurer had a "moral and legal right" to so limit the liability. Id.


58. For a discussion of McKinney, see notes 54-57 and accompanying text infra. For a discussion of Brown, see notes 33-47 and accompanying text infra. For a discussion of Mullins, see notes 48-53 and accompanying text infra.

59. The only change in the outcome of decisions in this period involved judicial interpretations of time limitation clauses in policies insuring against loss of body parts. Some courts construed these broadly to allow recovery for the insured. See, e.g., Life & Casualty Co. v. Ford, 172 Ark. 1098, 292 S.W. 389 (1927) (judgment was affirmed for the insured's beneficiary although the insured's foot was amputated after the 30-day time limitation on the ground that the insurance policy provision for payment for "loss of members" within 30 days of the accident did not apply to the loss of a single member); Westenhouser v. Life & Casualty Ins. Co., 27 So. 2d 391 (La. Ct. App. 1946) (judgment for insured's beneficiary although insured's amputation occurred outside the 30-day limitation period on the ground that the limitation merely required the "loss" of a member within the specified time period and the words "loss" and "total and permanent severance" [i.e., amputation] were not synonymous).

60. See, e.g., Mullins v. National Casualty Co., 273 Ky. 686, 117 S.W.2d 928 (1938). For a discussion of Mullins, see notes 48-53 and accompanying text supra. In Mullins, the beneficiary contended, inter alia, that enforcement of the clause would permit the insurer to profit by the extraordinary medical efforts taken to prolong the insured's life. Id. at 688, 117 S.W.2d at 929. Although the court did recognize that the case presented an "appealing situation" it nevertheless held the provision to be a valid and enforceable limitation on coverage without giving any major consideration to the beneficiary's public policy argument. Id.

61. See, e.g., Bennett v. Life & Casualty Ins. Co., 60 Ga. App. 228, 3 S.E.2d 794 (1939) (30-day limitation in accidental death provision alleged to be violative of public policy); Weickelbaum v. Commercial Travelers Mut. Accident Ass'n of Am., 129
characterize time limitation provisions as contractual terms which were "injurious to the public or [which] contravened some established interest of society," and, therefore, violative of public policy. Generally, the claimants argued that requiring the insured's death to occur within a specified time period following the accident would tend to encourage the beneficiary to deny the insured proper medical treatment in order to be certain that death would occur within the time limitation period. For example, in *Bennett v. Life & Casualty Insurance Co.*, the insurer refused to pay an accidental death indemnity on the ground that the insured's death had occurred eighty-six days after the accident, and therefore was outside the thirty-day limitation period specified in the policy. In holding for the insurer, the court stated that the time limitation provision was neither unreasonable nor against public policy and that it was not a wager. However, the court failed to explain how or why it reached these conclusions.


62. *L'Orange v. Medical Protective Co.*, 394 F.2d 57, 60 (6th Cir. 1968) (quoting *McCullough Transfer Co. v. Virginia Surety Co.*, 213 F.2d 440, 443 (6th Cir. 1954)) (cancellation of malpractice insurance for purposes of coercing and intimidating the insured as a witness in pending and future malpractice suits was injurious to the public and thus a violation of public policy). *Accord Porter v. Trustees of Cincinnati S. Ry.*, 96 Ohio St. 29, 117 N.E. 20 (1917). The Porter court stated that "public policy is that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good." *Id.* at 33-34, 117 N.E. at 21 (quoting 9 *Cyclopedia of Law and Procedure, Contracts* § 481 (1903)). *See also Ritter v. Mutual Life Ins. Co.*, 169 U.S. 139 (1898). In *Ritter*, Justice Harlan stated, "A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment." *Id.* at 154.


64. 60 Ga. App. 228, 3 S.E. 2d 794 (1939). In *Bennett*, the insured was covered under a life insurance policy which insured against death resulting from accidental injury, providing death occurred within 30 days from the date of accident. *Id.* The policy provided in pertinent part "that no indemnity will be paid as the result of or for injuries . . . where death . . . does not occur within thirty days from the date of the accident." *Id.* (quoting policy language).

65. *Id.* at 228, 3 S.E.2d at 795.

66. *Id.* The court also concluded from an analysis of the policy language that the premiums charged in the policy were adjusted with respect to the limitations provided therein. *Id.* at 228, 3 S.E.2d at 794.

67. *See id.* at 228, 3 S.E.2d at 794-95.
Similarly, in *Weickelbaum v. Commercial Travelers Mutual Accident Association of America*, the beneficiary unsuccessfully contended that a ninety-day limitation clause was inoperative as contrary to public policy because it provided for "a profit for failing to heal the injured." In granting the insurer's motion for summary judgment, the court merely cited other decisions which had summarily dismissed this public policy argument, and concluded that the ninety-day limitation was not repugnant to public policy.

Thus, from the late nineteenth century through the mid-twentieth century, a decisional evolution took place in the courts' justifications as to the validity and enforceability of time limitation clauses in accidental death provisions. In the late nineteenth century, these provisions were analyzed strictly in accordance with general contract principles. In time, the "strict construction" approach was fortified with the notion that insurance policies were "voluntary contracts," and was later supplemented with considerations of the purposes underlying the creation and enforcement of the time limitation provisions. Finally, by the mid-twentieth century, the courts began to recognize the beneficiaries' public policy arguments, but avoided any real analysis of these arguments. It was not until *Burne v. Franklin Life Insurance Co.*, that a court addressed these arguments in a straightforward fashion.


69. 129 N.Y.S.2d at 612.

70. *See id.* at 613 (citing Brown v. United States Casualty Co., 95 F. 935 (C.C.N.D. Cal. 1899); Bennett v. Life and Casualty Ins. Co., 60 Ga. App. 228, 3 S.E.2d 794 (1939); Mullins v. National Casualty Co., 273 Ky. 686, 117 S.W.2d 928 (1938)).


72. For a discussion of this interpretational evolution, see notes 19-71 and accompanying text *supra*.

73. For a discussion of this strict contract analysis, see notes 19-31 and accompanying text *supra*.

74. For a discussion of this fortification of the strict contract analysis, see notes 32-57 and accompanying text *supra*.

75. For a discussion of this supplementation of the strict contract analysis, see notes 32-57 and accompanying text *supra*.

76. For a discussion of decisions where the courts begin to recognize the beneficiaries' public policy arguments, see notes 58-71 and accompanying text *supra*.

77. 451 Pa. 218, 301 A.2d 799 (1973). For a discussion of the Pennsylvania Supreme Court's opinion in *Burne*, see notes 78-115 and accompanying text *infra*. For a discussion of how other jurisdictions have viewed the rationale espoused in *Burne*, see notes 118-224 and accompanying text *infra*. 
III. **Burne v. Franklin Life Insurance and Its Progeny: A Turn From Tradition**

### A. The Burne Rationale

In the leading Pennsylvania decision ruling on the validity of time limitations in accidental death insurance provisions, *Burne v. Franklin Life Insurance Co.*, the Pennsylvania Supreme Court held that such a provision was unenforceable as contrary to public policy and not applicable when there was no dispute as to the cause of death. In *Burne*, the insured was rendered a “complete and hopeless invalid” as a result of being struck by an automobile while crossing a street. The insured required the most sophisticated medical technology merely to be kept “medically alive” for a four and one half year period extending from the date of the accident until his eventual death. The insurer, under a life insurance policy containing a double indemnity provision conditioned on death resulting from accidental means within ninety days from the date of the accident, paid only the face amount of the policy, although it conceded that the injuries sustained were the direct and sole cause of the insured's death. The beneficiary brought suit against the insurer for the recovery of the accidental benefits alleging that the time limitation was

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79. 451 Pa. at 221-25, 301 A.2d at 801-03 (1973). See generally Note, supra note 1; Note, supra note 5.
80. 451 Pa. at 220-22, 301 A.2d at 800-01. The court pointed out that [f]rom the moment of the accident until his death, Mr. Burne's existence was that of a complete and hopeless invalid, unable to speak, subject to seizures and requiring constant nursing and medical care. Vast sums of money were expended by appellant, and the most sophisticated medical techniques utilized, merely to keep her husband medically alive, albeit in a vegetative state, for 4½ years. *Id.* at 220, 301 A.2d at 801 (footnote omitted).
81. *Id.*
82. *Id.* at 221, 301 A.2d at 801. In 1949 the defendant-insurer issued to the insured a life insurance policy with a face value of $15,000 and containing a double indemnity provision for the payment of an additional $15,000 if the insured's death resulted solely from accidental means. *Id.* at 220, 301 A.2d at 800. The policy also provided that accidental double indemnity death benefits were payable only if “such death occurred . . . within ninety days from the date of the accident.” *Id.* at 221, 301 A.2d at 801 (quoting policy language).
83. *Id.* at 220-21, 301 A.2d at 801. The court noted that, during this 4½ year period, the insurance carrier suffered no prejudice by the retention of the double indemnity death proceeds, and that it appeared that the insurance carrier actually enjoyed an economic benefit by having the use of the funds during the 4½-year period rather than having to pay them out at or near the time of the accident. *Id.* at 220 n.1, 301 A.2d at 801 n.1. The premium paid by the insured for the double indemnity coverage amounted to $31.05 per year, whereas the annual premium for the basic coverage was $467.55. *Id.* at 229 n.1, 301 A.2d at 805 n.1 (Pomeroy, J., dissenting).
invalid and unenforceable as contrary to public policy. In support of its ruling for the beneficiary, the Pennsylvania Supreme Court directly addressed the public policy arguments that mitigate against the validity of time limitation clauses. In discussing its "strong policy reasons" for holding in favor of the beneficiary in *Burne*, the court pointed out that the leading cases upholding this type of time limitation in accidental death provisions predated the modern advancements in medical science that have enabled medical professionals to become adept at delaying death for an indeterminate time. Apparently, the court concluded that such advancements make the time limitation provisions obsolete. Also, the court noted that it was offended by the "gruesome paradox" created by the allowance of full double indemnity recovery for the death of an insured who dies instantaneously or within the time limitation specified, and the disallowance of recovery for the death of an insured who has endured the agony and expense of a long illness. On this basis, the court found that predicating the insurer's liability on whether death occurred before or after a fixed date was offensive to the basic concepts and fundamental objectives of life insurance, and was therefore, unenforceable as contrary to public policy. Finally, the court stated that any such time limitation might adversely affect the insured's opportu-

