



## Alerts

### Fifth Circuit Holds Amputation Not An Accident Under AD&D Policy Where Employee's Underlying Medical Conditions Contributed to the Loss

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*The LHD/ERISA Advisor*

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In *Byerly v. Std. Ins. Co.*, 2021 U.S. App. LEXIS 2937 (5th Cir. Feb. 2, 2021), the Fifth Circuit determined that a claimant, whose leg was amputated after he stubbed his toe, did not suffer a qualifying loss under his group AD&D policy because the loss was not caused solely by an accident, but rather was contributed to by the employee's underlying medical conditions.

The case provides an interesting discussion on how to analyze coverage under an AD&D policy where the effects of an accident are exacerbated by pre-existing medical conditions.

Gregory Byerly stubbed his toe in a household accident. Byerly suffered from several pre-existing conditions, including diabetes, peripheral neuropathy, and peripheral arterial disease. Shortly after the accident, Byerly suffered a bone infection that spread up his leg and eventually required the amputation of his leg below the knee. The surgeon who amputated the leg reported Byerly had been admitted with a nonhealing left heel decubitus related to his neuropathy and peripheral artery disease.

At the time, Byerly's employer provided its employees with an AD&D group policy (Policy) issued by Standard Insurance Company (Standard). The Standard Policy covered the accidental loss of a foot as long as the "Loss" resulting from the accident is caused solely and directly by an accident and occurs independently of all other causes. The Policy also excluded certain accidental losses, including "if the accident or loss is caused or contributed to by...the [s]ickness...existing at the time of the accident." "Sickness" was defined as "your sickness, illness, or disease."

Byerly submitted a claim under the Policy. During the administration of the claim, Standard concluded that the development of infection and gangrene was related to his then-existing medical conditions and "likely would not have occurred in the absence of those conditions" and denied the claim on that basis. On appeal, Standard upheld its denial on the basis that the need for amputation was directly related to Byerly's underlying medical conditions.

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After Byerly died from unrelated causes, Byerly's widow challenged the claim denial in a Texas federal court. The district court granted summary judgment in Standard's favor. On appeal, the widow did not dispute the consensus medical view that Byerly's pre-existing conditions contributed to the need for an amputation. Instead, she argued that the analysis should focus on what caused the initial injury to the toe. Because the underlying conditions did not cause Byerly to stub his toe, she maintained, stubbing the toe was an accident and thus was covered under the Policy.

The Fifth Circuit disagreed, holding that the Policy placed the focus on the cause of the loss, not on the cause of the accident. Here, the loss was the amputation, so under the Policy, the amputation must have been solely and directly caused by an accident and must occur independently of all other causes. Because neither of those two conditions was met, the Fifth Circuit agreed with the district court and held that the Policy did not provide coverage.

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