84. Id. at 221, 301 A.2d at 801. In addition, the beneficiary alleged that "the policy gave undue prominence to the accidental death provision without corresponding prominence to the ninety-day limitation period," in contravention of § 617(A)(4) of the Insurance Company Law of 1921. [Act of May 17, 1921, P.L. 682, art. VI, § 617 (codified as amended at PA. STAT. ANN. tit. 40, § 752 (A)(4) (Purdon 1971)]. 451 Pa. at 221 n.2, 301 A.2d at 801 n.2. The court found it unnecessary to rule on this claim in light of its holding that the time limitation clause was invalid as contrary to public policy. Id.

85. For a concise statement of this ruling, see text accompanying notes 79 & 112-13 *supra*.

86. 451 Pa. at 220-26, 301 A.2d at 801-03. For a discussion of the court's analysis of the beneficiary's public policy arguments, see notes 87-93 and accompanying text *infra*. The court also alluded to the ethical and legal issues surrounding euthanasia and potential controversies which could possibly develop with respect to time limitations in accident insurance policies. Id. at 222 n.3, 301 A.2d at 801 n.3. The court pointed out that it was the purpose of its opinion "not to introduce this controversy into the area of life insurance policies but to forestall it." Id. For a general discussion of the legal and ethical controversy surrounding euthanasia, see Silving, *Euthanasia: A Study in Comparative Criminal Law*, 103 U. PA. L. REV. 350 (1954); Symposium—The Medical, Moral, and Legal Implications of Recent Medical Advances, 13 VILL. L. REV. 732 (1968).

87. 451 Pa. at 221-22, 301 A.2d at 801.

88. See *id*.

89. *Id.* at 222, 301 A.2d at 801-02.

90. *Id.*, 301 A.2d at 802.

91. *Id.* at 223, 301 A.2d at 802.
nity to receive optimal medical care, and might further aggravate the mental anguish which generally accompanies such accidents. However, in discussing these policy considerations the court failed to specify the degree of weight that each should be accorded. The effect was to leave to speculation both the exact perimeters of the decision and what the outcome would be if the Burne rationale were applied in a different factual context.

Quite apart from a pure public policy basis, the court reasoned that the ninety-day time limitation possessed "no persuasive decisional support." The court pointed out that the leading cases interpreting the ninety-day limitation were actually resolutions of situations in which the accidental injury alone was not clearly fatal or in which there was some problem with causation. These problems, the court concluded, did not exist in Burne. In distinguishing, but not explicitly overruling these cases, the Burne court cited Sidebotham v. Metropolitan Life Insurance Co. as being illustrative of its earlier decisions. In Sidebothom, the insured had suffered severe injuries from

92. Id. The court pointed out that the decisions as to what medical treatment should be accorded an accident victim should be unhampered by considerations which might have a tendency to encourage something less than the maximum medical care on penalty of financial loss if such care succeeds in extending life beyond the 90th day. All such factors should, whenever possible, be removed from the antiseptic halls of the hospital. Rejection of the arbitrary ninety day provision does exactly that.

93. 451 Pa. at 222, 301 A.2d at 802. The court opined that such mental anguish should not be aggravated with concerns of whether the moment of death will permit or defeat a double indemnity claim. Id.

94. See id. at 220-26, 301 A.2d at 801-03. See also Note, supra note 11, at 155.

95. Pennsylvania eliminated this problem, at least with respect to the issuance of new policies, by enacting regulations which flatly forbid the use of time limitations in certain types of policies. See 31 PA. ADMIN. CODE §§ 89.43, 89.61(h), 89.80(e), 89.97(d), 133.12 (Shepard’s 1978). For an in-depth discussion of events leading to the adoption of these new regulations, see note 116 and accompanying text infra.

96. 451 Pa. at 223, 301 A.2d at 802. For a discussion of the court’s analysis of earlier judicial interpretations of the 90-day provision, see notes 97-108 and accompanying text infra.

97. 451 Pa. at 223, 301 A.2d at 802. In the opinion of the court, earlier cases had viewed the limitation as an arbitrary period designed to govern cases where there was uncertainty as to causation and were based on the assumption that if death was in fact the result of an accidental injury it would manifest itself within ninety days.

98. Id. at 224, 301 A.2d at 802. For a discussion of how the Burne court distinguished but did not overrule these prior decisions, see notes 99-108 and accompanying text infra.


100. 451 Pa. at 224, 301 A.2d at 802. The supreme court pointed out that the trial court, in granting the insurer’s motion for summary judgment, apparently relied solely upon Sidebothom. Id. at 223, 301 A.2d at 802.
two different exposures to carbon monoxide and then sustained further injuries during a fall from his hospital bed while recovering from the carbon monoxide injuries.\(^{101}\) Because only the last accident (the fall) was within ninety days of the insured's death, and because it could not be established that this accident was the sole cause of the insured's death, the *Sidebothom* court held that there should be no recovery of accidental double indemnity death benefits under a policy which required that death result solely from accidental bodily injuries sustained within ninety days from the date of the accident.\(^ {102}\) The *Burne* court distinguished *Sidebothom* and the early interpretations of the limitation in two crucial ways.\(^ {103}\) First, in *Sidebothom*, the injury was not the type that with any degree of certainty could be regarded as fatal, whereas in *Burne* it was clear from the outset that the insured would eventually die as a result of the accident.\(^ {104}\) Secondly, there existed "distinct causation problems" in *Sidebothom* which were not present in *Burne*, where it was conceded that the injuries sustained in the accident were the sole cause of death.\(^ {105}\) After making these factual distinctions, the court relied upon the "well settled" rule that a

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101. 339 Pa. at 126, 14 A.2d at 131. The insured in *Sidebothom* was covered under seven industrial life insurance policies, each containing provisions for the payment of double indemnity benefits in the event of an accidental death of the insured. *Id.* at 125, 14 A.2d at 131. The accidental death benefit provisions provided in pertinent part as follows:

Upon the receipt of due proof that the Insured . . . has sustained . . . bodily injuries, solely through external violent and accidental means, resulting, directly and independently of all other causes, in the death of the Insured within ninety days from the date of such bodily injuries . . . the company will pay in addition to any other sums due under this policy . . . an Accidental Death Benefit equal to the face amount of the insurance then payable at death.

*Id.* at 126, 14 A.2d at 131 (quoting policy language).

102. 339 Pa. at 127, 14 A.2d at 132. For a statement of the precise policy language interpreted by the court, see note 101 supra.

103. 451 Pa. at 224, 301 A.2d at 802. For a discussion of the basis on which the *Burne* court distinguished *Sidebothom* and other cases upholding the provisions as valid and enforceable limitations on coverage, see notes 104-05 and accompanying text infra.

104. 451 Pa. at 224, 301 A.2d at 802. In *Sidebothom* it was not clear that the insured would die as a result of his carbon monoxide poisoning. See 339 Pa. at 126, 14 A.2d at 131.

105. 451 Pa. at 224, 301 A.2d at 802. The *Sidebothom* court indicated these causation problems when it quoted the trial court's statement that "[a]s the pleading stands it cannot be said that the last accident was the cause of death independent of all other causes." 339 Pa. at 127, 14 A.2d at 131-32 (quoting lower court). Although there were no Pennsylvania decisions upholding such provisions in cases in which there was no dispute as to causation, the court did not treat at least three decisions in other jurisdictions where causation was not in dispute. See Bennett v. Life & Casualty Co., 60 Ga. App. 228, 3 S.E.2d 794 (1939); Mullins v. National Casualty Co., 273 Ky. 686, 117 S.W.2d 928 (1938); Douglas v. Southwestern Life Ins. Co., 374 S.W.2d 788 (Tex. Civ. App. 1964). For a discussion of *Bennett*, see notes 64-67 and accompanying text.
“provision in an insurance policy [which] cannot reasonably be applied to a certain factual situation . . . should be disregarded,” and concluded that the ninety-day time limitation provision should not apply in cases like Burne, in which no dispute exists as to the cause of death. The court observed further “that to enforce the ninety-day condition would serve only as a trap to the assured or as a means of escape for the insurer.”

Given the lengths to which the court went to distinguish prior case law, it appears that the court did not intend its holding to be interpreted to mean that all time limitations were void; otherwise, the

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106. 451 Pa. at 224, 301 A.2d at 802. The Burne court found support for its characterization of this rule as “well settled” in the case of Grandin v. Rochester German Ins. Co., 107 Pa. 26 (1884). In Grandin, the court refused to mechanically apply a forfeiture insurance provision:

It will thus be seen that where the reason of a condition does not apply this court has refused to apply it. Other instances of the same kind might be cited where necessary. We are not to suppose that conditions involving forfeitures are introduced into policies by insurance companies, which are purely arbitrary and without reason, merely as a trap to the assured or as a means of escape for the company in case of loss. When therefore a general condition has no application to a particular policy; where the reason which alone gives it force is out of the case, the condition itself drops out with it.

Id. at 37.

At least one commentator has concluded that the court’s reliance upon Grandin was not well founded. See Note, supra note 11, at 163. That commentator states that Grandin was no real authority for the application of such a rule in Burne since the court in Grandin held the disputed provision inapplicable after it had determined the intent of the parties at the time they entered the bargain. In Burne, the intent of the parties was not at issue. Thus, it appears that Burne manufactured this “sound rule;” a more obvious example of creative use of precedent would be difficult to find.

Id. (footnotes omitted).

107. 451 Pa. at 225, 301 A.2d at 803. As demonstrative of this principle the court cited cases interpreting insurance policy provisions, which by their terms precluded recovery for loss of limbs unless the loss occurred within a specified time period following the accident. Id. In these cases, claimants were able to recover despite the fact that the actual amputation occurred after the expiration of the period because they produced medical testimony which established that it was obvious before the period’s expiration that the insured would need the amputation. Id. (citing Westenhouer v. Life & Casualty Ins. Co., 27 So. 2d 391 (La. Ct. App. 1946) (recovery permitted where insured’s right leg amputated after the expiration of a time limitation which required amputation within 30 days from date of accident); Interstate Life & Accident Co. v. Waters, 213 Miss. 265, 56 So. 2d 493 (1952) (recovery permitted despite policy limitation which required severance within 30 days from date of accident; amputation was delayed three months, but it was apparent within one week that leg would have to be amputated)).

The Burne court pointed out that the beneficiary was prepared to establish through medical testimony that physicians knew within the 90-day period that the insured would die as a result of his accident. Id. at 225, 301 A.2d at 803.

108. Id. at 235, 301 A.2d at 803.
conclusion and factual distinctions made by the court would be mere verbiage.\(^\text{109}\) Thus, in addition to resulting in an outcome which runs contrary to that of the majority of jurisdictions,\(^\text{110}\) the \textit{Burne} decision is also problematic because it is subject to several interpretations.\(^\text{111}\) Read broadly, \textit{Burne} could stand for the proposition that all time limitations in accidental death provisions of accident and life insurance policies are contrary to public policy and unenforceable.\(^\text{112}\) Under a limited interpretation of \textit{Burne}, however, such time limitations might be found unenforceable only when there exists no dispute that the accident was the cause of death.\(^\text{113}\)

It appears, therefore, that if the establishment of causation is conceded by the insurer, the time limitation will not be enforced under either of the possible interpretations of \textit{Burne}. However, under the limited interpretation of \textit{Burne}, the time limitation provision may be applied in cases where the record establishes a dispute as to the cause of death. Such an interpretation is supported by the court’s efforts to distinguish, rather than disregard, prior leading decisions on the grounds that they presented causation questions not present in \textit{Burne},\(^\text{114}\) and involved injuries which could not with any degree of

\(^{109}\) See 451 Pa. at 238-41, 301 A.2d at 805-11 (Pomeroy, J., dissenting). In rejecting the majority’s holding, Justice Pomeroy opined that the holding was “not only without precedent in judicial decisions, but . . . also without justification in fact.” Id. at 239, 301 A.2d at 810 (Pomeroy, J., dissenting). Justice Pomeroy indicated that the majority overlooked the intent of the parties and violated fundamental principles of contract law. Id. at 238-41, 301 A.2d at 805-11 (Pomeroy, J., dissenting).

\(^{110}\) Under the majority view time limitations in accidental death provisions are upheld as valid and enforceable limitations on coverage. See 1C J. APPLEMAN, supra note 1, § 612, at 128-30. See also Note, supra note 5, at 600. See generally Annot. 39 A.L.R. 3d 1311, 1311-13 (1971).

\(^{111}\) See 451 Pa. at 220-27, 301 A.2d at 801-04. See also id. at 234, 301 A.2d at 807 (Pomeroy, J., dissenting). See generally Note, supra note 5, at 603-04. For a discussion of this interpretational problem, see notes 112-15 and accompanying text infra.

\(^{112}\) See 451 Pa. at 220-24, 301 A.2d at 801-02. See also id. at 228-41, 301 A.2d at 805-11 (Pomeroy, J., dissenting).

\(^{113}\) See id. at 225, 301 A.2d at 803. See also id. at 228-41, 401 A.2d at 805-11 (Pomeroy, J., dissenting).

\(^{114}\) For a discussion of the Pennsylvania Supreme Court’s distinction of its earlier \textit{Sidebotham} decision, see notes 96-108 and accompanying text supra. Justice Pomeroy pointed out what he perceived as a flaw in the majority’s reasoning:

Were the first interpretation intended (all 90-day provisions void), then it would be idle to distinguish a case in which the 90 day provision appeared [and was upheld as valid and enforceable]; the case would simply be overruled. It would appear to follow that not all such clauses are meant to be stricken, and that the validity of such a provision thus depends entirely upon whether the insured . . . died beyond the time limitation and without "some possible uncertainty" as to causation.

451 Pa. at 234-35, 301 A.2d at 807-08 (Pomeroy, J., dissenting).
certainty be regarded as fatal at the time of the accident.¹¹⁵

No reported Pennsylvania decision has considered the scope of the Burne rationale in the context of an action for the recovery of insurance benefits. However, the Pennsylvania Insurance Department, in 1978, principally relying upon Burne, adopted regulations which prohibit the requirement that death occur within any specific time period in any provision for accidental death benefits.¹¹⁶ These regulations lend credence to the position that Burne is subject to a

¹¹⁵. For a discussion of the Burne court's factual distinguishing of earlier cases, see notes 96-108 and accompanying text supra.

¹¹⁶. See 31 PA. ADMIN. CODE §§ 89.43, 89.61(h), 89.80(e), 89.97(d), 133.12 (Shepard's 1978). These regulations provide that "[n]o provision for accidental death benefit may contain any requirement that death must occur within any specific time period." Id. For a discussion of the events leading up to the adoption of these regulations, see Breenan & Delgado, supra note 1, at 1331 n.41. In addition to serving as the basis for these regulations, Burne has been relied upon in Pennsylvania in several other contexts.

Shortly after the Burne decision, the Pennsylvania Attorney General issued an opinion concerning the effect that the Burne decision should have on the enforcement of Pennsylvania law with respect to the type of language that the Insurance Commissioner should consider as acceptable in accidental death benefit clauses. See Time Limitations in Accidental Benefit Policies, 22 Op. Att'y Gen. 74 (1974), reprintedin 65 Pa. D. & C.2d 17 (1974). In his opinion the Attorney General stated that by permitting double indemnification after four and one-half years, the Burne court implicitly held that any time period limitation restricting recovery of accidental death benefits where death is caused by accident is invalid. We are, therefore, of the opinion that any time limitation, regardless of how long, might be arbitrary and capricious and thus void as against public policy... All time limitations in regard to accidental death clauses in all lines of insurance can be considered void as contrary to public policy. Insurance policies that have been approved by the Insurance Department containing like clauses may be disapproved to exclude such provisions. By the same token, all new policies that are submitted to the Insurance Department for its approval may be disapproved if they contain such a clause. Id. at 24-25 (emphasis added).

On two other occasions, authoritative pronouncements have been made concerning the scope of the Burne opinion. The first involved an attempt by an insurance carrier to have several insurance riders approved by the Pennsylvania Insurance Commissioner. See INA Life Ins. Co. v. Commonwealth Ins. Dep't, 31 Pa. Commw. 416, 376 A.2d 670 (1977). In INA, life insurance riders had been rejected by the Insurance Commissioner on the purported authority of Burne and Attorney General Opinion No. 22. Id. at 418-19, 376 A.2d at 672. Upon receipt of the rejection, INA sought review of the Commissioner's decision in Commonwealth Court. Id. at 419, 376 A.2d at 672. Although this decision did not involve a beneficiary attempting to recover under such a policy, the opinion did squarely address the issue of whether all time limitations were void as against public policy. See id. at 421-24, 376 A.2d at 673-74. In affirming the Commissioner's decision that any time limitation in an accidental death benefit provision violated public policy as pronounced in Burne, the court stated that the Burne rationale extended well beyond its factual perimeters. See id. at 423, 376 A.2d at 674. In addition, the court rejected INA's contention that such a time limitation was necessary to protect insurers from having to pay benefits on doubtful claims. Id. In its rejection, the court stated that INA's contention "ignores the fact that in all instances when a claim is filed, it is the claimant's burden to prove
broad interpretation, however, the *Burne* decision has been read in a more limited manner in other jurisdictions.\footnote{117}

**B. The Rejection of the *Burne* Rationale**

In the ten years since *Burne*, all but two jurisdictions\footnote{118} which have considered the validity of time limitations in accidental death benefit provisions have upheld the limitations as valid and enforceable limitations on coverage.\footnote{119} These decisions, although traditional in result, have addressed the public policy arguments in a more straightforward fashion than did decisions prior to *Burne*.\footnote{120} The first reported decision to address the public policy argument after the Pennsylvania Supreme Court’s decision in *Burne* was *Rhoades v. Equitable Life Assurance Society of the United States*.\footnote{121} In *Rhoades*, the Ohio Supreme Court

entitlement to benefits. If the passage of time obscures the cause of death, the claimant’s burden becomes all the heavier.” *Id.*

Secondly, in 1978, the Insurance Department adopted regulations which prohibit the requirement that death must occur within any specific time period in any provision for accidental death benefits. See 31 PA. ADMIN. CODE §§ 89.43, 89.61(h), 89.80(e), 89.97(d), 133.12 (Shepard’s 1978).


119. *See, e.g., Kirk v. Financial Sec. Life Ins. Co., 75 Ill. 2d 367, 389 N.E.2d 144 (1978), rev’d, 54 Ill. App. 3d 192, 369 N.E.2d 340 (1977); Fontenot v. New York Life Ins. Co., 357 So. 2d 1185 (La. Ct. App. 1978); Rhoades v. Equitable Life Assurance Soc’y of the U.S., 54 Ohio St. 2d 45, 374 N.E. 2d 643 (1978). For a discussion of Kirk, see notes 148-70 and accompanying text infra. For a discussion of *Fontenot*, see notes 133-47 and accompanying text infra. For a discussion of *Rhoades*, see notes 121-32 and accompanying text infra. For a summary of these opinions, see notes 168-70 and accompanying text. *See also Hardee v. Kilpatrick Life Ins. Co., 373 So. 2d 982 (La. Ct. App. 1979). In *Hardee*, the court affirmed a summary judgment in favor of the insurer where the accidental death policy required that the insured die within 90 days from the date of the accident; the insured died 111 days after an industrial accident. *Id.* Although the opinion in *Hardee* dealt primarily with procedural questions concerning summary judgment, the court did cite its prior opinion in *Fontenot* for the proposition that the 90-day clause was not contrary to public policy. *See id.* at 985 (citing Fontenot v. New York Life Ins. Co., 357 So. 2d 1185 (La. Ct. App. 1978)).

120. For exemplary *pre-Burne* cases, see McKinney v. General Accident Fire & Life Assurance Co., 211 F. 951 (8th Cir. 1914); Brown v. United States Casualty Co., 95 F. 935 (C.C.N.D. Cal. 1899); Mullins v. National Casualty Co., 273 Ky. 686, 117 S.W.2d 928 (1938). For a discussion of these decisions and the decisional approaches employed, see notes 33-57 and accompanying text *supra*. *See also 1C J. Appleman, supra* note 1, § 612, at 128-31 (applying a pure contract construction analysis to time limitations); Annot., 39 A.L.R.3d 1311, 1320 (1971) (providing state-by-state list of cases upholding time limitation provisions).

121. 54 Ohio St. 2d 45, 374 N.E.2d 643 (1978).
expressly considered and rejected the *Burne* public policy arguments, basing its decision on the intent of the parties and the principle of freedom of contract.\(^{122}\) The insured in *Rhoades* was covered under an accidental death policy with a ninety-day limitation provision.\(^{123}\) As the result of injuries sustained in an automobile accident, the insured was intermittently hospitalized, and eventually died 116 days after the date of the accident.\(^{124}\) The insurer claimed that the insured's death was not the direct independent result of the accident,\(^{125}\) and that the insured did not die within ninety days after the accident as required by the policy.\(^{126}\) When the action finally came before the Ohio Supreme Court,\(^{127}\) the Court held that the time limitation was not void as against public policy and would not be against public policy even if there were no real question concerning proximate causation.\(^{128}\) The court stated that it was the intent of the parties that the beneficiary be compensated only if the insured died within ninety days of the accident.\(^{129}\) Further, the court noted that it could not rewrite an insurance contract so as to provide coverage which it might consider equitable unless the contract could be deemed contrary to public policy.\(^{130}\) The court concluded that "to hold the

\(^{122}\) *Id.* at 47-48, 374 N.E.2d at 645.

\(^{123}\) *Id.* at 45, 374 N.E.2d at 644.

\(^{124}\) *Id.* at 45-46, 374 N.E.2d at 644. On September 13, 1974, the insured was injured and hospitalized until her release on October 11, 1974 (29 days). *Id.* at 46, 374 N.E.2d at 644. On December 21, 1974 the insured was readmitted to the hospital, but was discharged on January 5, 1975. The insured died 2 days later, 116 days after the accident. *Id.* The cause of death was recorded as "cardiac arrest; acute myocardial infarction (recent)."

\(^{125}\) *Id.* The parties had stipulated that "[a] substantial question of fact exists as to whether or not Mr. Rhoades' death was the result, directly or independently of all other causes, of injuries caused directly and exclusively by external, violent and purely accidental means." *Id.*

\(^{126}\) *Id.* For a discussion of the facts surrounding the insured's death, see note 124 and accompanying text supra.

\(^{127}\) After making a preliminary determination that there existed a substantial question as to whether or not the insured's death was the result of the accident, the trial court nevertheless granted the insurer's motion for summary judgment on the ground that the indemnification provision was effective only if the insured died within 90 days of the accident. 54 Ohio St. 2d at 46, 374 N.E.2d at 644. The Ohio Court of Appeals reversed this judgment and remanded the action, holding that the time limitation was contrary to public policy and unenforceable. *Id.* The action came before the Ohio Supreme Court upon a motion to certify the record. *Id.*

\(^{128}\) *Id.* at 48 n.3, 374 N.E.2d at 645 n.3. The court stated that it need not distinguish the facts of *Rhoades* from those of *Burne* concerning causation, since in its view, time limitation provisions were not against public policy. *Id.* For a discussion of the facts of *Burne*, see notes 80-83 and accompanying text supra.

\(^{129}\) 54 Ohio St. 2d at 47, 374 N.E.2d at 645. The court noted that, having determined the intent of the parties, any death occurring outside the limited time period, although accidentally caused, was not compensable. *Id.*

\(^{130}\) *Id.* at 48, 374 N.E.2d at 645.
ninety day limitation provision void as against public policy would constitute an unwarranted infringement upon the right of freedom to contract.\textsuperscript{131} Thus, the \textit{Rhoades} court addressed the public policy argument, but chose to dispose of this argument on the basis of the contract rationale espoused in earlier decisions.\textsuperscript{132}

A second decision explicitly rejecting the \textit{Burne} rationale was \textit{Fontenot v. New York Life Insurance Co.}\textsuperscript{133} In \textit{Fontenot}, the insured's policy called for the payment of accidental death benefits if the insured's death occurred within ninety days from the date of an accident.\textsuperscript{134} The insured accidentally sustained severe bodily injuries in a motor vehicle accident and required continuous hospitalization from the date of the accident until his death 105 days later.\textsuperscript{135} The insurer paid only the face amount of the policy, claiming that the additional accidental death benefits were not due because death did not occur within the ninety-day limitation period.\textsuperscript{136} On appeal to the Court of Appeal of Louisiana,\textsuperscript{137} the court explicitly rejected the beneficiary's reliance on \textit{Burne},\textsuperscript{138} and held that the ninety-day provision was a valid and enforceable limitation on coverage, and was not violative of public policy.\textsuperscript{139} In reaching this decision, the court recognized that

\textsuperscript{131. Id. The court pointed out that the claim of liability espoused by the plaintiff was not within the intent of the parties to the insurance contract and that the court knew "of no public policy justification for ignoring the language of a contract in order to impose liability on a defendant insurer for a loss not contemplated by the contract." Id. (quoting Shelton v. Equitable Life Assurance Soc'y of the U.S., 28 Ill. App. 2d 461, 469, 171 N.E.2d 787, 797 (1961)). In reaching this conclusion, the court stated that the proper test for determining whether a provision in an insurance contract is void as against public policy is whether the provision's purpose is "injurious to the public or contravenes some established interest of society." Id. (quoting L'Orange v. Medical Protective Co., 394 F.2d 57, 60 (6th Cir. 1968)). As viewed by the \textit{Rhoades} court, the purpose of this time limitation was to eliminate disputes concerning the proximate cause of death. 54 Ohio St. 2d at 48, 374 N.E.2d at 645. Finding this purpose to be neither injurious to the public nor in contravention of any societal interest, the court concluded that the provision served a "legitimate societal function" and was therefore not void as against public policy. Id. (citing Brown v. United States Casualty Co., 95 F. 935 (C.C.N.D. Cal. 1899)).

\textsuperscript{132. 54 Ohio St. 2d at 47, 374 N.E.2d at 645. For a discussion of the \textit{Rhoades} Court's analysis, see notes 127-31 and accompanying text supra.}

\textsuperscript{133. 357 So. 2d 1185 (La. Ct. App. 1978).}

\textsuperscript{134. Id. at 1186. The 90-day limitation applied to the payment of double indemnity benefits. Id. The face value of the policy was payable regardless of the time of death, providing death occurred within the term of the policy. Id.}

\textsuperscript{135. Id. The stipulated cause of death was "respiratory and cardiac arrest due to cerebral anoxia and spinal cord injury." Id.}

\textsuperscript{136. Id.}

\textsuperscript{137. Id. at 1185. The beneficiaries appealed the trial court's judgment for the insurer and its determination that the time limitation was valid. Id. at 1186.}

\textsuperscript{138. Id. at 1187-88. For a discussion of the court's treatment of \textit{Burne}, see text accompanying notes 139-47 infra.}

\textsuperscript{139. 357 So. 2d at 1187-88. In reaching its decision, the court noted that it is}
the Burne rationale presented an alternative interpretation, but cited as the "better view" the many cases that have upheld the provision as a valid and enforceable limitation on coverage.\textsuperscript{140} As viewed by the Fontenot court, the purpose of the provision is to "minimize uncertainty and dispute as to the cause of death allegedly due to accidental means by preventing the accident from becoming too remote in time."\textsuperscript{141} In addition, the court found that the fact that insurance companies set their rates for coverage in reliance upon data pertaining to death within the specified period was "important and supportive" of the validity of time limitations.\textsuperscript{142} Finally, in discussing the Burne rationale, the court described as "absurd and unsound" the suggestion in Burne that the time limitation would negatively impact on the insured's opportunity to receive optimal medical care.\textsuperscript{143}

Thus, while the Fontenot court did make references to, and rely in part on, the contract rationale which formed the basis of earlier decisions,\textsuperscript{144} the court addressed at least one of the two arguments underpinning the Burne rationale\textsuperscript{145} and reached a contrary decision on the basis of its perception of the proper public policy and the weight of the countervailing authority.\textsuperscript{146} Such a decision is in contrast to Rhoades in which the Court merely recognized the Burne public policy argument, but based its decision entirely on the principle of the freedom of contract.\textsuperscript{147}

A third decision to explicitly reject the Burne rationale was that of the Supreme Court of Illinois in Kirk v. Financial Security Life Insu-

\textsuperscript{140} Id. at 1188.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id. (quoting Burne v. Franklin Life Ins. Co., 451 Pa. at 237, 301 A.2d at 809 (Pomeroy, J., dissenting)).
\textsuperscript{144} Id. at 1187. For a discussion of the Rhoades court's application of the contract rationale, see notes 138-51 and accompanying text supra. For a discussion of other cases which have relied on this "contract rationale," see notes 20-57 and accompanying text supra.
\textsuperscript{145} See 357 So. 2d at 1187-88. The court addressed the public policy aspect of Burne. Id.
\textsuperscript{146} Id. at 1187-88. For a discussion of the Fontenot court's analysis, see notes 133-44 and accompanying text supra.
\textsuperscript{147} For a discussion of Rhoades, see notes 121-32 and accompanying text supra.
ance Co. In Kirk, the insured's accidental death benefit was conditioned on the insured’s death as a result of accidental injury within ninety days of the accident. The insured was involved in an auto accident resulting in severe injuries which caused him to be placed in intensive care; he required “extraordinary measures” merely to be kept alive. From the date of the accident until his death, ninety-two days later, the insured was given little chance of survival. The insurer paid the face value of the policy, but refused to pay the accidental death benefit because the insured did not die within the ninety-day period provided in the policy. On appeal to the Illinois Supreme Court from the decision below holding that the ninety-day limitation was contrary to public policy, the court reversed, holding that the time limitation was not clearly against public policy and that, therefore, the beneficiary was not entitled to the double indemnity benefits.

In support of its decision, the court not only categorically addressed and rejected the public policy considerations in Burne, but also enunciated policy considerations of its own. In first addressing the policy considerations espoused by the majority in Burne, the court

149. 54 Ill. App. 3d at 193, 369 N.E.2d at 341.
150. Id.
151. 75 Ill. 2d at 370, 389 N.E.2d at 145.
152. Id. The court pointed out that the policy “specifically limited double indemnity recovery to death occurring within 90 days of the fatal accident.” Id.
153. 54 Ill. App. 3d at 197-98, 369 N.E.2d at 344. The beneficiary's action, based on the allegation that the 90-day time limitation violated public policy, was orally dismissed by the trial court. Id. at 192, 369 N.E.2d at 341. On appeal to the Illinois appellate court, the trial court's judgment was reversed, and the action remanded on a finding that the 90-day limitation was contrary to public policy. Id. (citing Burne v. Franklin Life Ins. Co., 451 Pa. 218, 301 A.2d 799 (1973)).
154. 75 Ill. 2d at 371, 389 N.E.2d at 145 (1978). The court concisely framed the “primary question” posed in the appeal as “whether this unambiguous 90-day requirement violates Illinois public policy.” Id. at 370, 389 N.E.2d at 145. The court also indicated that, while this issue had not yet been addressed by the Illinois Supreme Court, several Illinois appellate courts had approved this type of time limitation. Id. at 372, 389 N.E.2d at 146 (citing Hickey v. Washington Nat'l Ins. Co., 302 Ill. App. 388, 23 N.E.2d 933 (1939) (upholding provision in accident insurance policy which limited benefits to instances where the insured died within 30 days of the accident); Clarke v. Illinois Commercial Men’s Ass’n, 180 Ill. App. 300 (1913) (insurer’s refusal to pay under a double indemnity provision upheld where the insured died beyond the policy’s 90-day limitation period)).
155. 75 Ill. 2d at 373-80, 389 N.E.2d at 146-48. For a discussion of the court’s treatment of the policy considerations in Burne, see notes 159-63 and accompanying text infra.
156. 75 Ill. 2d at 373-80, 389 N.E.2d at 148-49. For a discussion of the court’s policy considerations in support of upholding the validity and enforceability of such limitations, see notes 164-67 and accompanying text infra.
rejected as "unpersuasive" the argument that time limitations should be abandoned in light of the advancements made by the medical profession in defining death. 157 In addition, the court posited that the "suggestion that the injection of financial matters may detrimentally affect [medical] decisions by double indemnity life insurance beneficiaries [was] not substantiated by the case at bar." 158

The court also pointed out that, although some states have no clearly defined public policy on this matter, this was not the case in Illinois. 159 The court noted that the public policy of Illinois in the area of insurance was embodied in the Illinois Insurance Code which gives the Insurance Director the duty to make judgments as to the validity of various policy provisions. 160 Further, it was pointed out that the ninety-day limitation had been specifically authorized in the Insurance Department's "Rules and Regulations," 161 and that the long-established approval of such limitations by the Director, in the absence of any countermanding action by the legislature, evidenced that the legislature did not consider them violative of public policy. 162

157. 75 Ill. 2d at 378, 389 N.E.2d at 149 (citing Note, supra note 1, at 860). The court noted that there would always be those who will die immediately following the expiration of the policy's time limitation period, despite the state of the art of healing or preserving life. Id. at 378, 389 N.E.2d at 149.

158. Id. at 378, 389 N.E.2d at 149. The court noted that, contrary to the Burne court's contention concerning the injection of financial matters into medical decisions, the beneficiary in Kirk maintained the insured's life for more than 90 days despite the 90-day limitation provisions. Id. Thus, the court concluded that the limitation provision "did not act as a disincentive in the provision of medical services." Id. In addition, the court noted that this issue was already dealt with by the concept of "insurable interest." Id. at 379, 389 N.E.2d at 149. For a general discussion of the concept of "insurable interest, see R. Keeton, supra note 3, §§ 3.3-3.5, at 101-128; W. Vancé, supra note 5, §§ 28-34, at 156-208.

159. 75 Ill. 2d at 374-76, 389 N.E.2d at 148 (citing Smith v. Board of Educ., 405 Ill. 143, 89 N.E.2d 893 (1950); Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947); Pearson v. Adams, 394 Ill. 391, 68 N.E.2d 777 (1946)). The court noted that the legislature had not been silent on the issue of public policy in relation to the contents of insurance policies. Id.

160. Id. (citing Ill. Rev. Stat. ch. 73, §§ 73, 1013 (1977). Section 1013 provides in pertinent part, "The Director is charged with the rights, powers and duties appertaining to the enforcement and execution of all insurance laws of this State. He shall have the power (a) to make reasonable rules and regulations as may be necessary for making effective such laws." Ill. Rev. Stat. ch. 73, § 1013 (1977).

161. 75 Ill. 2d at 376-77, 389 N.E.2d at 147-48 (citing Department of Insurance Rule 20.07, § 7(a)(10), 2 Ill. Admin. Reg. 57 (July 28, 1978)). Insurance Rule 20.06 authorizes the following language: "Accidental death and dismemberment benefits shall be payable if the loss occurs within 90 days of the date of the accident . . . ." 2 Ill. Admin. Reg. 57 (July 28, 1978). Cf. 31 Pa. Admin. Code §§ 89.43, 89.61(h), 89.80(e), 89.97(d), 133.12 (Shepard's 1978) (prohibiting time limitations in accidental death provisions). For a discussion of the Pennsylvania regulations, see note 116 supra.

162. 75 Ill. 2d at 376-78, 389 N.E.2d at 148. The court noted that, although approval of these provisions by the Insurance Department was not binding upon the
The court concluded, therefore, that the matter was one better left to the Insurance Department and the legislature. The court then elaborated on the policy considerations favoring the validity and enforceability of time limitation provisions. The court noted that "these provisions minimize uncertainty as to the cause of the assured's death" with the concomitant effect of eliminating a substantial amount of litigation. The court also indicated that these provisions reflect decisions by the insurance company concerning the premiums to be charged.

Thus, although the Kirk court reached the same outcome as Fontenot and Rhoades, its analysis ventured beyond these decisions by not only addressing and dismissing the major arguments underpinning the Burne public policy rationale, but also by formulating public policy considerations of its own and looking to state statutes for guidance in the determination of the state's public policy. Such an analytical approach is in sharp contrast with Fontenot and Rhoades which only superficially addressed the Burne public policy rationale.

courts, they were nevertheless entitled to great weight against a contention that the approved provisions violated public policy. Id.

163. Id. at 376-78, 389 N.E.2d at 148. However, the court did indicate that "there may be valid reasons which support the validity of the decision in Burne." Id. at 377, 389 N.E.2d at 148.

164. Id. at 376-78, 389 N.E.2d at 148. Although the court stated that there were "numerous policy arguments favoring the 90 day limitation," the court clearly articulated only three. Id. For a discussion of the policy arguments favoring time limitations espoused in Kirk, see text accompanying notes 165-67 infra.


166. 75 Ill. 2d at 377-78, 389 N.E.2d at 148. The court posited that without the finality provided by such time limitations, the uncertainty surrounding the cause of death, which increases with the length of time between injury and death, would "spawn a substantial amount of litigation as beneficiaries attempt to establish some injury-connected cause of their insured decedent's death." Id.


168. For a discussion of the court's analysis of the Burne rationale, see notes 155-63 and accompanying text supra.

169. 75 Ill. 2d at 378, 389 N.E.2d at 148. For a discussion of the court's opinion in Kirk, see notes 148-67 and accompanying text supra.

In the final reported decision to address the public policy argument after *Burne*, the District Court of Appeal of Florida in *Haines v. Southern Life & Health Insurance Co.*, 171 upheld the refusal of payment of accidental death benefits by an insurer where the insured's policy specified that death must result within ninety days, but where the insured died 120 days after the date of the accident. 172 In reaching its decision, the court recognized the argument advanced in *Burne* that the beneficiary of the insured might "pull the plug" in order to get the insurance proceeds, 173 but reasoned that without a "showing of any tendency on the part of the public to engage in murder or suicide in order to defeat the time limitations and collect on accident insurance . . . any change [with respect to public policy] must come from the legislature." 174 The court nevertheless indicated that a different outcome might have resulted had the court been faced with a record depicting an insured who was comatose from the moment of the accident or who remained alive "solely by reason of some mechanical device," rather than a record which merely involved an insured who suffered injuries in an accident which later caused his death. 175 The *Haines* dicta is significant in that it highlights the important factual distinction between cases involving both a causation dispute and an uncertainty of eventual death at the time of the accident, and cases in which causation is clear and eventual death is almost certain at the time of the accident. 176 This distinction, implicitly recognized by the *Haines* court, constitutes the basis of the argument for a limited inter-

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172. Id. The court noted that the claimant conceded that, under the then-existing Florida law, the 90-day limitation would have been upheld as a valid limitation on coverage. *Id.* (citing Stinchomb v. Mutual Life Ins. Co., 305 So. 2d 64 (Fla. Dist. Ct. App.), cert. denied, 318 So. 2d 402 (1974) (leg amputation occurred 73 days after the expiration of a 90-day limitation period)).
174. 363 So. 2d at 176.
175. Id. Although not indicated by the court, the hypothetical factual situation which it posited closely resembles the factual situation in *Burne v. Franklin Life Ins. Co.*, 451 Pa. 218, 301 A.2d 729 (1973). For a discussion of *Burne*, see notes 78-115 and accompanying text *supra*.
176. For a discussion of the significance of this factual distinction under the different possible interpretations of *Burne*, see notes 109-15 and accompanying text *infra*. 

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pretation of *Burne*. 177


Only one jurisdiction has adopted, at least in part, the rationale espoused in *Burne*. 178 In *Karl v. New York Life Insurance Co.*, 179 an action was brought by an insured’s beneficiary to recover under the accidental death benefit provisions of two life insurance policies, one providing that death must occur within ninety days and the other, one hundred and twenty days. 180 The insured had suffered severe brain and skull injuries during a criminal assault and died eleven months later without ever regaining normal physical or mental functioning. 181 The insurer paid the face amount of each policy to the insured’s beneficiary, but refused to pay the accidental death benefits. 182 This refusal was based on the grounds that the death occurred

177. For a discussion of *Burne* and the implications of a qualified or broad interpretation of *Burne*, see notes 78-115 accompanying text supra.


180. *Id.* at 320, 353 A.2d at 565. The time limitations were 90 days under a policy issued in 1955 and 120 days under a policy issued in 1963. *Id.* at 321, 353 A.2d at 565. The 1955 policy provided in pertinent part that:

The Company will pay to the beneficiary . . . an additional amount (the Double Indemnity Benefit) equal to the face amount of this policy upon receipt of due proof that the insured’s death resulted directly, and independently of all other causes, from accidental bodily injury and that such death occurred within 90 days of such injury.

*Id.*, 353 A.2d at 566. The 1963 policy provided in pertinent part that “the Company will pay the Accidental Death Benefit, as part of the policy’s death benefit proceeds, upon due proof that the Insured’s death resulted directly, and independently of all other causes, from accidental bodily injury and that such death occurred within 120 days after such injury.” *Id.* at 321-22, 353 A.2d at 566. The insured’s death occurred 334 days after the criminal assault. *Id.*

181. *Id.* at 322-24, 353 A.2d at 566-67. Unlike other leading cases which primarily involved automobile accidents, the insured in *Karl* was the victim of a criminal assault. *Id.* at 322, 353 A.2d at 566. The insured, in addition to “drastic brain surgery” performed upon his admission to the hospital on January 6, 1969, underwent four additional surgical procedures before he was transferred to a nursing home on June 13, 1969. *Id.* The insured remained at the nursing home until his transfer back to the hospital on August 13, 1969, where he remained until his death on December 6, 1969 (334 days following the accident). *Id.* In addition, the record indicated that the insured was totally paralyzed from the date of the accident until his death, except that he was occasionally able to squeeze with one hand in response to a command. *Id.* The insured also required a tracheotomy to permit breathing, was never able to speak, and could neither feed himself nor eat a normal diet. *Id.*

182. *Id.* at 321, 353 A.2d at 565. The face amount of each policy was $10,000. *Id.*
after the expiration of the time period specified in the policies,\textsuperscript{183} and that the insured's death was not caused solely by the accident, but was partially the result of an intervening lung infection.\textsuperscript{184} The trial court, having heard the expert testimony of both parties during the course of a non-jury trial,\textsuperscript{185} disposed of the causation issue by concluding that it had been "clearly and convincingly established" that the insured died as the direct result, independently of all other causes, from the accidental bodily injury he received during the criminal assault.\textsuperscript{186} The court then noted that the time limitation provision should not be read literally to preclude recovery where death does not occur within the specified time following an accident,\textsuperscript{187} but rather should be read as requiring that there be "clear and convincing evidence" that the accident was the cause of death whenever the time limitation is exceeded.\textsuperscript{188} Although the court acknowledged the mass of precedent based largely on strict contractual interpretation of the

\textsuperscript{183.} Id.
\textsuperscript{184.} Id. For the text of the pertinent policy provision relied upon by the insurer, see note 180 supra.
\textsuperscript{185.} 139 N.J. Super. at 324, 353 A.2d at 567. Testimony of the treating neurosurgeon indicated that the insured had suffered an acute subdural hematoma immediately following the accident and that it was common that a person so injured would die in a relatively short period after the accident that gave rise to the injury. Id. at 323, 353 A.2d at 566. The treating neurosurgeon testified that, although some persons survive such a condition, he never expected the insured to survive, and he was surprised at the length of time that the patient lived following the accident. Id. Further, he testified that even though his patient's condition was complicated by various infections, "such infections were the normal and predictable consequence of the breakdown of various bodily functions which invariably follows massive brain injury." Id. Thus, it was the treating physician's opinion that "the insured died as the direct and inevitable result of the injuries sustained during the assault upon him on January 6, 1969." Id. However, the defendant insurer offered the testimony of another neurosurgeon who concluded that the insured "had not died of brain damage alone." Id. at 324, 353 A.2d at 567. In his opinion, the lung infection was at least to some extent independent of the brain injury and might have been attributable to a lung injury suffered by the insured some years before. Id.
\textsuperscript{186.} Id. The court concluded that "the infection existing at the time of Karl's death was a normal part of the pathology resulting from the massive traumatic brain damage and does not amount in any legally significant sense to an independent cause of death." Id. The court noted that the insurer's expert witness had neither treated nor observed the insured and that his expert opinion was based solely on a study of the insured's medical records. Id.
\textsuperscript{187.} Id. The court recognized that the majority view is to give literal enforcement to the time limitation provisions and thereby to preclude recovery where death does not occur within the specified period, and further noted that "as a matter of basic legal philosophy, there is a great deal to be said for giving straightforward effect to clear contractual language." Id. at 324-25, 353 A.2d at 567.
\textsuperscript{188.} Id. at 327, 353 A.2d at 569. The court noted that its holding would give "fair treatment" to the insurers who need to be protected from paying claims where causation is doubtful, whereas a literal reading of the clause would work an "arbitrary forfeiture" on the insured while giving unwarranted protection to the insurer. Id.
policy language, the trial court observed, "[n]evertheless, the fair application and development of law is more than a matter of good linguistic analysis, and a legal result should not be accepted merely because it is called for by contractual language." The court, noting the soundness of the Burne position, concurred with the Burne court that the enforcement of the time limitation would be arbitrary and unreasonable where the cause of death is clear. In addition, the court noted that there existed a great social utility in having losses covered by insurance, and, on that basis, enunciated the previously unarticulated public policy that "courts should find coverage wherever it is possible to do so on a fair basis." The Law Division determined that it was the broad purpose of the time limitation to protect insurers from having to pay on policies where there was some doubt that the death was caused by the accident. The court reasoned that its approach of requiring "clear and convincing" proof of causation whenever death occurred after the expiration of the time limit, would not defeat the purpose of the policy provision and would give fair treatment to both the parties involved.

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189. Id. at 325, 353 A.2d at 566. For a discussion of the court's analysis, see notes 190-94 and accompanying text infra. For a discussion of Burne, see notes 78-115 and accompanying text supra.

190. 139 N.J. Super. at 326, 353 A.2d at 568.

191. Id. This approach would result in the reading of a time limitation in an insurance policy in terms of its "broad purpose and function" whenever a literal reading would work to defeat coverage. Id.

192. Id. at 325-26, 353 A.2d at 568. The court stated that this purpose was a "sound one" because, generally, as the time interval between the accident and eventual death increases, so does the likelihood that an intervening cause was responsible for or at least contributed to the insured's death. Id.

193. Id., 353 A.2d at 568-69.

194. Id. 353 A.2d at 569. For a discussion of the court's reasoning regarding "fair treatment," see note 188 and accompanying text supra. The court limited its holding by explicitly stating that not all time limitation provisions in insurance policies should be read in a broad functional sense and that some provisions must be read literally (e.g., time term setting forth the period of coverage), since to do otherwise would destroy any fair and reasonable limitations on coverage. 139 N.J. Super. at 325-26, 353 A.2d at 569.

In reaching its decision, the court rejected the defendant insurer's argument that the accidental death coverage was only meant to be very limited in scope because of the very modest charge for such coverage. In the 1953 and 1966 policies, the accidental death coverage cost $9.60 and $8.80 per year respectively, whereas the cost of basic life coverage was $185.00 and $256.80 per year respectively. Id. at 327-28, 353 A.2d at 569. The court grounded its rejection of this claim on two points. First, the defendant, in interrogatory answers, stated that there was "no relation between the premium for the accidental death benefits and the time limitations set forth therein." Id. Secondly, the court determined that, based on death statistics, the meaningful factor in setting the low premium is not the time of death, but rather the cause of death. Id. (citations omitted). Thus, the court concluded that accidental death premiums were low because a relatively small percentage of deaths in the United States in 1967 (6.17%) resulted from accidents. Id.
On appeal, the New Jersey Superior Court, Appellate Division, affirmed the award of accidental death benefits. The court pointed out that it was not deciding whether such time limitations were void as against public policy in all cases. Rather, the court merely adopted a limited interpretation of the Burne rationale, holding that time limitations in accidental death benefit provisions would not be enforced where the accident was the clear cause of death. The court advanced the theory that the insurance policy was an “adhesion contract” and reasoned that to enforce the limitation in such an instance would be arbitrary and unreasonable. The court indicated that members of the public who purchase insurance are entitled to protection to the extent necessary to fulfill their reasonable expectations, and that insurance policy provisions that, read literally, would nullify insurance coverage should be read restrictively so as to enable a fair fulfillment of the policy’s objective. The Karl court concluded that because the policy objective was to protect the insurer from having to pay dubious claims, a restrictive reading of the policy provision so as to allow recovery when causation was not in dis-
pute would not frustrate the policy's objective.\textsuperscript{201}

Thus, while the \textit{Karl} opinions have taken the lead of the \textit{Burne} court, they have limited the \textit{Burne} interpretation of limitation provisions to cases in which the cause of death is clear.\textsuperscript{202} The \textit{Karl} trial court further delineated this interpretation by requiring that causation be proven clearly and convincingly, presumably as a safeguard for the insurer.\textsuperscript{203}


In \textit{National Life & Accident Insurance Co. v. Edwards},\textsuperscript{204} the California Court of Appeal added yet another variant to the construction of time limitation conditions in accidental death provisions: the "process of nature" rule.\textsuperscript{205} The "process of nature" rule, previously only applied to disability policies, traces the debilitation of the insured from the time of injury to eventual total disability, or in the life insurance context, from injury to death.\textsuperscript{206} The rationale underlying the rule's application is that "in a large majority of instances . . . the real nature and extent of injuries are not revealed until sometime in the future . . . [T]he processes of nature may be busily engaged in developing what may have seemed to be a slight hurt into a most serious and perhaps fatal injury."\textsuperscript{207} In \textit{National Life}, the insured had purchased a life insurance policy containing a provision for double indemnity in the event the insured died as the result of injuries sustained in a vehicular accident within ninety days of the accident.\textsuperscript{208}

As the result of an automobile accident, the insured was rendered a quadriplegic from the date of the accident until his death, over two

\textsuperscript{201} 154 N.J. Super. at 186, 381 A.2d at 64. The court reasoned that where the objective of the time limitation provision is to protect insurers from having to pay doubtful claims and there is no dispute that the covered accident caused the insured's death, recovery would in no way frustrate the objective of the provision. \textit{Id.}

\textsuperscript{202} See notes 188-97 and accompanying text \textit{supra}. For a discussion of the court's reliance upon \textit{Burne}, see notes 189-90 and accompanying text \textit{supra}.

\textsuperscript{203} 139 N.J. Super. at 327, 353 A.2d at 568. For a discussion of the \textit{Karl} court's interpretation of \textit{Burne}, see notes 179-94 and accompanying text \textit{supra}.

\textsuperscript{204} 119 Cal. App. 3d 326, 174 Cal. Rptr. 31 (1981).

\textsuperscript{205} \textit{Id.}

\textsuperscript{206} \textit{Id.} at 332-33, 174 Cal. Rptr. at 34.

\textsuperscript{207} \textit{Id.} at 333, 174 Cal. Rptr. at 34.

\textsuperscript{208} \textit{Id.} at 331, 174 Cal. Rptr. at 33. The policy provided a face amount coverage of $4,000 with an additional $4,000 payable only if the insured's death occurred within 10 years following the issuance of the policy. \textit{Id.} The policy also contained a vehicular accident provision, whereby the named beneficiary would receive $8,000 (twice the face amount) if death occurred within 90 days from the date of the death-causing vehicular accident. \textit{Id.}
years later. Although the insured’s death certificate indicated that he died of bilateral bronchopneumonia as a result of the spinal cord injury he received in the automobile accident, and although the parties stipulated that the disabling effects of the injuries were continuous until his death, the insurer refused to pay under the policy’s double indemnity provision on the ground that death occurred more than ninety days after the injuries were sustained.

On appeal, the California Court of Appeal addressed the issue of whether the “process of nature” rule should apply to time limitation clauses in accidental death provisions. At the outset the court noted that although the “process of nature” rule had been confirmed as the law in California, its application had been limited to disability policies. In the disability context, the onset of the disability was considered to relate back to the time of the accident wherever it could be established that the disability arose directly from the accident, notwithstanding time limitation provisions which would have otherwise cut off coverage before the person affected was brought to a state of total disability. Making what it purported to be a “reasonable

209. Id. The insured’s accident occurred on March 2, 1974. He died on March 22, 1976, 751 days following the date of the accident. Id.
210. Id.
211. Id.
212. Id. at 330, 174 Cal. Rptr. at 33. In granting summary judgment for the insured, the trial court refused to apply the “process of nature” rule advanced by the beneficiary in an effort to defeat the time limitation clause. Id. at 332, 174 Cal. Rptr. at 34.
213. Id. at 332, 174 Cal. Rptr. at 34. For a discussion of the court’s analysis, see notes 214-24 and accompanying text infra. For a discussion of the “process of nature” rule, see text accompanying notes 206-07 supra.
214. 119 Cal. App. 3d at 332, 174 Cal. Rptr. at 34. The court noted that while the “process of nature” rule was adopted in judicial decisions in other states, it was first applied by a California court in Frenzer v. Mutual Benefit Health & Accident Ass’n, 27 Cal. App. 2d 406, 81 P.2d 197 (1938). In Frenzer, the court held that “when a disability follows from accidental injury within such time as processes of nature consume in bringing the affected person to the state of total incapacity . . . such disability is immediate” under the terms of an accident insurance policy provision which covered disability only if the insured suffered an accidental injury which immediately, continuously, and wholly disabled the insured. Id. at 413, 81 P.2d at 201. The National Life court noted that despite the “substantial and growing body of law” which applied the “process of nature” rule to disability policies, courts have been reluctant to extend the concept to time limitation provisions in double indemnity life insurance policies. 119 Cal. App. 3d at 333, 174 Cal. Rptr. at 35. For another court’s application of the “process of nature” rule, see Booth v. United States Fidelity & Guar. Co., 3 N.J. Misc. 735, 130 A. 131 (1925) (“process of nature” rule applied where a seemingly minor head injury caused vision impairment, mental discoordination, and later paralysis).
extension” of California law, the National Life court determined that
the “process of nature” rule should also be applied to time limitations
in accidental death provisions. The court reasoned that a strict and literal interpretation of the policy provision would lead to an unjust result and an unreasonable restriction of coverage.

In reaching its decision that the “process of nature” rule could properly be applied to defeat time limitation clauses in accidental double indemnity death provisions, the court rejected both the majority rule upholding such provisions as well as several of the theories upon which that rule was based. The court stated that, rather than being a product of negotiation, the double indemnity agreement was a “classic example of a contract of adhesion” so as not to require the traditional literal enforcement. Moreover, the court concluded that modern medicine has made “ridiculous” the premise that ninety days is a fair length of time for the final result of an accident to occur, and that the time limitations were not suitable substitutes for an actual determination of the cause of the insured’s death. In addition to rejecting the majority rule, the court also summarily determined that it was not necessary to adopt or extend the public policy rationale espoused in Burne.

216. Id. at 334, 174 Cal. Rptr. at 35.
217. Id. at 333, 174 Cal. Rptr. at 35 (citing Annot., 39 A.L.R. 3d 1026, 1034 (1971)).
218. Id. at 333-36, 174 Cal. Rptr. at 35-38. For a discussion of the court’s rejection of the several theories underpinning the majority rule, see notes 219-21 and accompanying text infra. For a discussion of the majority rule, see notes 20-77 and accompanying text supra.
219. 119 Cal. App. 3d at 334, 174 Cal. Rptr. at 35. The court rejected the notion espoused in Brown v. United States Casualty Co., that the insured had contracted with the insurer with “full awareness” of the time limitation provision and that the inclusion of such provision was reached through the parties’ negotiations. Id. (citing 95 F. 935 (C.C.N.D. Cal. 1899)). Rather, it was noted by the court that the insured “had no opportunity to bargain or render the provision inapplicable.” Id. For a discussion of Brown, see notes 33-46 and accompanying text supra. For a discussion of the adhesion contract theory, see note 198 supra. See also Karl v. New York Life Ins. Co., 154 N.J. Super. at 185-86, 381 A.2d at 64.
220. 119 Cal. App.3d at 334, 174 Cal. Rptr. at 35 (citing Burne v. Franklin Life Ins. Co., 451 Pa. 218, 301 A.2d 799 (1973) (insured’s life was prolonged for 4½ years by the use of sophisticated medical techniques and life support equipment)). For a discussion of Burne, see notes 78-115 and accompanying text supra.
221. 119 Cal. App. 3d at 334-35, 174 Cal. Rptr. at 35-36. In rejecting the argument that such time limitation provisions were inserted to provide a solution to problems presented by questions concerning cause of death, the court pointed out that it was the function of the court to “admit evidence on actual causation rather than rely on some arbitrary time limitation.” Id. The court also indicated that, in the instant case, the policy language puts the burden of establishing causation upon the claimant. The court observed further that it was unaware of any actuarial or statistical basis for the selection of a 90-day limitations period. Id.
222. Id. at 334, 174 Cal. Rptr. at 35. The court opined that it was not necessary
Thus, in reversing the summary judgment for the insurer and remanding the action, the National Life court held that, as a matter of law, the "process of nature" rule is applicable to insurance policy clauses which limit death benefits to instances where the insured's death occurs within a specified time period from the accident. Further, the court held that the time limitation clause was not invalid as a matter of public policy and that the trial court must admit evidence on actual causation and instruct the jury as to the "process of nature" rule, rather than merely relying on an adhesive arbitrary policy limitation.

IV. SUMMARY AND CONCLUSION

Prior to the Pennsylvania Supreme Court's decision in Burne, courts had uniformly upheld time limitations in accidental multiple indemnity life insurance provisions as valid and enforceable limitations on coverage. These decisions were based on a strict application of contract law with supplementary reliance on the purported purposes of the provisions and the intentions of the parties as perceived by the courts. These provisions had been unsuccessfully held that time limitation clauses in accidental death provisions were invalid as a matter of public policy. Rather, the court viewed its holding merely as a "reasonable extension" of the "process of nature" rule.

223. Id. at 335-36, 74 Cal. Rptr. at 36. The court reversed and remanded the decision of the trial court with the order that the matter be permitted to proceed to trial with the appropriate instruction as to the "process of nature" rule.

224. Id. at 336, 174 Cal. Rptr. at 36. For a discussion of the court's characterization of the time limitation provision as a contract of adhesion, see note 219 and accompanying text. For a discussion of the court's characterization of the time limitation provision as an arbitrary limitation on coverage, see note 221 and accompanying text.


226. For a discussion of cases upholding time limitation provisions, see notes 19-77 and accompanying text.


228. See, e.g., Brown v. United States Casualty Co., 95 F. 935 (C.C.N.D. Cal. 1899). For a discussion of the purpose of such limitations as articulated by the court in Brown, see notes 41-46 and accompanying text. For a discussion of several arguments which have been offered by the courts as to why such limitations are valid, see Note, supra note 5, at 601.

challenged as being ambiguous, unfair, contrary to the main provision of the policy, and invalid as against public policy.

With the decision of the Pennsylvania Supreme Court in Burne, vitality was given to the applicability of the "void as against public policy" rationale.

In the years following the Burne decision, several courts have considered the continued validity of such limitations, and, with the noted exceptions of New Jersey and California, the public policy argument has been rejected. Although, like the pre-Burne decisions, these decisions explicitly rejected the void as against public policy rationale, it is clear that the post-Burne decisions can be contrasted to the pre-Burne decisions on the basis of the extent of consideration given to public policy arguments. In the pre-Burne period, the courts either summarily rejected public policy arguments or gave them only superficial consideration before reaching a determination based on a strict application of contract law.
period, the courts have to a greater extent addressed and attempted to rebut the major arguments underpinning the Burne rationale.\(^{239}\) Thus, as a result of the Pennsylvania Supreme Court's decision in Burne, the courts have been forced to give greater consideration to the public policy rationale as a legitimate argument.\(^{240}\) As a consequence of this heightened consideration, it is submitted that the courts have placed greater reliance upon causation as a determining factor in the interpretation of time limitation clauses. The most obvious example of such reliance is in Karl where the court concluded that it would, in effect, disregard time limitations whenever there was "clear and convincing" evidence of causation.\(^{241}\) Similarly, the Haines dicta, indicating that a different outcome may have resulted had there been a closer nexus between the accident and death, demonstrates the impact which causation may have in future decisions.\(^{242}\) The importance of causation was also evidenced in National Life, where the court, although not reaching a determination on the Burne public policy rationale, applied the "process of nature" rule and in effect substituted a rule of causation for the time limitation provision.\(^{243}\) Further, it is submitted that the importance of causation in the interpretation of time limitation provisions is also borne out by post-Burne decisions which have rejected the Burne rationale, but which have indicated that the purpose of the limitations was to resolve potential disputes over causation.\(^{244}\) Thus, the question that must be asked of and answered by courts in the future is, "If causation is not in dispute, of what significance is the time limitation?"

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239. For an example of these cases, see cases cited in note 236 supra.

240. For a discussion of opinions which have considered the public policy rationale, see notes 118-203 and accompanying text supra.


244. See, e.g., Fontenot v. New York Life Ins. Co., 357 So. 2d 1185 (La. Ct. App. 1978). In Fontenot, the court stated that the purpose of the limitation provision is to "minimize uncertainty and dispute as to the cause of death allegedly due to accidental means by preventing the accident from being too remote in time." Id. at 1188. For a discussion of Fontenot, see notes 133-47 and accompanying text supra.
How future opinions will resolve the issue of the validity of time limitation clauses in multiple indemnity provisions can only be the subject of speculation. It is submitted that the broad interpretation of Burne, that the time limitations are void as against public policy in all instances, will not be readily adopted.\textsuperscript{245} However, it is clear that claimants under policies with this type of time limitation will continue to attack such provisions on the ground that they are violative of public policy and therefore unenforceable.\textsuperscript{246} Similarly, it can be anticipated that future opinions will continue to give greater consideration to the public policy rationale and perhaps even adopt the limited interpretation of the Burne rationale as did the court in Karl,\textsuperscript{247} and thereby limit the enforcement of such provisions to instances where there is no "clear and convincing" evidence that the accident was the cause of death.\textsuperscript{248} Alternatively, it is possible, although not probable, that future decisions may follow the lead of the California court in National Life and apply the "process of nature" rule in the accident insurance context.\textsuperscript{249} These approaches would enable a court to reach an outcome which parallels that arguably intended by the court in Burne, without necessitating a decision on the general validity of time limitation provisions.\textsuperscript{250} In any event, as a result of Burne, jurisdictions that have not yet considered this issue will be required to reexamine the rationales previously accepted in support of the validity of such time limitations.\textsuperscript{251}

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\textsuperscript{246} See generally Annot., 39 A.L.R. 3d 1311, 1313 (1971). See also Note, supra note 5, at 600.


\textsuperscript{248} For a discussion of the Karl court's application of the Burne rationale, see notes 189-94 and accompanying text supra.


\textsuperscript{251} See Note, supra note 1, at 864.